



:: 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

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

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/  
Appeal /File No.  
V2/189/BVR/2018-19

मूल आदेश सं /  
O.I.O. No.  
R-47/REFUND/2018-19

दिनांक/  
Date:  
06/09/2018

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

**BHV-EXCUS-000-APP-243-2019**

आदेश का दिनांक/  
Date of Order: 21.11.2019

जारी करने की तारीख /  
Date of issue:

28.11.2019

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by **Shri Gopi Nath**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,  
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/ST / GST, Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of theAppellants&Respondent :-

**M/s.Vidhi Construction & Estate Broker, Shop No. 6, J B Pandya Audichya Chhatralay, Opp. Petrol Pump,  
Sihor,Bhavnagar**

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:-

(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 असारवा अहमदाबाद- ३८००१६ 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 माँग, ब्याज की माँग 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

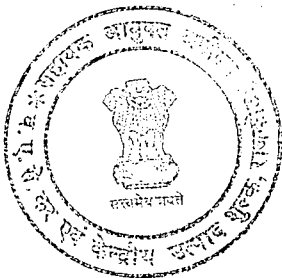
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund 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) 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 सकती है 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 माँग, ब्याज की माँग 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। 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 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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्टेड) 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" से निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई राशि  
(iii) सेनवेट 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 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 :  
(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 प्रथमपरंतुक 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 में 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 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 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 छूटी 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 समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.  
(v) उपरोक्त आवेदन की दो प्रतियाँ 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 प्रतियाँ 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 पढ़ी 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.  
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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-I 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. Vidhi Construction & Estate Broker, Shop No. 6, J. B. Pandya Audichya Chhatralay, Opp. Petrol Pump, Sihor, District-Bhavnagar (hereinafter referred to as "the appellant") filed present appeal against Order-in-Original No. R-47/REFUND/2018-19 dated 06.09.2018(hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central GST Division Bhavnagar -1, Bhavnagar (hereinafter referred to as 'the adjudicating authority'):-

2. The brief facts of the case are that the Appellant filed a refund claim of excess payment of service tax of Rs. 5,80,163/- with the department on 12.06.2018. Show Cause Notice bearing No. V/18-07/Ref-Vidhi/18-19 dated 26.06.2018 was issued to the Appellant asking as to why their refund claim should not be considered as time-barred and should not be rejected under the provisions of Section 11B of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') as made applicable to Section 83 of the Finance Act, 1944. The adjudicating authority vide impugned order has rejected the refund claim on the ground that the refund claim is time barred in terms of Section 11B of the Act.

3. Being aggrieved with the impugned order, the Appellant preferred present appeals, *inter-alia*, on the following grounds:

3.1 that service tax of Rs. 42,96,804/- was paid by the appellant during the period from April, 2014 to March, 2015; that on verification of service tax records and books of accounts, the Appellant revealed that their service tax liability was Rs. 37,16,642/- only instead of Rs. 42,96,804/-. Thus, the appellant had paid service tax of Rs. 5,80,163/- in excess during the period from April, 2014 to March, 2015.

3.2 that the department has not denied excess payment of service tax of Rs. 5,80,163/-; that the present refund arisen due to excess payment of service tax and such excess payment of service tax cannot be treated as "paid up Service Tax"; that it can be treated as "extra payment of amount" as provided under the provisions of the Finance Act, 1994; that such "payment" made "over and above the due payable Service Tax" cannot be retained by the government and cannot be considered for the purpose of limitation of time. Thus, the impugned order rejecting the Refund Claim is not proper but its gross violation of principle of natural justice.

3.3 that the department was well aware with this factual position at the time of scrutiny of the ST-3 Returns as well as conducting the Audit at the material time; that the Appellant is admissible for such Refund of excess payment of service tax as the same has not been used in or in relation to payment of Service Tax by debiting from the statutory Accounts maintained by them; that there is no such clause of limitation under



the Act and Rules made thereunder, that the situation of the process of filing of a refund claim was nothing but in accordance with the process of filing of such refund claim as was governed under the provisions of Section 11B of the Act.

3.4 that the clause of limitation of time would not be applicable in the present case as the amount involved in the Refund Claim was nothing but excess payment only and not the payment of Service Tax against the value of taxable service which was provided to the recipient of the service. Therefore, the Refund under reference is not in or in relation to the providing of the taxable service.

4. Personal Hearing in the matter was given on 19.07.2019, 13.08.2019, 03.09.2019 & 25.09.2019, but no one from the appellant side has appeared for the same. Therefore, the instant case is to be decided *ex-parte* on the basis of available records.

5. I find that the impugned order was received by the appellant on 08.09.2018 whereas appeal has been filed on 07.12.2018 and the appellant has requested to condone the delay in filing of this appeal. I also find that the appellant has filed appeal within further period of one month beyond normal period of two months from the date of receipt of the impugned order. Hence, I condone delay in term of Section 85(3A) of the Act and proceed to decide the appeal on merits.

6. I have carefully gone through the facts of the case, the impugned order, Appeal Memorandum. The issue to be decided in the instant appeal is whether in the facts and circumstances of the present case, the impugned order passed by the adjudicating authority rejecting refund of Rs. 5,80,163/- of excess service tax paid as claimed by the appellant, is proper or otherwise.

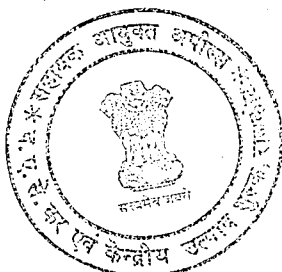
7. I find that the appellant has filed refund claim on 12.06.2018 under Section 11B of the Act made applicable to the service tax matters by virtue of Section 83 of the Finance Act, 1994, claiming refund of service tax paid in excess during the period from April, 2014 to March, 2015 and the adjudicating authority vide the impugned order has processed/adjudicated the said refund claim under the said statutory provisions. I would like to reproduce Section 11B of the Act, which is as under:

*SECTION 11B. Claim for refund of duty and interest, if any, paid on such duty. —*

*(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise **before the expiry of one year from the relevant date** in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :*

.....

*Explanation. — For the purposes of this section, -*



- (A) .....
- (B) "relevant date" means, -
- (a) .....
- .....
- (f) in any other case, the date of payment of duty.

(Emphasis supplied)

7.1 In view of the above, it can be seen that any person may make an application for refund to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date and the Clause (f) in Explanation (B) of the said Section 11B of the Act provides the relevant date for the purpose of computation of the limitation period for filing of the refund claim. Thus, Section 11B of the Act mandates that the refund claim has to be filed before expiry of one year from the relevant date. Hence, in the present case, the relevant date should be considered as the date of payment of service tax.

7.2 I find that the appellant had made payment of service tax of Rs. 12,23,640/- on 24.06.2014; Rs. 3,58,935/- on 04.10.2014; Rs. 6,05,702/- on 02.01.2015 and Rs. 21,08,527 on 06.04.2015 (total Rs. 42,96,804/-) and filed refund claim of excess payment of service tax of Rs. 5,80,163/- on 12.06.2018. I, thus, find that the refund claim was filed by the appellant beyond the statutory time limitation prescribed under the statute. I find that when the wordings of Section 11B are clear and unambiguous, different interpretations cannot be placed by the authorities functioning under the statute and they are bound to obey the dictates/provisions contained therein. Therefore, I find that the adjudicating authority has correctly reject the refund claim on the ground of limitation of time under the Section 11B of the Act. My this view is supported by the judgment of the Hon'ble Supreme Court in the case of Doaba Co-operative Sugar Mills reported as 1988 (37) ELT 478 (SC), wherein it has been held that if the proceedings have been initiated under the Central Excise Act by the department, the provisions of limitation prescribed in such Act alone will prevail with regard to applicability of the time limitation for filing the refund claim.

7.3 I also rely on case law of the Hon'ble Supreme Court in the case of Anam Electrical Manufacturing Co. reported as 1997 (90) ELT 260 (SC), wherein also it has been held that the period prescribed by the Central Excise Act / Customs Act for filing of refund application in the case of "illegal levy" cannot be extended by any authority or Court.

7.4 I find that the appellant argued that the amount which is not a tax cannot be retained by the government. I find that any money to be returned to the appellant is mainly on the ground that the same is not to be retained by the government as per the provisions of law. I find that the limitation is part of the law and even to return an amount which is excess paid over and above the legal obligation, the provisions of appropriate



tax law has to be applied. Accordingly, in the impugned order, the provisions of limitation in terms of the Section 11B of the Act are correctly and legally applied. I relied on case law of the Hon'ble Tribunal, Delhi in case of LNG Security Services Pvt. Ltd. reported as 2017 (5) GSTL 291 (Tri. Del.), wherein held as under:

"7. Regarding the submission of the appellant that the amount which is not a tax cannot be retained by the Government, we note that the amount has been paid as service tax under proper heading and was duly appropriated towards the tax liability of the appellant. Any return of the amount collected as tax in terms of provisions of Finance Act, 1994 has to be made in terms of the provision applicable to such collection. We may note here that any money to be returned to the claimant is mainly on the ground that the same is not to be retained by the Government as per the provisions of law. Limitation is part of the law. Even to return an amount which is excess paid over and above the legal obligation (making the excess paid tax as not a tax) the provisions of appropriate tax law has to be applied. The Hon'ble Supreme Court in Miles India Ltd. v. Assistant Collector of Customs reported in 1987 (30) E.L.T. 641 (S.C.) held that the tax authorities are bound by the period of limitation as provided by the relevant Act. Hon'ble Bombay High Court in Andrew Telecom (I) Pvt. Ltd. v. CC & CE, Goa reported in 2014 (34) S.T.R. 562 (Bom.) held that even a writ petition under Article 226 of the Constitution of India cannot be decided by overriding a law or legal regime. There is no warrant or justification for holding that a stale or belated claim can be granted in a Constitutional remedy by ignoring a statutory prescription. Hon'ble Karnataka High Court in M.C.I. Leasing (P) Ltd. v. CCE, Mysore reported in 2014 (33) S.T.R. 497 (Kar.) held that when the Act provides a complete mechanism for correcting any errors whether on fact or on law the burden is to work out remedy with four corners of law."

7.5 In view of the above settled principles of law and in view of the fact that the refund claim was filed and decided under Section 11B of the Act, the time limit prescribed there-under was strictly applicable for deciding such issue. Since, the adjudicating authority has rejected the refund claim on the ground of limitation, I do not find infirmity in the impugned order, as the same is in conformity with the statutory provisions. Since, the issue arising out of the present dispute is no more open for any debate, in view of the well laid judgments delivered by the Hon'ble Apex Court, I am of the view that there is no need for any discussion of the case laws relied upon by the appellant for deciding the issue differently.

8. In view of the foregoing discussions and analysis, I upheld the impugned order and reject the appeal filed by the appellant.

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

8.1 The appeal filed by the Appellant stand disposed off in above terms.

आयुक्त,

*(Signature)*

आर. पी. शाह  
आयुक्त (अपील)

*(Signature)*  
(GOPI NATH) 21/11/19  
Commissioner (Appeals)

By RPAD

To

M/s. Vidhi Construction & Estate Broker,  
Shop No. 6, J B Pandya Audichya  
Chhatralay, Opp. Petrol Pump, Sihor,  
Bhavnagar

मैसर्स विधी कंस्ट्रक्शन एंड एस्टेट ब्रोकर, दुकाननंबर 6,  
जेबीपंड्या ऑडिच्या छत्रालय, विपक्ष।पेट्रोलपंप, सीहोर,  
भावनगर.

प्रति:

- (1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।
- (2) आयुक्त, केन्द्रीय वस्तु व सेवा कर, भावनगर को आवश्यक कार्यवाही हेतु।
- (3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर, भावनगर-1 मण्डल, भावनगर को आवश्यक कार्यवाही हेतु।

✓ (4) गार्ड फ़ाइल

