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

द्वितीय तल, जी एस टी भवन / 2nd 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.I.O. No.	दिनांक / Date
	V2/47 to 49/GDM/2017	ST/DIV/Refund-Misc/2016-17/269 to 271	28.02.2017

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

KCH-EXCUS-000-APP-143-TO-145-2017-18

आदेश का दिनांक / Date of Order:	01.01.2018	जारी करने की तारीख / Date of issue:	04.01.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अथवा आयुक्त संयुक्त आयुक्त उपायुक्त सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवारत, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्तित जारी मूल आदेश से उत्पन्न /
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 Appellant & Respondent :-**
M/s. Sardar Sarovar Narmada Nigam Ltd., Block No. 12, 7th Floor New Sachivalaya Complex, Gadhinar - 382 010,

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 अपील 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:-

(i) वर्गीकरण मूल्यंकन से सम्बंधित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपील 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 अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दूजे किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, आयात की सीमा और लगभग मात्रा जर्मना, 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्ववित्तिक 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 अपील न्यायाधिकरण की शाखा स्थित है। स्वयं 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) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी है, उसकी प्रति साथ में संलग्न की (उपरो में एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, व्याज की सीमा और लगभग मात्रा जर्मना, 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्ववित्तिक 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 अपील न्यायाधिकरण की शाखा स्थित है। स्वयं 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 is 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 दायें की गयी अपील, सेवकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकने वाली एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क सेवकर, को अपील की न्यायाधिकरण को आवेदन 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 सेवकर अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करने 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित टैक्स एंशि दस करोड़ रुपये से अधिक न हो।

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

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेस्टैट जमा की गयी गलत राशि
- (iii) सेस्टैट जमा निष्पत्ती के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंश से पूर्व किसी अपील न्यायाधिकरण के समस्त विधायक स्थान अर्थात् 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 :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परन्तक के अंतर्गत उच्च सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन् दीप भवन, संसद भवन, 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 मांग के किसी मुकदमा के मामले में, जहां मुकदमा किसी मांग को किसी कारखाने से अडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अडार गृह से दूसरे अडार गृह पारगमन के दौरान, या किसी अडार गृह में या अडारण में मांग के प्रसंकरण के दौरान, किसी कारखाने या किसी अडार गृह में मांग के मुकदमा 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 मांग के विनिर्माण में प्रयुक्त कच्चे मांग पर गयी 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 मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुविधित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निघत की गई तरीक अथवा समायाचिधि 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशेषण 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। / 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, उपरोक्त इस से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा यही कार्य से बचने के लिए यथास्थिति अपील 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 Appellate 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 टिकट 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 सेवकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में उचित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर 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 अपील न्यायाधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी 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 ::

M/s. Sardar Sarovar Narmada Nigam Ltd., Block No. 12, 7th Floor, New Sachivalaya Complex, Gandhinagar - 382010, (*hereinafter referred to as "the appellant"*) filed three appeals, as detailed in Table below, against respective letter/communication/Order-in-Original (*hereinafter referred to as "the impugned letters"*) issued by the Assistant Commissioner, Service Tax Division, Gandhidham (*hereinafter referred to as "the lower authority"*). Since, the issue involved is common in nature, I proceed to decide all three appeals through common order.

Sr. No.	Appeal No.	Impugned Letter No. & Dt.	Amt. of refund rejected (in Rs.)	Earlier rejected vide OIO No. / all dated 28.10.2016
1	47/2017	Service Tax/Div/Refund-Misc/2016/269 - 28.02.2017	13,58,876/-	ST/429/2016-17
2	48/2017	Service Tax/Div/Refund-Misc/2016/270 - 28.02.2017	34,99,712/-	ST/429/2016-17
3	49/2017	Service Tax/Div/Refund-Misc/2016/271 - 28.02.2017	23,22,156/-	ST/431/2016-17

2. The brief facts of the cases are that the lower authority vide the impugned letter dated 28.08.2017 refused to entertain the aforesaid refund claims filed by the appellant, *inter alia*, stating as under in the impugned letters, all dated 28.02.2017 :

" In this context, vide your reply dated 13/01/2017 and during personal hearing submitted that filing of refund claim amounting to Rs. 1,05,69,649/- dated 11/08/2016 includes an amount deposited to the department under reverse charge mechanism for work contract and amount of service tax reimbursed to the contractor in respect of work contract entered by division with contractor who falls under the jurisdiction of this office.

In view of the above, it is observed that the entire amount of present refund claim i.e. (i) Rs. 13,58,876/- [(ii) Rs. 34,99,712/- & (iii) Rs. 23,22,156/-] is included in earlier refund claim filed for (i) Rs. 1,05,69,649/- [(ii) Rs. 1,94,55,594/- & (iii) Rs. 1,94,55,594/-] which was entirely rejected vide OIO No. ST/429/2016-17 dated 28/10/2016 [OIO No. ST/431/2016-17 dated 28/10/2016]. Thus, the once refund amount has already been adjudicated cannot be adjudicated twice. However, you have only remedy remains is to file appeal before the proper appellate authority against OIO No. ST429/2016-17 dated 28/10/2016 [OIO No. ST/431/2016-17 dated 28/10/2016]."

In view of the above, all documents submitted vide your refund claim filed on 25/10/2016 are returned herewith as the same cannot be adjudicated again."



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3. Being aggrieved with the impugned letters, all dated 28.02.2017, the appellant preferred appeal before this authority, *inter alia*, contending that the lower authority has erred in stating in the impugned letters that the entire amount of refund claim were included in the refund applications which were rejected previously; that introduction of Section 101 of the Act has given the appellant a right to claim refund of service tax which has been deposited by them and in fact borne by them on Work Contract services received by them during the mentioned period; that they had borne the Service Tax on work contract services received by them in two manner, (i) by way of Service Tax deposited under reverse charge mechanism, and (ii) by way of paying an amount of Service Tax as reimbursed to the service provider; that the refund applications which were filed earlier shall stand withdrawn, because they had filed fresh refund application dated 25.10.2016; that the Assistant Commissioner passed an order in respect of earlier refund application without providing any opportunity of being heard; that had opportunity been provided, they could have withdrawn the application; that the appellant had also made declaration in reply dated 11.01.2017 that they are not going to take any further action in respect of the OIO rejecting refund claim as the fresh refund application of the appellant had already been admitted by the Department on 25.10.2016.

4. Personal hearing in the matter was attended by S/Shri Yash Shah, and Vedant Raval, both CA wherein they reiterated the grounds made in the appeals. Personal hearing notices were also sent to the jurisdictional Assistant Commissioner, however, none appeared from the Department.

Findings:-

5. I have carefully gone through the impugned orders/letters, Appeal memoranda and written as well as oral submissions made by the appellant. The issue to be decided in all three appeals is whether the refund claims filed by appellant are maintainable and entertainable before the lower authority, or not.

6. The lower authority has rejected the refund claims filed by refusing to entertain the same on the ground that Orders-in-Original dated 28.10.2016 vide which the aforesaid refund amounts were rejected in the first place, have already been issued by rejecting the refund claims. The impugned letters state that once the refund claims have already been adjudicated, it cannot be adjudicated again since the matter has already attained finality.

7. I find that the appellant has also accepted in Appeal memoranda that they have not preferred appeal against the Orders-in-Original, vide which their above refund claims were originally rejected by the jurisdictional Assistant Commissioner, Service Tax Division, Gandhidham but against these letters.

7.1 I find that the refund claims rejected by the lower jurisdictional authority through some Orders-in-Original cannot be reopened by the appellant without going into appeal against these Orders-in-Original. It is a well settled legal position, in light of the landmark judgment of the Hon'ble Apex Court in the case of M/s. Flocks India Ltd. reported as 2000 (120) E.L.T. 285 (S.C.) the issue has attained finality. The relevant portion of the judgment is reproduced as under :-

"10. Coming to the question that is raised there is little scope for doubt that in a case where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order. If this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant. This position in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot, be countenanced. The view taken by us also gain support from the provision in sub-rule (3) of Rule 11 wherein it is laid down that where as a result of any order passed in appeal or revision under the Act, refund of any duty becomes due to any person, the proper officer, may refund, the amount to such person without his having to make any claim in that behalf. The provision indicates the importance attached to an order of the appellate or revisional authority under the Act therefore, an order which is appealable under the Act is not challenged then the order is not liable to be questioned and the matter is not to be reopened in a proceeding for refund which if we may term it so is in the nature of execution of a decree/order. In the case at hand it was specifically mentioned in the order of the Assistant Collector that the assessee may file appeal against the order before the Collector (Appeals) if so advised."

[Emphasis supplied]

7.2 Therefore, once any quasi-judicial proceedings have attained finality by way of passing an adjudicating order, it cannot be reopened without going in appeal against that adjudication order. In the instant case, undisputedly Orders-in-Original dated 28.10.2016 rejected refund claims and these Orders-in-Original have not been challenged/appealed against and the appellant again filing refund claims for same claims/amount before the same adjudicating authority. This is not permitted in law.



Therefore, I find nothing wrong in the impugned letters returning the refund claims and hold the letters correct, legal and proper.

7.3 Before parting with the issue, I would also like to refer to the judgment of Hon'ble CESTAT in the case of M/s. Ericsson Communications Ltd. reported as 2012 (281) E.L.T. 95 (Tri. - Del.) wherein it has been held as follows :-

7. The question required to be addressed in the present appeal is as to when the earlier order of the Chief Commissioner was passed on 4th Jan. 2005 accepting the impugned order of Commissioner and the Board did not pass any orders for review of the impugned order till 19th July 2005. It is only subsequently that the Board ordered for placing the matter before the Committee of Chief Commissioners for review. This happened on around 19/20th July 2005, when new provisions of Section 129D were introduced with effect from 13-5-2005 requiring review by a Committee of Chief Commissioners. The question is as to whether the subsequent introduction of law introduced vide the amended provisions of Section 129D with effect from 13-5-2005 is retrospective, so as to apply to all the previous cases where the matter has already attained finality. Admittedly, in terms of the unamended provisions of Section 129D which required a review by the Board, no action was taken in the matter. Such action was required to be taken by the Board within a period of six months but not beyond the period of one year from the date of passing of the order by Commissioner. The Chief Commissioner having accepted the order on 29th August 2004 and having intimated the above acceptance to the Board and the Board having not passed any order for review, it can be safely concluded that the matter had attained finality. As such, we are of the firm view that once the matter attained finality in terms of the provisions of law which were prevalent during the relevant period, any subsequent change in the law requiring review by Committee of Chief Commissioners cannot be applied retrospectively to the matters which have already attain finality and the same cannot be reopened. There is nothing in the amended provisions of Section 129D to reflect upon the fact that the same would apply retrospectively. Such procedure prescribed in the Section 129D would be applicable with effect from the date of amendment carried out in the said Section which is 13-5-2005. As such on the said issue itself, we are of the view that the subsequent reference of matter to the Committee of Chief Commissioners in terms of the amended provisions of law, itself was not in accordance with law.

8. We also further find that the Chief Commissioner having accepted the order of the Commissioner, subsequent review of the same by the Committee of Chief Commissioners was not called for. The Tribunal in the case of C.C.E., Ludhiana v. Global Money - 2011 (22) S.T.R. 422 (Tri.-Del.) has held that once an order stands accepted by the proper officer, a subsequent overruling of the same in terms of the directions given by the Review Committee cannot be accepted as sufficient reasons for condonation of delay inasmuch as the same may lead to reopening of many cases where appeals were not filed by the department, as a result of conscious decision. Similarly in the case of C.C.E. v. Madura Coats - 2007 (216) E.L.T. 86 (Tri.-Chennai), it was observed that once a decision is taken by the Committee of Commissioners to the effect that no appeal is to be filed, the same attained finality and the subsequent reopening and reviewing of the same cannot be permitted. Applying the ratio of the above decisions in the present case, we find that the impugned order having been accepted by the department, subsequent review of the same by a Committee (that too with divided opinion) was neither justified nor warranted. Once a conscious decision is taken on the legality or otherwise of an order passed by the adjudicating authority, whether such decision is right or wrong, the subsequent overruling of the same in exercise of the jurisdiction which stand

conferred subsequently and which was not available in the relevant time can be said to be against all the basic principles of law and jurisprudence.

[Emphasis supplied]

7.4 It is, therefore, very evident that the proceedings concluded validly and legally under quasi – judicial proceedings by way of passing adjudication order cannot be re-opened unless and until the adjudication order is challenged/appealed at the higher forum.

8. In view of above facts and circumstances, I uphold the content of the impugned letters and reject all three appeals filed by the appellant.

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

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

सत्यापित
निष्ठा मे. सरोवर निगम
(अपील)

11/11/2018
(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Sardar Sarovar Narmada Nigam Ltd., Block No. 12, 7 th Floor, New Sachivalaya Complex, Gandhinagar – 382 010.	मेसर्स सरदार सरोवर नर्मदा निगम लिमिटेड, ब्लॉक नो. 12, 7 फ्लोर, न्यू सचिवलाया कॉम्प्लेक्स, गांधीनगर - 382 010, गुजरात.
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Copy to for information and necessary action :-

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise Commissionerate, Kutch.
- 3) The Assistant Commissioner, GST & Central Excise, Kutch.
- 4) The Range Superintendent, GST & Central Excise, Kutch.
- 5) Guard File.

