NATION TAX MARKET

O/O THE PRINCIPAL COMMISSIONER (APPEALS) [illegible]

[illegible] 2nd Floor, GST [illegible]

[illegible] Ring Road

[illegible]

[illegible]

[illegible]

Date [illegible]

BHV-EXCUS-000-APP-098-2019

Date of Order:	22.03.2019	Date of issue:	04.04.2019

Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग [illegible]

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/Service Tax, Rajkot/Jamnagar/Gandhidham [illegible]

घ [illegible] Name & Address of the Appellants & Respondent :-

M/s Reliance Naval Engineering Ltd. (Earlier known as M/s Pipavav Defence and Offshore Engg. Co. Ltd), Pipavav Port, Rajula, Dist. Amreli

[illegible]

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way. [illegible]

(A) [illegible]

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:- [illegible]

(i) [illegible]

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) [illegible]

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at [illegible] Floor, [illegible], Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-1(a) above

(iii) [illegible]

[illegible]

(B) [illegible]

[illegible]

[illegible]

The appeal under [illegible] of the Finance Act 1994, shall be filed [illegible] of the Service Tax Rules, 1994 [illegible] Commissioner [illegible] before the Appellate Tribunal.

[illegible]

The 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 [illegible]

Under [illegible] "Duty Demanded" shall include:

(i) [illegible]
(ii) [illegible]
(iii) [illegible]

Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority [illegible]

[illegible]

Revision application to Government of India:

[illegible]

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 [illegible]

[illegible]

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.

[illegible]

In case of rebate of duty of excise on goods exported to any country or territory outside India [illegible]

[illegible]

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

[illegible]

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 [illegible] by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

[illegible]

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.

[illegible]

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

[illegible]

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.

[illegible]

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.

[illegible]

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

[illegible]

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 [illegible]

:: ORDER IN APPEAL ::

M/s Reliance Naval and Engineering Ltd (earlier known as M/s. Pipavav Defense and Offshore Engg. Co Ltd), Pipavav Port, Rajula, Dist- Amreli (hereinafter referred to as "the Appellant") filed appeal against the Order-in-Original No. R/23/2017 dated 20.1.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST & C. Excise, Division III, Bhavnagar (hereinafter referred to as "the lower adjudicating authority").

2 Brief facts of the case are that the appellant holding Service Tax registration No. AABCP1491LSD003 filed refund claim of Rs. 1,80,79,775/- under Notification No. 12/2013-ST dated 1.7.2013 (hereinafter referred to as "the said notification"). While passing Order-in-Original No. R/58/2016 dated 27.10.2015, Assistant Commissioner sanctioned refund of Rs.1,51,61,055/- and rejected refund of Rs. 29,18,720/-. Being aggrieved by the above Order-in-Original dated 27.10.2015, the Appellant had preferred appeal before the appellate authority which was decided vide Order-in-Appeal No. BHV-EXCUS-000-APP-045-2017-18 dated 9.10.2017 read with Misc(ROM) Order dated 19.12.2017 and the matter of refund of Rs. 20,37,179/- was remanded.

2.1 The lower adjudicating authority decided the refund claim of Rs. 20,37,179/- vide the impugned order, whereby refund claim of Rs. 17,01,517/- was rejected again and the appellant has now filed appeal for refund of Rs. 17,01,517/- under Notification No. 12/2013-ST dated 01.07.2013 for the service tax paid to the service providers for the specified services used in authorized operations in the SEZ.

3 Being aggrieved, the appellant preferred the present appeal against the impugned order to the extent of rejection of refund of Rs. 17,01,517/-, inter-alia on the grounds as under :-

3.1 Appellant submitted a Sheet showing amount of claim, query raised and their reply vide submission dated 12.1.2018 to contend that the amount of said entries and the total amount rejected are not matching as total amount rejected comes to Rs. 3,87,758/- as against the rejected amount of Rs. 4,29,081/-, that in Query sheet No. 2 Sr.No

claim) total amount rejected comes to Rs. 17,39,970/- (-) Rs. 1,31,0[illegible]/- (ROM) as against rejected amount of Rs. 16,09,[illegible]/-

3.2 Appellant submitted that major portion of their refund claim i.e. Rs. 25,5[illegible]/- (+) Rs. 14,51,739/- = Rs. 14,77,2[illegible]/- has been rejected on the ground that payments were made beyond period of one year in contravention of provisions of the said notification as the said Notification No. 12/2013-ST permitted filing of refund claim beyond the period of one year; that while complying the queries, the appellant had requested for condonation of delay to the sanctioning authority vide their letter dated 17.10.2018 stating that some payments were made in installments and therefore, payments were within time limit and some were time barred; but the lower adjudicating authority could condone the delay.

3.2.1 Appellant submitted that out of total rejection of Rs. 14,77,2[illegible]/-, refund claim of Rs. 21,543/- against query at serial No. 1,2,3,4,5,13,14 and Rs. 9,75,820/- against query at serial No. 73,74,75,76,77,79,108,109,116,117,119,120,121 and 122 were fully time-barred and refund claim of Rs. 7,48,343/- against query at serial No.12, 69, 70, 71, 72, 78, 80, 85, 86, 87, 88, 89, 90, 91, 92, 94, 97, 99, 100, 102, 103, 104, 107 and 123 where part of payments were made within time limit and part of the payment were made before time limit of one year.

3.3 The Appellant vide letter dated 12.11.2018 submitted that where payment have been made in installments, part payments are time barred, while other part payments were made within time limit as per Para 3(ii)(c) of Notification No. 12/2013-ST which did not allow the claim as refund unless full payment was made to the service provider; that Appellant had made request to the sanctioning authority to condone delay for not paying full amount within one year to the service providers; that lower adjudicating authority had not considered the above ground and only reiterating his findings given under previous order; that he had also not clarified which entries are within time limit and which entries are time-barred; that it is common in trade that lump sum payments to service providers in parts, however the refund claim in respect of such transactions is filed only after final payment against a particular invoice of service provider; that in business it is practically difficult to follow

conditions as laid down under clause (d), (e) and (f) of Para 3(III) of the said Notification; that in case of ongoing or continuous receipt of services payments are made without referring to specific invoice, that looking to this practical difficulty in compliance clause (e) of the said notification pertaining to time limitation, the Assistant/Deputy Commissioner has been allowed to condone delay in filing refund claim beyond one year, that strict time limit for filing refund claim within one year as mandated under Section 11B of the Central Excise Act, 1944 is not applicable, as may be appreciated from clause (e) of the said notification reproduced under :-

> "(e) the claim for refund shall be filed <u>within one year from the end of the month</u> in which actual <u>payment of Service Tax was made by such Developer or SEZ unit to the registered service provider</u> or such extended <u>period</u> as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, <u>shall permit</u>."

3.4 In view of the above submissions the lower adjudicating authority rejecting refund claim of Rs. 14,77,338/- is not proper; that the Appellant relied upon the decision of the Hon'ble CESTAT in the case of M/s. APK Identification reported as 2012 (27) STR 20 (Tri.-Del.), Order in Appeal No. BVR-EXCUS-000-APPELLANT-52 to 54/2014-15 dated 21.11.2014 and Order-in-Appeal No. BVR-EXCUS-000-APPELLANT 52 to 54/2014-15 dated 21.11.2014 ; Order in Appeal No. BHV-EXCUS-000-APP-032-2017-18 dated 8.5.2017, Order-in-Appeal No. BHV-EXCUS-000-APP-041-2017-18 dated 9.10.2017, Order-in-Appeal No. BHV-EXCUS-000-APP-105-2017-18 dated 30.1.2018; that in view of the above orders the impugned order rejecting refund of Rs. 14,77,338/- on the ground of time bar may be allowed.

3.5 Refund of Rs. 1,21,048/- though wrongly paid under reverse charge mechanism (in short RCM), it could be sanctioned under the said notification and relied upon the decision in the case of Aurya Chamber of Commerce reported as 1986(25)ELT 867(S.C.) and Panjab Construction reported as 2018 (350) ELT113(Guj.)

3.6 The lower adjudicating authority has erred in rejecting refund of Rs. 32,212/- against query raised at Sr. No. 35, 48 and 80 on the ground that it has not paid full amount to the Service Provider; that vide letter dated 17.10.2017 they had submitted bank statement which showed

proof of payment in respect of query at Sr. No. 36; that for rest of two entries at Sr. No. 48 and No. 60 only part payment was made.

3.7 The impugned order is erroneous and suffers from legal deficiency as well as arithmetical discrepancies; that they had filed refund claim of Rs. 20,37,178/- before the lower adjudicating authorities; that out of Rs. 20,37,178/- the lower adjudicating authority rejected refund claim of Rs. 17,01,517/-, however, the appellant has filed appeal before this appellate authority for Rs. 16,70,595/-.

4. Personal hearing in the matter was attended to by Shri P.D. Rachchh, Advocate, on behalf of the appellant wherein he reiterated the ground of appeals and stated that the services have been used for authorized operation of SEZ and hence refund of Rs. 16,70,597/- is required to be allowed which has been contested by them on 3 grounds, that refund claim of Rs. 14,77,326/- is not time barred; that delay is required to be condoned, which is obligatory as the said notification has used the word 'shall' and not 'may'; that Rs. 1,31,048/- was paid wrongly on RCM but since paid, it is required to be refunded, this being SEZ; that Rs. 62,212/- has been rejected without assigning specific reason for 3 entries i.e. 36,48, 60 query No.; that Commissioner(Appeals) vide earlier round of Order in Appeal has remanded back for correct decision but the Assistant Commissioner has not applied his mind correctly and rejected refund of the 62,212/- wrongly; that appeal needs to be allowed in view of new facts.

FINDINGS :-

5. I have carefully gone through the facts of the case, the impugned order and submissions made by the Appellant in grounds of appeal, as well as written and oral submissions. The issues to be decided in the present appeal are whether the impugned order rejecting refund of service tax passed under Notification No. 12/2013-ST by lower adjudicating authority has correctly rejected refund of

(i) Rs.14,77,326/- on the ground of time bar under Notification No. 12/2013-ST dated 1.7.2013 or not;

(ii) Rs. 1,31,048/- on the ground that the appellant has wrongly paid Service Tax under RCM and therefore, the same cannot be claimed as refund under the said Notification or not.

(iii) Rs. 62,212/- on the ground that full amount of service tax on which refund claim was made was not paid.

6. I find that earlier Order-in-Appeal No. BHV-EXCUS-000-APP-041-2017-18 dated 9.10.2017 Para 10 & 10.1 held as under :-

"10. *The appellant has contended that the reasons for rejection of Refund of Rs.19,05,120/- (Rs 4,78,591/- + Rs.14,78,035/-) have not been discussed by the adjudicating authority and hence order is a non- speaking order to this extent. In order to better appreciate the facts, relevant portion of findings and discussion at Para 15 of impugned order is reproduced below:-*

"13. In respect of queries raised vide sheet no. 1 and replies submitted by the claimant.

(a)

(b)

(c) I find that in respect of query sheet No.1, the claimant has either not submitted sufficient reply or the reply submitted by them is not acceptable in respect of query Sr No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11,12,13,14,17,35,37,41,42,43,44,46,49,50,51,52,54,58,61 & 65 and therefore I hereby reject total amount of Rs 4,78,591/- claimed in respect of such entries.

(d)

Query sheet No. 2 (site claims)

(a)

(b) I find that in respect of query sheet No.2, the claimant has either not submitted sufficient reply or the reply submitted by them is not acceptable in respect of query Sr No.68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 107, 108, 109, 115, 116, 117, 118, 119,120,121& 122 and further in entries at Sr No. 82 & 101 the wrongly paid tax under RCM cannot be claimed/ sanctioned under this Notification and hence therefore I hereby reject total amount of Rs 16,09,087/- claimed in respect of such entries."

10.1 *Therefore, filing reply to the queries by the appellant is not in dispute whereas, adjudicating authority in his order did not*

attribute any reason for rejecting the refund request of the appellant to conclude that how was the reply not sufficient and not acceptable to him. I also find that the submissions made by the appellant before adjudicating authority have not been discussed / considered by the adjudicating authority. The impugned order does not reveal the correctness of the claims made by the appellant with regard to admissibility under Notification 12/2013-ST dated 01.07.2013. I find considerable force in the appellants argument that their submission should be considered and findings of lower adjudicating authority recorded in the impugned order as refund cannot be rejected baldly when export of goods, utilization of services and payment of tax are not disputed in the impugned order. Therefore, this aspect requires to be re-looked into by the adjudicating authority and needs to be remanded back to the jurisdictional adjudicating authority, who must examine all relevant documents factually as well as legally and then to pass a speaking order."

8.1 M.eq(ROM) dated 1[illegible].12.2017 in Para 6 & 7 held as under:-

"6. On going through the record of the case, I find that the appellant had filed Appeal for total refund of Rs. 28,82,260/-, which as bifurcated by them as Rs. 8,20,112/- Appeared as 4,25,091/-, Rs. 14,78,039/- and Rs. 1,31,048/- as per Para 4, 4.1, 4.2 and 4.3 of the Appeal Memorandum. However, at Para 5.2 the appellant had summarized issues related to amount of Rs. 4,22,591/- + Rs. 14,76,023/- and Rs. 1,32,048/- for common grounds of appeal i.e. 'being non speaking order' showing total as Rs. 19,08,135 (Rs. 4,22,591/- + Rs. 14,78,023/-) though corresponding issues were mentioned correlating paragraphs of Order-in-Original including that of pertaining to Rs. 1,32,048/-. This resulted in a mistake while discussing the impugned Order-in-Appeal, which remanded back case of refund of Rs. 19,08,135/- instead of Rs. 20,37,148/-. I find that the issue has been discussed at Para 10 and 10.1 of the Order-in-Appeal which cover operative portion of the impugned order. I also find that the appellant has mentioned refund of Rs. 1,31,048/- in their submissions at the time of personal hearing.

7. In light of the above facts and records available, I find that the correct figure of remanding back the refund should be

Rs. 20,37,172/- including Rs. 1,31,048/- at Para 12 of Order-in-Appeal No. [illegible] dated [illegible].2017 and therefore, there is a mistake apparent from the record of this case, and hence this ROM application merits acceptance to correct the figure of refund remanded back to the adjudicating authority, which should be Rs. 20,37,172/- and not Rs. 19,06,150/-. Needless to state that the rest of the part of the impugned order and the findings therein, remain unaltered."

7. The appellant has contended that rejection of refund of 14,[illegible]/- as time barred is not correct and for this they relied upon words employed in the said notification which uses the word "shall" in respect of power for extension of time limit given to Assistant Commissioner or Deputy Commissioner as the case may be. The appellant has stated that the refund claim is not time barred as they have made the payment in two or more installments to the service provider, that they made lump sum payment in parts and payment is not made invoice wise in one go and accordingly refund was claimed considering the last and final installment of that invoice and they had requested the adjudicating authority for condonation of delay as per Para 3(e) of the said notification. I find that the appellant while accepting the delay has contended that the substantive benefit should not be denied for procedural aspects in absence of substantial grounds for rejection. I also find that the adjudicating authority has summarily rejected the request for condonation of delay without assigning any reasons. The adjudicating authority has not recorded any valid reason for rejecting the specific request for condonation of delay provided under Para 3 (e) of the said Notification, which reads as under:

> *"(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or <u>such extended</u> period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the <u>case may be</u>, <u>**shall permit**</u>;"*
>
> (Emphasis supplied)

7.1 From above, it is very clear that the language of Notification is unambiguous and specifically says that the Assistant Commissioner or Deputy Commissioner 'shall' permit such extension requests. Thus, discretion vested is not absolute and exercise of power for extension is required to be used and for non grant of extension, he is to give

justifiable reasons and those reasons have to be recorded by the lower adjudicating authority. I find force in the appellant's contention that where payments are made in installments and in cases of ongoing or continuous receipt of services where payments are not made invoice specific, it may happen that while complying one conditions, other may not be fulfilled in terms of Clause (d) (e) and (f) of Para 3.0 of the Notification. I also find that the decision in the case of M/s. APK Identification reported as 2012 (27) STR 20 (Tri. - Delhi) relied upon by the appellant is relevant and applicable in this case wherein the Hon'ble CESTAT has held that adjudicating authority is expected to exercise the power unless there is a reason for not exercising such power. Relevant portion of the judgment is reproduced as under –

> "4. *Considered the arguments of both sides. I do not agree with the argument that the time-limit under Notification dated 1-3-2011 cannot be made applicable to the claims filed before that date and pending on that date. I also consider the fact that even under the earlier notification, the Deputy Commissioner had power to condone the delay. The delay involved was only 17 days and when a public authority is given any power, he is expected to exercise it unless there is a reason for not exercising such power. No reason has been recorded in the impugned order. In the facts and circumstances of the case, I consider that this a case where he should have considered the claim as per the proviso of Notification No. 17/2011-S.T., dated 1-3-2011 which was in force on the date when he issued the order. I hold that the claims are not time-barred and the matter is remanded to the adjudicating authority to decide the case afresh on the merits of the claim.*"
>
> (Emphasis supplied)

7.2 The adjudicating authority has not recorded any reason for not exercising given power to him and for rejecting the substantive benefit of refund to the appellant. I find considerable force in the appellant's submission that in absence of any recorded reasons in the impugned order, the appellant cannot be deprived of their legitimate right and substantive benefit of refund where export of goods, utilization of the services in export of goods and payment of service tax are not disputed. I rely on the below mentioned case laws as under :-

(i) M/s. Modern Process Printers 2006 (204) ELT 0332 (RA) -

> "6.5 ..... *In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notifications/Circulars etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be condoned.* ....."

(ii) ACE HYG. ENT. PROD. P. LTD. — 2012 (276) E.L.T. 131 (G.O.I.)

"8. From the perusal of records, Government observes that the respondent has cleared the goods to the unit in SEZ area on the basis of the ARE-1 which was duly endorsed by the concerned Range Officer and duly countersigned by the customs officer of the SEZ which is an evidence itself that the goods were properly exported to SEZ area. When there is no ambiguity in the export of the duty paid goods, the rebate of duty paid under Rule 18 of the Central Excise Rules, 2002 cannot be denied to the respondent merely on the procedural/technical lapse. In the case of UOI v. Suksha International and Nutan Gems & others - 1989 (39) E.L.T. 503 (S.C.), Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. Further, in the case of Mangalore Chemicals and Fertilizers Ltd. v. DCCE - 1991 (55) E.L.T. 437 (S.C.), Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions. In fact, it is now trite law that the procedural infractions of Notifications/Circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses."

(iii) M.K. JOKAI AGR. PLANT P. LTD. — 2018 (351) E.L.T. 595 (Cal.)

"11. A bare reading of the above quoted clauses of the Notification makes it clear that the appellant was first required to prove its eligibility for refund exemption by establishing that the three industrial units had undertaken substantial expansion of not less than 25% on or before 24th day of December, 1997 and then on every month's statement of duty paid from the account current to the Assistant Commissioner. And, if these two conditions were fulfilled, the appellant was entitled to refund of the amount of duty paid. As seen above, the appellant has duly established before the Commissioner (Appeals) that the three industrial units had undertaken increase by more than 45.80%, 57% and 27.96% before 24-12-1997. The finding of the Commissioner (Appeals) confirming this position was not questioned by the Revenue in appeals filed before the Tribunal. The eligibility of the appellant for the benefit of exemptions and refund of duty paid stands conclusively proved. Clause 2(a) of the Notification only says that the manufacturer shall submit a statement of the duty paid by 7th of next month in which the duty has been paid from the account current. The Notification nowhere mandates the manufacturer to submit a separate claim for refund of duty paid. The appellant has admittedly been submitting statements of the duty paid from account current in RT-12 returns within time with all details before the Assistant Commissioner. The appellant having been once found to be eligible for exemptions and refund of duty paid, denial of benefit of exemptions and refund on the ground of delay, in our considered opinion, will

cause grave injustice which cannot be permitted. Even otherwise, it is well settled law that non following of procedural requirement cannot deny the substantive benefit, otherwise available to the assessee. Also, exemptions made with a beneficient object like growth of industry in a Region have to be liberally construed and a narrow construction of the Notification which defeats the object should be avoided. For these reasons, we conclude that the impugned order of the Tribunal is not based on correct appreciation of the provisions of Notification and denial of refund (of duty paid) to the appellant on the ground of delay is wholly unjustified. We also hold that statements of duty paid submitted in RT-12 returns by the appellant was substantial compliance of Clause 2(e) of the Notification and there was no need for it to submit a separate statement of the duty paid and claim refund. This Tribunal itself earlier in number of cases viz. Commissioner of Central Excise v. Vinay Cement Ltd., 2007 (147) E.L.T. 724, Commissioner of Central Excise v. Maple Tea Estate, 2007 (216) E.L.T. 175 and Doomsad Tea Estate v. Commissioner of Central Excise, 2011 (274) E.L.T. 339 has held that statements of duty paid submitted in RT-12 returns amounts to due compliance of Clause 2(e) of the Notification and refund of duty paid cannot be denied for want of separate statement of such duty paid."

[Emphasis supplied]

7.3 I, therefore, hold that the adjudicating authority is duty bound to condone the delay and hence, I have no option but to allow the appeal of Rs. 14,77,008/-.

8. The Appellant contended that Service Tax of Rs. 1,31,048/- mistakenly paid by them considering it payable under RCM and hence entire amount should be refunded to them as tax not payable and they relied upon various decisions to support their contention. I find that the lower adjudicating authority has rejected the refund to this extent holding as under :-

"11. .... With regard to query Sr. No. 82 & 101, I find that the claimant had wrongly paid Service Tax under RCM which cannot be claimed/considered under this Notification and hence, I hereby reject amount of Rs. 1,31,048/- in respect of query Sr. No. 82 and 101. ....."

8.1. I find that it is undisputed fact that the Appellant (SEZ unit) has paid Service Tax of Rs. 1,31,048/- as service receiver and they were not liable to pay service tax under RCM which they paid mistakenly. I find that denial of the refund on the ground that Notification No. 12/2013-ST supra, does not cover refund of Service Tax paid mistakenly is not legal and proper inasmuch as all refund claims are filed under Section 11B of the Central Excise Act, 1944 only. I find

that the reason advanced by the lower adjudicating authority to reject this refund is only technical and not substantive at all, as Rs. 1,31,046/- paid by the appellant can't be retained by the Department as the utilization of the services for operations of SEZ is not disputed by the Department nor payment of Service Tax by the appellant. Thus, I hold that denial of refund of Rs. 1,31,046/- is not correct, legal and proper.

9. Regarding rejection of Rs. 62,212/- (query raised at Sr. No. 35, 48 and 60) on the ground that full amount of service tax on which refund claim was made was not paid, I find that appellant has submitted vide their letter dated 17.10.2017 along with bank statement showing proof of payment of query at serial no. 35. The lower adjudicating authority has rejected refund Para 10 / Page 5 / of the impugned order, inter-alia, finding as under :

> "10. .... *Further, I find that regarding query Nos. 35, 48 and 60, the claimant had not paid full amount to the service provider and therefore, the then Assistant Commissioner has proportionally allowed the refund with respect to the same....."*
>
> [Emphasis supplied]

9.1 Going through above I find that, even if part amount has been realized subsequently by Appellant, the refund on the relevant invoices/bills could not have been denied. If full or remaining amount for the service received was paid subsequently, the refund has to be considered to be in order. I therefore, find that the Appellant is eligible for refund of Rs. 62,212/- and I allow the appeal to this extent.

10. In view of above, I set aside the impugned order and allow the appeal for refund of Rs. [illegible]/-.

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

11. The appeal of the appellant is disposed off as above.

(कुमार संतोष)
प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Reliance Naval and Engineering Ltd. (earlier known as M/s Reliance Defense and Engineering Limited) Pipavav Port Via - Rajula District - Amreli-365 560 (Gujarat).	मै. रिलायंस नेवल एंड इंजीनियरिंग लिमिटेड (पहले मै. रिलायंस डिफेंस एंड इंजीनियरिंग लिमिटेड के नाम से जानी जाती थी) पिपावाव पोर्ट, वाया राजुला, जिला : अमरेली 365560.

प्रति :-

1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, कच्छ आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल - II, भावनगर.
4) गार्ड फ़ाइल.