



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/113/RAJ/2017	007/ST/REF/2017	09.01.2017

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

**RAJ-EXCUS-000-APP-126-2017-18**

आदेश का दिनांक / Date of Order:	01.12.2017	जारी करने की तारीख / Date of issue:	04.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

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 Appellant & Respondent :-**  
M/s. Sardar Sarovar Narmada Nigal Ltd., 7th Floor, Block No. 12, New Sachivalay Complex, Gandhinagar - 382 010,

इस आदेश(अपील) से व्यक्ति 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:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन 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 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- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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) नियमावली, 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 सलग्न 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 नियमवली, 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 सलग्न 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 सलग्न 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 नियमावली, 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) 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 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 वाली 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  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवैट जमा की ली गई गलत राशि  
(iii) सेनवैट जमा नियमावली 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।/  
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 परंतक के अंतर्गत भवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 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 माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयुटी 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 समयावधि 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 पट्टी 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, 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 filled 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, 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 ::**

M/s. Sardar Sarovar Narmada Nigam Limited, Block No. 12, 2<sup>nd</sup> floor, New Sachivalaya Complex, Gandhinagar (hereinafter referred to as "Appellant") has filed present appeal against Order-in-Original No. 7/ST/REF/2017 dated 09.01.2017 (hereinafter referred to as "the impugned order"), passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as the "lower adjudicating authority").

2. Briefly stated, facts of the case are that appellant is a wholly owned Gujarat Government Limited Company engaged in construction of Canal, Dam, etc. by giving contracts/agreements to contractors; that they had given contract to M/s. Kishan Infrastructure Private Limited, Rajkot (hereinafter referred to as "M/s. Kishan") for construction of canal; that the appellant reimbursed service tax of Rs. 1,31,13,473/- to M/s. Kishan for the services of construction provided during the period from 01.07.2012 to 29.01.2014 and filed refund claim on 07.11.2016 as the service tax has been exempted retrospectively under Section 101 of the Finance Act, 2016. The lower adjudicating authority vide impugned order rejected refund claim of Rs. 1,31,13,473/- on the ground that M/s. Kishan was not registered with Service Tax department and they had not filed ST-3 returns and therefore it is not possible to verify that the appellant had received services from M/s. Kishan and M/s. Kishan had deposited the claimed amount in Government account for the said services for which refund has been claimed and jurisdiction of service provider is not ascertained.

3. Being aggrieved with the impugned order, appellant has filed appeal, *inter-alia*, on the following grounds: -

(i) Refund of service tax paid is governed by the provisions of Section 11B of Central Excise Act, 1944, which has been made applicable to service tax as per Section 83 of Finance Act, 1994. The 2<sup>nd</sup> proviso to Section 11B states that limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

(ii) The retrospective amendment was made in Finance Act, 1994 whereby the services provided to the appellant for construction, repair and maintenance of canal, dam and other irrigation works became exempt and no longer remained under the purview of service tax. Hence, service tax paid has to be refunded because services on which such service tax had been deposited has been exempted retrospectively under Section 101 of Finance Act, 2016. As final burden of the service tax claimed as refund has been borne by the appellant as a service recipient, such refund needs to be granted to the appellant. Such amount assumes the character of 'deposit'. Retention of such amount would be wholly unauthorized in terms of Article 265 of the Constitution of India which states that taxes not to be imposed except under authority of law, no tax shall be levied or collected except by

authority of law. It is well established law that once the tax has been exempted from the beginning, the same cannot be retained by the authority. The appellant relied on decisions in the case of Alcatel Modi Network Systems Limited reported as 2008 (221) ELT 358 (P&H) and U.P. Twiga Fiberglass Ltd.

(iii) The appellant awarded a contract for construction of canal structure work and lining work to M/s. Kishan who provided services as per terms and conditions of the contract. The appellant had reimbursed service tax of Rs. 1,31,13,473/-. Whether service provider is registered or not is not the appellant's domain, the fact is that appellant had reimbursed service tax to service provider and service provider had deposited the said amount to credit of the Government vide Challan Nos. 80269 and 80280 dated 05.11.2015.

(iv) The service provider was registered with Range-I, Service Tax Division, Rajkot as can be confirmed from EASIEEST. Further, when an assessee had taken up the service tax registration under 'non-assessee' terms, the same does not change its legal position under jurisdictional service tax department, where it is registered as non-assessee as per Service Tax Rules.

(v) The contention of lower adjudicating authority for non-filing of Service Tax Returns (ST-3) is not correct as assesseees who have obtained service tax registration under non-assessee terms are not required to file any tax returns as per CBEC Circular No. 919/9/2010-CX dated 23.3.2010.

4. Personal hearing in the matter was attended to by S/Shri Yash Shah & Vedant Raval, Chartered Accountant, who reiterated the Grounds of Appeal and nothing more to add. No one appeared from the department despite P.H. notices issued to them.

#### **FINDINGS: -**

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority rejecting refund claim of service tax is correct or not.

6. I find that the appellant is a service receiver and had received the services from M/s. Kishan for construction of canal and repair & maintenance of canal and reimbursed service tax levied thereon to M/s. Kishan, during the period from 01.07.2012 to 29.01.2014. M/s. Kishan-a service provider, were registered as 'non-assessee' with Service Tax Division, Rajkot and had made payment of service tax into Government account vide Challan No. 80269 and 80280, both dated 05.11.2015. The Central Government in terms of Section 101 of Finance Act, 2016, has provided retrospective exemption from service tax on taxable services of construction, erection, commissioning,

installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works provided to a government authority or a board or any other body set up by an Act of Parliament or a State Legislature; or established by the Government, with ninety per cent or more participation by way of equity or control. The appellant filed refund claim of Rs. 1,31,13,473/- with the authority under whose jurisdiction, the service provider is located.

7. The appellant has contended that service provider had taken registration as 'non-assessee' and whether service provider is registered or not, is not the appellant's domain and fact is that appellant has reimbursed service tax to service provider and service provider has deposited the said amount to credit of the Government vide Challan Nos. 80269 and 80280, both dated 05.11.2015. I find that the appellant has produced copy of contract/agreement made with service provider, copy of R.A. Bills issued by the service provider, copy of declaration of service provider that service tax has been reimbursed to them, copy of challans evidencing payment of service tax to the Government account, copy of ledger account along with certificate of Chartered Accountant evidencing that incidence of service tax has been borne by them and not passed on to other person, etc. It could be established from the said documents that M/s. Kishan has provided construction service and repair & maintenance service to the appellant for canal or other irrigation work and that payment of service tax has been made by the appellant to the service provider who has deposited service tax into Government account. Thus, receipt of service by the appellant from M/s. Kishan and payment of service tax into Government account by M/s. Kishan cannot be questioned without any valid reason.

8. The lower adjudicating authority has rejected the refund claim for the reason that the service provider has not filed ST-3 returns. I find that CBEC vide Circular No. 919/9/2010-CX dated 23.3.2010 has clarified that the assessees who have obtained service tax registration under non-assessee terms are not required to file any tax returns. Non-filing of ST-3 returns by the service provider cannot be a ground for rejection of refund claim filed by the service receiver and thus it cannot be sustained. Therefore, I am of the considered view that substantial benefit admissible to the appellant cannot be withheld for the reason of non-submission of ST-3 returns by the service provider.

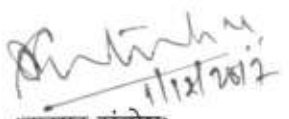
9. I find that Section 101(1) of Finance Act, 2016 grants retrospective exemption in respect of taxable services provided during 01.07.2012 to 29.01.2014 to a government authority or a board or any other body set up by an Act of Parliament or a State Legislature; or established by the Government, Section 101(2) of the Act states that refund shall be made of all such service tax which has been collected but which would not have been so collected. The appellant is established by the State Government with 90% or more participation by way of equity and carrying out functions entrusted to a Municipality, falls under the definition of

'Government authority' by virtue of Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 2/2014-ST dated 30.01.2014 and the appellant is engaged in constructing Canal, Dam, etc. for and on behalf of State Government. The appellant has received construction and repair & maintenance service of canal from M/s. Kishan and reimbursed service tax on taxable services received by them during the said exempted period. Consequent upon insertion of Section 101 of the Act, they filed refund claim of service tax wherein they have provided copy of ledger account evidencing payment of service tax to the service provider and Certificate of Chartered Accountant certifying that incidence of service tax has been borne by them and not passed on to any other person. They have also declared that no cenvat credit of service tax so paid by them has been availed. However, the lower adjudicating authority has not verified the doctrine of unjust enrichment. Therefore, I find it proper to remand back the matter to lower adjudicating authority to verify the doctrine of unjust enrichment and pass fair and reasoned order within 3 months from receipt of this order, after affording sufficient opportunities to the appellant to explain their case. The appellant is also directed to produce written submissions along with documentary evidences to the lower adjudicating authority in support of their claim within one month of receipt of this order.

9.1 I find that Commissioner (Appeals) has inherent power to remand a case as decided by the Hon'ble CESTAT in the cases of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del) and CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported as 2013 (287) ELT 353 (Tri-Del). The Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment of Section 35A (3) of the Central Excise Act, 1944 after 11.05.2001, the Commissioner (Appeals) would retain the power to remand an appropriate case.

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

10. The appeal filed by the appellant stands disposed off in above terms.

  
(कुमार संतोष)  
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Sardar Sarovar Narmada Nigam Limited, Block No. 12, 2 <sup>nd</sup> floor, New Sachiwalaya Complex, Gandhinagar	मे. सरदार सरोवर नर्मदा निगम लिमिटेड, ब्लॉक न. १२, दूसरी मंजिल, न्यू सचिवालय कॉम्प्लेक्स, गांधीनगर
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Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise Commissionerate, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise Division-I, Rajkot.
- 4) Guard File.