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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No.
V2/104/GDM/2017

मूल आदेश सं /
O.I.O. No.
ST/649/2016-17

दिनांक /
Date
23.03.2017

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

KCH-EXCUS-000-APP-196-2017-18

आदेश का दिनांक /
Date of Order: 27.02.2018

जारी करने की तारीख /
Date of issue: 05.03.2018

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६.१७ दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं . १६ दिनांक टी.एस-२०१७/०५११ के अनुसरण में २०१७ श्री ललित प्रसाद ,आयुक्त , केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क ,राजकोट को वित्त अधिनियम १९९४ की धारा ८५की १९५४ केन्द्रीय उत्पाद शुल्क अधिनियम , के अंतर्गत दर्ज ३५ धाराकी गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। 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 :-**
M/s Dipesh Construction Co., 11, Apurva Chambers, Ganga Gate, Anjar Kutch

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर 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 अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत 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:-
- (ii) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक न 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.
- (iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
Appeal to the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa 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) नियमवाली, 2001 के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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/-, Rs.10,000/- 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 अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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 of Rs. 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/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज 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 For 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों 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 अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा 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 वाले अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमवाली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat 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 याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरालेग के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल 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 माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (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 on 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 माल 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संसाधनविधि 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य 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 Challan 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 अदायगी 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 कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति अपीलीय 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, notwithstanding 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) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन 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-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी विभागीय वेबसाइट 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

:: ORDER-IN-APPEAL ::

Being aggrieved with the Order-in-Original No: ST/649/2016-17 dated 23.03.2017 (**hereinafter referred to "as impugned order"**) passed by the Assistant Commissioner of Service Tax, Gandhidham (Kutch) (**hereinafter referred to "Lower Adjudicating Authority"**), **M/s. Dipesh Construction Company**, 11, Apurva Chambers, Ganga Gate, Anjar, Dist: Kutch (**hereinafter referred to "as the appellants"**) have filed present appeal.

2. The appellants filed an application on 14.02.2017 seeking refund of Service Tax of Rs. 1,60,97,417/-, paid by them during the period from 01.04.2015 to 29.02.2016, under Section 102 of the Finance Act, 1994. The Lower Adjudicating Authority while processing the refund claim observed that as per Section 102(3) *ibid* the application was required to be filed within six months from the date on which Finance Bill, 2016 receives the President's assent. Since the assent to Finance Bill, 2016 was granted by the President on 14.05.2016 therefore the said refund application was required to be filed on or before 13.11.2016. In the instant case, refund application had been filed by the appellant on 14.02.2017, therefore Lower Adjudicating Authority, without going into merits of the case, rejected the same on the grounds of limitation.

3.1 Being aggrieved with the impugned order, the appellants has preferred the present appeal on the grounds that pursuance to Section 102 of the Finance Act, 2016, Notification No. 9/2016-Service Tax dated 01.03.2016 has been issued amending Notification No. 25/2012-Service Tax dated 20.06.2012 wherein retrospective exemption covered under Entry No. 12 has been granted; that the refund can be filed under Section 11B of the Central Excise Act, 1944, made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994 therefore the time limit prescribed under Section 11B *ibid* is applicable.

3.2 The appellants while quoting Section 102 of the Finance Act, 1994 argued that it beings with the word "Notwithstanding anything" contained in Section 66B therefore all provisions of Sections of the Finance Act, 1994, including Section 83 *ibid*, will be applicable except



Section 66 *ibid*; that thus their refund is well within the time limit prescribed under Section 11B of the Central Excise Act, 1944.

3.3 The appellant further submitted that vide Section 102 of the Finance Act, 1994, retrospective effect has been given, therefore the Service Tax paid by them cannot be considered as Service Tax but it is an amount deposited with government and therefore, the time limit given under Section 11B of the Central Excise Act, 1944 is not applicable in their case as the Service Tax paid by them became deposit and therefore, limitation is not applicable. They placed reliance on the Order-in-Appeal dated 13.01.2017 in this regard.

3.4 The appellant further agitated that by resorting to Section 102 (3) of the Finance Act, 1994, which prescribes procedural aspect, main provision under Section 102(1) *ibid* cannot be made ineffective since it is enabling provision for not levying Service Tax; that the limits prescribed are mere administrative mechanism; that the rejection is in violation of the principals of natural justice.

3.5 The appellant while relying on the case laws of **J. S. Gupta & Sons - 2015 (318) ELT 63 (All)** and **Mangalore Chemicals & Fertilizers Limited - 1991 (55) ELT 437 (SC)** requested that impugned order rejecting their refund be set aside.

4. The Central Board of Excise and Customs vide Notification No: 26/2017-Cx(NT) dated 17.10.2017 read with Order No: 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as Appellate Authority under Section 35 of Central Excise Act, 1944 for the purpose of deciding this appeal.

5. Accordingly, personal hearing in the matter was held on 20.02.2018 which was attended by Ms. Bhagyashree Bhatt, Chartered Accountant and Ms. Dhvani Patwari, Chartered Accountant on behalf of the appellant. During the hearing, Ld. Chartered Accountants reiterated the submissions already made in their Appeal Memorandum and also submitted its summary.



Discussion and findings:

6. I have carefully gone through the entire appeal memorandum and the submissions made by the appellants in writing, as well as orally, during the personal hearing through their authorized person. I find that since the appeal is against the rejection of refund claim, therefore there is no requirement of compliance to Section 35F(i) of Central Excise Act, 1944, made applicable in Service Tax matters vide Section 83 of the Finance Act, 1994. Accordingly I proceed to decide the appeals on merits.

7.1 I find that dispute in instant appeal revolves around Section 102 of the Finance Act, 1994, inserted vide Section 159 of the Finance Act, 2016, w.e.f. from 14.05.2016, and the same reads as under:

102. (1) *Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—*
- (a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;*
 - (b) *a structure meant predominantly for use as—*
 - (i) *an educational establishment;*
 - (ii) *a clinical establishment; or*
 - (iii) *an art or cultural establishment;*
 - (c) *a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,*
- under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.*
- (2) *Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.*
- (3) *Notwithstanding anything contained in this Chapter, **an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President***

(emphasis supplied)

7.2 I find that Section 66 of the Finance Act, 1994 is charging section for levy of Service Tax. Upon perusal of Section 102(1) *ibid*, I find that it starts with the words "*Notwithstanding anything contained in*

section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration". Thus, Section 102(1) *ibid* retrospectively excludes only services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration during the period from 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive) from levy of Service Tax, which otherwise were taxable during the relevant time.

7.3 Thus, I find no force in the argument of the appellant that due to Section 102(1) of the Finance Act, 1994, all provisions of the Finance Act, 1994 will be applicable except Section 66B in this case.

8.1 I further find that Section 11B of the Central Excise Act, 1944, made applicable in Service Tax matters vide Section 83 of the Finance Act, 1994, which deals with refund is a general section. Whereas, **Section 102 of the Finance Act, 1994 is a specific provision** granting exemption from Service Tax, retrospectively, to the services provided to the Government, a Local Authority or a Governmental Authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration during the period from 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive).

8.2 Thus, when Section 102(3) of the Finance Act, 1994 stipulates a specific time limit, it has to be adhered to and no resort can be taken for time limit under Section 11B of the Central Excise Act, 1944. I find that my views are well supported by the judgment of the **Hon'ble High Court of Gujarat in the case of M/s. Torrent Laboratories Private Limited V/s. U. O. I. reported at 1991 (55) ELT 25(Guj)**, wherein it has been held as under:



12. **Whenever a general provision is in operation and thereafter knowing fully well that the general provision is in operation, the legislature enacts a special provision, it has got to be presumed that the legislature did not intend the general provision to apply to the special cases culled out by it.** The general provision made in that sphere has got to yield to the special provision. This is one of the basic principles of interpretation of statutes. In this connection reference may be made to a decision of the Supreme Court in the case of *J.K.C.S. & W. Mills v. State of UP* reported in AIR 1961 Supreme Court 1170. In Para 9 of the judgment the **Supreme Court has held that specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by special provision.** The rule applies to both type of cases, that is, while interpreting different provisions in different statutes as well as in the same statute. The Supreme Court has observed as follows:-

"The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect."

12A. Similar view is taken by the Supreme Court in the case of *State of Gujarat v. Patel Ramjibhai Danabhai* reported in (1979) 3 Supreme Court Cases 347. In that case, the legality and validity of provisions of Section 33(6) of the Bombay Sales Tax Act, 1959 [corresponding to Section 14(6) of Bombay Sales Tax Act, 1953] came up for consideration before the Supreme Court. It was contended that no time-limit was provided in this specific provision, while for taking actions in other cases, Section 35 provided time-limit and therefore the provisions should be held to be *ultra vires*. The Supreme Court applied the maxim - GENERALIA SPECIALIBUS NON DEROSANT and negated the contention. The Supreme Court held that the provision of S. 33(6) of the Bombay Sales Tax Act, 1959 was confined to a particular class of tax evaders while Section 35 of the Bombay Sales Tax Act, 1959, was a general provision dealing with escaped assessment or under assessment. **Thus whenever the legislature makes general provision and in the same sphere makes a special provision which would be applicable to specific cases, the provision relating to specific cases would be applicable to specific cases and not the provision relating to general cases.**

(emphasis supplied)

8.3 I further find that said judgment has been upheld by Supreme Court in the case of **Collector of Central Excise, Jaipur V/s. Raghavar (India) Limited** as reported in **2000 (118)ELT 311 (S.C.)**. Thus, I find that when specific provisions stipulating the time-limit are there in the Section 102(3) of the Finance Act, 1994, no recourse can be taken for other general section.



9. As regards to reliance placed on the Order-in-Appeal No: RAJ-EXCUS-000-APP-134-16-17 dated 13.01.2017 passed in the case of M/s. Essar Bulk Terminal (Salaya) Limited, I find that said Order-in-Appeal has been set aside by the Tribunal vide its Order No. A/12660/2017 dated 20.09.2017.

10. As regards to the reliance placed on the case laws of **J. S. Gupta & Sons - 2015 (318) ELT 63 (All)** and **Mangalore Chemicals & Fertilizers Limited - 1991 (55) ELT 437 (SC)**, I find that ratio of these case laws were the basis of above said Order-in-Appeal dated 13.01.2017. Since the Order-in-Appeal itself has been set aside therefore I find that there is no need for me to discuss their applicability in present appeal.

11. In view of above, appeal filed by the appellant is rejected.

F. No. V.2/104/GDM/2017

Place: Rajkot.

Dated: 27.02.2018



(LALIT PRASAD)

COMMISSIONER, CGST & CEX, RAJKOT/
COMMISSIONER (APPEALS-III),
CGST & CEX, RAJKOT

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- 2) The Commissioner, GST & Central Excise, Kutch.
- 3) The Commissioner, GST & Central Excise, Rajkot.
- 4) The Assistant Commissioner, GST & Central Excise, Division: Bhachau - Anjar.
- 5) Guard File.