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**::आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,**



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.O. No.	दिनांक / Date
	V2/2/EA2/BVR/2017	R/57/2016	11.11.2016
	V2/3/EA2/BVR/2017	R/61/2016	23.11.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-076-TO-077-2017-18**

आदेश का दिनांक /  
Date of Order: **01.01.2018** जारी करने की तारीख /  
Date of issue: **04.01.2018**

**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अथवा आधुनिक संवृद्ध आयुक्त/ उपआयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गंधीधाम, द्वारा उपरलिखित जारी मूल आदेश से सृजित /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-  
1. M/s Executive Engineer, SBC., Div. No. 4/2, Limbdi., Gujarat - 363 421,  
2. M/s. Executive Engineer, SBC., Div. No. 4/1, Limbdi, Gujarat - 363 421,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील टावर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है। /  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमामी भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumai Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये चार EA-3 की चार प्रतियां में दजे किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की जति ज्यादा की सीमा और लगाया गया जुर्माना, सजा 5 लाख या उससे कम, 5 लाख सजा या 50 लाख सजा तक अथवा 50 लाख सजा से अधिक है तो अन्ततः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अभाव, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वोच्च न्यायाधीश के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट टावर किया जाना चाहिए। संबंधित ड्राफ्ट का अभाव, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए अर्जत-पर के साथ 500/- सजा का निर्धारित शुल्क जमा करना होगा। /  
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित चार S.T-5 में दान प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की जति ज्यादा की सीमा और लगाया गया जुर्माना, सजा 5 लाख या उससे कम, 5 लाख सजा या 50 लाख सजा तक अथवा 50 लाख सजा से अधिक है तो अन्ततः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अभाव, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वोच्च न्यायाधीश के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट टावर किया जाना चाहिए। संबंधित ड्राफ्ट का अभाव, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए अर्जत-पर के साथ 500/- सजा का निर्धारित शुल्क जमा करना होगा। /  
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



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वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंडों की जड़ी अपील, सेवाकर नियमवाची, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकती एवं उसके साथ अपील, केन्द्रीय उत्पाद शुल्क अध्याय अधुक्ता (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न कर (जन्म से एक प्रति प्रमाणित होनी चाहिए) और अधुक्ता द्वारा सहायक अधुक्ता अथवा उपअधुक्ता, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थ न्यायाधिकरण को आवेदन दाने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थ न्यायाधिकरण में अपील करने समय उत्पाद शुल्कसेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अवशेषित टैप राशि इस कलेक्ट तथा में अधिक्त न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल है:
  - (i) धारा 11 डी के अंतर्गत रकम
  - (ii) सेस्टैट जमा की गई गई राशि
  - (iii) सेस्टैट जमा नियमवाची के नियम 6 के अंतर्गत टैप रकम

- बशर्ते यह कि इस धारा के अंतर्गत वित्तीय (स. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलार्थ न्यायाधिकरण के समक्ष विचारार्थीन प्रेषण नहीं एवं अपील की लागू नहीं होगी। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
  - (ii) amount of erroneous Convat Credit taken;
  - (iii) amount payable under Rule 6 of the Convat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन : Revision application to Government of India:

इस आदेश की पुनरीक्षण प्रक्रिया विस्तारित/विस्तारित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पत्रक के अंतर्गत अथवा अधिक्त, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, पारसव विभाग, चौथी मंजिल, जीवाण टिए भवन, भसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA, 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि आग के किसी नुकसान के मामले में, जहां नुकसान किसी आग को किसी कारखाने से आग गृह के परामर्श में टॉरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या भंडारण में आग के परामर्श के दौरान, किसी कारखाने या किसी भंडार गृह में आग के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे आग के विनिर्माण में प्रयुक्त कच्चे आग पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को आग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इन्ट्री डेस्ट्रि इस अधिनियम एवं इसके विभिन्न धाराओं के तहत मान्य की गई है और ऐसे आदेश जो अधुक्ता (अपील) के द्वारा वित्त अधिनियम (स. 2), 1998 की धारा 109 के द्वारा वित्त की गई तरीक अथवा स्थायीधिति पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रथम लडया EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवाची, 2001, के नियम 9 के अंतर्गत सिनिस्टिफ है, इस आदेश के संदर्भ के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की उत्पादगी के साथ के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Chalan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की उत्पादगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 - का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कोई मूल आदेश का संशोधन है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त टाग से किया जाना चाहिए। इस लडया के होने हुए भी की निम्न पट्टी रुपये से बचने के लिए स्थायित्वी अपीलार्थ न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) पारामर्शित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची। के अधुक्ता मूल आदेश एवं स्वयं आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (कार्य विधि) नियमवाची, 1982 में उचित एवं अन्य संबंधित मामलों को सम्भालित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलार्थ न्यायाधिकरण को अपील दायित्व करने से संबंधित विषयक, विस्तृत और नवीनतम जानकारी के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)



**:: ORDER – IN – APPEAL ::**

The Department has filed the below mentioned two appeals against below mentioned Orders-in-Original (*hereinafter referred to as* "the impugned orders") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (*hereinafter referred to as* "Appellant") in respect of M/s. Sardar Sarovar Narmada Nigam Ltd., Executive Engg. SBC Division No. 4/2, Limbdi, Gujarat and the Executive Engineer, Saurashtra Branch Canal, Division No. 4/1, 201 to 21, Taluka Seva Sadan, Limbdi, Gujarat – 363 421 (*hereinafter referred to as* "Respondent"), as detailed in Table below. Since, the issue involved is common in nature, I proceed to decide two appeals through common order:-

Sr. No.	EA-2 / Appeal No.	OIO No. & Dt.	Amt. of refund appealed against by the Department (Rs.)
1	02/2017	R/57/2016 – 11.11.2016	27,993/-
2	03/2017	R/61/2016 – 23.11.2016	10,84,449/-

2. Brief facts of the cases are that the Respondent filed two refund claims under Section 101 of the Finance Act, 2016 on the ground that no Service Tax was required to be levied or collected during the period from 01.07.2012 to 29.01.2014, in respect of taxable services provided to a government authority or a Board or any Body set up by the Central Government or State Government. Both the refund claims were allowed and sanctioned by the lower adjudicating authority, vide the impugned orders *inter alia*, on the grounds that (i) the respondent had made payment of Service Tax provided during the exempted period i.e. from 01.07.2012 to 29.01.2014, and therefore as per Section 101 of the Finance Act, 2016 the respondent was eligible for refund claim; (ii) the respondent had submitted Chartered Accountant's certificate, issued by M/s. Dhirubhai Shah & Doshi declaring that they had paid their amounts under VCES on reverse charge mechanism hence they have not passed on incidence of service tax to any other person.

3. Being aggrieved with the impugned orders, the Department preferred these two appeals, *inter-alia*, on the grounds as under :-

3.1 In terms of provisions of Section 101 of the Finance Act, 2016, exemption from payment of Service Tax is available, if taxable services pertaining to construction of canal, dam, etc. are provided to an authority or a board or any other body (i) set up by an act of parliament or state legislature or (ii) established by the Government, with ninety percent, or more participation by way of equity or control, to carry out any





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function entrusted to it under Article 243 of the Constitution; that the Respondent had received construction services in respect of construction of Saurashtra Branch Canal for irrigation; that it is a matter of fact that the Respondent had made payment of Service Tax on the services covered under Section 101 of the Finance Act, 2016; that the amount of Service Tax had been paid by the Respondent under VCES Scheme as admitted by them and also as per Certificate issued by their C.A. namely, M/s. Dhirubhai Shah & Doshi, which was submitted during the proceedings before the Assistant Commissioner, Service Tax Division, Bhavnagar.

3.2 The Respondent is a Governmental authority, which got Saurashtra Branch Canal constructed for irrigation and had made payment of Service Tax of Rs. 27,993/- and Rs. 10,84,449/- under VCES, 2013. The jurisdictional Assistant Commissioner has confirmed that amount of Rs. 10,84,449/- paid under VCES, 2013 has been refunded erroneously vide impugned order dated 23.11.2016; that the amount paid under VCES, 2013 cannot be refunded under any circumstances.

3.3 Section 109 of the Finance Act, 2013 refund of any amount paid under VCES, 2013 should not be refunded under any circumstances; that as per Section 109 of the Finance Act, 2013, any amount paid in pursuance of a declaration made under Sub-section (1) of Section 107 shall not be refunded under any circumstances.

4. The Respondent filed memorandum of cross objections dated 28.03.2017 against the department appeal wherein they, *inter alia*, stated that the lower adjudicating authority erred by considering Section 109 of the Finance Act, 2013 and stating that Service Tax was paid under VCES, 2013; that as per Section 107 of the Finance Act, 2013, the assessee had to make a declaration of "tax dues"; that as per Section 95(1)(e) of the Act, 'tax dues' means the service tax due or payable under Chapter or any other amount due or payable under section 73A thereof, for the period including cess leviable thereon under any other Act for the time being in force, but not paid as on the 01.03.2013; that Section 109 of the VCES, 2013 says that any amount paid in pursuance of the declared tax dues shall not be refundable; hence it is clear that "tax dues" cannot be refunded, but any other amount may be refunded because of retrospective amendment in Section 101 of the Finance Act, 2016 because Service Tax paid by the appellant ceases to be 'tax dues' due to Section 101 of the Finance Act, 2016; that VCES, 2013 places no restriction on refund of amount which is not tax dues; that they relied upon a judgment of the Hon'ble Gujarat High Court in case of M/s. Swastik Sanitaryware Ltd. Vs. UOI reported as 2017 (49) S.T.R. 484 (Guj.) (para



15) and an order of Hon'ble CESTAT in the case of Nobles Construction Gujarat Pvt. Ltd. reported as 2016-65-taxmann.com-57-Ahmedabad-CESTAT.

4.1 The Department failed to appreciate that the respondent had paid Service Tax in terms of Section 66B of the Act and Section 101 of the Finance Act, 2016 overrides VCES, 2013 and Section 109 of Finance Act, 2013 and therefore, Service Tax paid by them on specified services pertaining to the period from 01.07.2012 to 29.01.2014 was required to be refunded.

4.2 The Department failed to appreciate that Section 101 of the Finance Act, 2016 does not place any restriction on refund of amount paid under VCES, 2013; that it provides for a refund of any Service Tax paid for the specified services for the specified period, so long as the refund claim is filed within six months from 14.05.2016 and there is no unjust enrichment; that they have satisfied all the conditions necessary for claiming the refund; that lower adjudicating authority has not made out case for unjust enrichment; that there is no restriction on refund of tax paid whether in due course or under any special scheme like the VCES, 2013; that Section 101 of the Finance Act, 2016 was introduced to provide substantive benefit to the taxpayer; that the legislation, in its wisdom had not imposed any conditions for refund of service tax on specified services provided to Government authority, local government or Body or authority set up by Government of India or State government; that the appellant is a body set up by Government of India or State Government; that the appellant is a body set up by Government of Gujarat; that the intention of Government is to grant refund - a substantive benefit as is clear from CBEC Circular issued vide D.O.F. No.334/8/2016-TRU, dated February 29, 2016, where it is clarified that : -

"K. Service Tax exemption to canal, dam or other irrigation works with retrospective effect:

*(a) Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 1st July, 2012 to 29.01.2014.*

*[Handwritten signature]*



*(b) Refund of Service Tax paid on the said services during the period from the 1st July, 2012 to 29.01.2014 shall also be allowed in accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.*

*[New section 101 is being inserted in the Finance Act, 1994] (Clauses 156 of the Finance Bill, 2016 refers)"*

[ Emphasis supplied]

4.3. The Respondent relied upon the following case laws :-

- |      |                                      |                             |
|------|--------------------------------------|-----------------------------|
| (i)  | Sandoz Pvt. Ltd. Vs. CCE, Belapur    | 2010-28-STT-91-Mum-CESTAT   |
| (ii) | J.P. Morgan Services India Pvt. Ltd. | 2016-67-taxmann.com-13(Mum) |

4.4 There is no intention on part of legislature to restrict refund of service tax paid on specified services in as much as Section 101 does not place any restrictive conditions.

4.5 In respect of the impugned order dated 23.11.2016, the amount paid under VCES, 2013 was Rs. 9,67,701/- and not Rs. 10,84,449/- and therefore the amount paid under VCES, 2013 is required to be corrected.

5. Personal hearing in the matter was attended by S/Shri Yash Shah, C.A. wherein he, *inter alia*, reiterated the grounds raised in the cross-objections. Personal hearing notice was also sent to the jurisdictional Assistant Commissioner, however, none appeared from the Department.

### **Findings:-**

6. I have carefully gone through the impugned orders, appeal memorandums and cross-objections, as well as oral submissions made by the respondent. The issue to be decided in both appeals is whether the impugned orders of the lower adjudicating authority sanctioning refund claims of Service Tax paid under VCES, 2013 to the respondent are correct, or not.

7. I find that the respondent has claimed refund of that Service Tax also, which they paid availing benefit of VCES, 2013. The lower adjudicating authority has incorrectly sanctioned these amount of refund claims paid under VCES, 2013 in two installments i.e. 50 % of Service Tax of these amounts were paid by the respondent on or before 31.12.2013 and remaining 50 % of Service Tax by 30.06.2014, as per



provisions of VCES, 2013. The facts of the cases establish that Service Tax refunded by the lower adjudicating authority under these two appeals, were originally paid by the respondent under VCES, 2013 only.

7.1 I would like to reproduce Section 109 of the Finance Act, 2013 (governing VCES, 2013), which reads as under :-

**"No refund of amount paid under the Scheme.**

**109. Any amount** paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances."

[ Emphasis supplied ]

7.2 It is an admitted and undisputed fact that all payments for which appeals have been filed had actually been paid under VCES, 2013. Section 109 very categorically states that any amount paid in pursuance of a declaration made under VCES, 2013 would not be refundable. I find that embargo placed upon seeking refund of amount paid under VCES, 2013 is plenary and very categorical and hence no refund of Service Tax paid under VCES, 2013 is available to the respondent .

7.3 I also find that Section 108 of Finance Act, 2013 reads as under :-

*"(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter. (2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration."*

[ Emphasis supplied]

7.4 I find that the words used in the aforesaid sections, like (i) *"a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration"*, and (ii) *"under any circumstances"* in Section 109 are quite clear and express provisions, which rule out, whatsoever, any ambiguity regarding non - refundability of amount paid under VCES, 2013. Accordingly, the amounts paid by the respondent as Service Tax under VCES,





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2013 were not refundable under any circumstances. In view of above, I am of the considered view that the impugned orders sanctioning refund claims to the respondent are patently incorrect, illegal and improper and therefore, both the Departmental appeals under consideration merit to be allowed.

7.5 I also find that both these appeals have been filed by the department stating that Section 101 of Finance Act, 2016 exempted specified services provided to the government authority, local government, Board or authority set up by the Central Government or State Government retrospectively and hence the lower adjudicating authority was required to examine bar of unjust enrichment. The respondent quoted Para (K) of CBEC Circular 334/8/2016-TRU dated 29.02.2016 to claim refund, however, Para K(b) of this very Circular very clearly mentions that "Refund of Service Tax paid should be allowed in accordance with law" including the law of unjust enrichment.

7.6 I, therefore, find that the refund under Section 101 of the Finance Act, 2016 is not absolute but subject to the provisions of law on refund including bar of unjust enrichment. I am of the considered view that Service Tax paid under VCES, 2013 cannot be allowed to be refunded to anyone under any circumstances and hence refund of Service Tax paid by the respondent under VCES, 2013 cannot be allowed under Section 101 of the Finance Act, 2016 without considering clauses of VCES, 2013.

8. In view of above facts and legal position, I allow both appeals filed by the Department and set aside both the impugned orders.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलस का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stand disposed off in above terms.



*(Handwritten Signature)*  
 (कुमार संतोष)  
 आयुक्त (अपील्स)