:: ORDER IN APPEAL ::

M/s Gujarat Mineral Development Corporation Limited, Lignite Project, Umarsar, PO & TA Nagar, Tal. Lakhpat, Dist. Kutch-370601 (hereinafter referred to as "the appellant") has filed the present appeal against Order-in-Original No. Refund/03/2018-19 dated 25.4.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Gandhidham Division, Kutch (hereinafter referred to as "the adjudicating authority").

2. The brief facts of the case are that Appellant had filed seven refund claims for the amount of Rs. 79,29,036/- under Section 11B of the Central Excise Act, 1944 (hereinafter referred to as "the Act") for excess payment of Central Excise duty paid by them for the months of Jun. 2016 to Jan. 2017, details of which are as under:

S. No.	Refund for the month of	Refund Amount (Rs.)	Date
1	June,2016		7x4230
2	July,2016		940857
3	Aug,2016		302362
4	Sep,2016		1 91523
5	Oct,2016		128407
6	Nov,2016		102308
7	Dec,2016		1 [illegible]
8	Jan,2017		1 [illegible]
9	Feb,2017		[illegible]
	Total		7929036

2.1 The lower adjudicating authority, vide the Order-in-Original, has rejected the refund claims of the months from June,2016 to Sept.,2016 on the ground of limitation and also rejected refund for the month of Jan.2017 and Feb. 2017 on the ground that CA/CA-2 certificates produced by the Appellant in support of the refund claim were not by the Appellant.

3. Being aggrieved with the impugned order, the Appellant has preferred present appeal, interalia, on the following grounds:

(i) Appellant is an assessee engaged in the payment of CGST, IGST, UTGST duty by cash, has filed refund claim on account of excess collection of amount as determined by them and not in respect of CE duty. It is submitted that the Section 11B of the Act is not applicable in the case as date of payment is not relevant date since the value is to be assessed on the basis of cost of production to be determined [illegible]

assessment stage and accordingly, under Circular No. 17/2019-GST dated 12.7.2019, that case of final assessment cannot be treated as covered as per the circular ibid, hence, the appeal is liable to be rejected.

(ii) The lower adjudicating authority is required to allow the refund claims on the basis of Section 142(3) of Central Goods and Services Tax Act, 2017 hereinafter referred to as "the CGST Act, 2017".

(iii) Refund claim of Rs. 1,65,012/- in respect of S. No.7 is well within one year from the date of payment.

(iv) The said submitted all documents/evidence including CA's Certificates and complied with the requirements of Circular No. 125/44/2019-GST dated 18.11.2019 that amount paid cannot be rejected merely because CA's certificates are issued on 19.12.2019 as they relied upon judgment of the Hon'ble Gujarat High Court in the case of M/s. Scientific Sanitary wares Ltd. reported as 2017(49) STR 434 (Guj.), that the appellant at the Supreme Court in the case of M/s. Mahavir Industries Ltd. reported as 1997(92)ELT 247 (SC) is misplaced, that the lower adjudicating authority has misplaced Board's Circular No. 125/44/2019-GST dated 18.11.2019 in holding that appellant is not entitled for provisional assessment which is not sustainable in the eye of law.

4. Personal Hearing in the matter was attended by Shri Rahul Patel, C.A., who reiterated the grounds of appeal and submitted that 7 refund claims have been rejected at one hand, which is not covered under Section 11B is not applicable to those claims that he relied upon case laws in the case of M/s. Scientific sanitary wares Ltd. [2017 (49) STR 434 (Guj.)] M/s. Mahavir Industries Ltd. [2017 (347) ELT 168 (All.)], M/s. KVR Construction - 2012 (26) STR 177 (Kar.), M/s. Ultra Steel & Power Ltd. 2014 (307) ELT 401 (Bom.) and National Institute of Public Finance and Policy [2019(20)GSTL 337 (Del.)], that pending 3 Nos. of claims are rejected on limitation ground, which are not legally sustainable, that duty on Royalty DMF, NMET & MDF is not payable on those goods which are cleared to their sister units (S. No. 5) wherein duty is payable on their value including the amount paid by them as these amounts are neither recovered by them nor paid by the units is being considered as their own funds, (S. No.5) Rejection of which was given in additional submission dated 23.4.2020, that all refund claims are filed within one year as per details given in their submission dated 16.4.2020 & covered under CA's Certificate, that the refund claims are not liable to be rejected as held by the Hon'ble Gujarat High Court in the case of M/s. Scientific Sanitary wares and other case laws relied upon by them, that relevant date in the

in it is stated of GAR 4 certificate is 13.6.2017 and no. for the date of actual payment of service wrongly paid by their predecessor-in-interest by Hon'ble Allahabad High Court in the case of M/s. Krishna Construction Pvt. Ltd.

4.1 Appellant in written submission as annexure-I has also moved during personal hearing and also submitted copies of GAR 3 challans dated 7.2.2017, dated 21.6.2017 and dated 22.7.2018 along with proofs of online applications made by them as no over adjustment is available.

FINDINGS

5. I have carefully gone through the impugned order, written submissions as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether

i) Service Tax claim rejected by the lower authority on the ground of limitation under Section 11A of the Act is correct or otherwise?

ii) The lower adjudicating authority in rejecting the refund claim is correct or not?

6. It is appellant's contention that service provider is required to pay service tax on due date for the months from June 2015 to Dec 2016 and the same is to be treated as duty that may have taken wrong calculation or inadvertent mistake in arriving at and to assess their correct duty liability for the respective months. As it is stipulated that appellant reflected payments as made in their ST-3 returns. But, payments made by them are pending but not reconciled. As it involves duty liability to the tune of Rs. 1,00,000/- and hence, appellant filed the present appeal. Further, it is stated by them that duty does not sustain. Limitation of two years. Excess payment made by appellant are excess duty payment and refund of such duty is governed under provisions of Section 11B of the Act.

6.1. And further the Hon'ble High Court of Punjab and Haryana in case of excess payment of duty on supply cannot be retained by the State has held in an order:

> "5. We have heard the learned counsel for the parties and we are of the view that no question of law warranting issuance of writ in the nature of mandamus is made out. Clearly, the provisions of Section 11B are applicable in the present case and the findings recorded in the impugned order dated 1st July 2010 dismissing the writ appeal as also in the order dated 17.11.2009 while dismissing the rectification application, have not adequately dealt with the relevant issues and, in fact,

the expiry of six months from the relevant date under or delayed in circumstances to which section 4(4)(a) of the Act applies. Accordingly the present matter has to be considered in relation to the date of payment of duty which was subsequently beyond the period of six months. In fact it is the only date which can be taken in accordance with the statutory provisions. Another issue which arises in this matter is that whether or not the additional duty could even apply in cases of rejection of the declaration on the second occasion only on grounds of a judgment of the Supreme Court in the case of Commissioner of Sales v. Sarda Energy & Minerals Ltd. - 2008 (9) SCC 632 = 2008 (221) E.L.T. 481 (S.C.).

6.2 I find that in the case of M/s. Vee Overseas Ltd. reported as 2017 (347) E.L.T. 58 (Tri. - Del.) has held as under:

> "7. What is crucial is the manner and mode in which the claim is made or lodged. They have argued that the provisional assessment or finality for the purpose of the limitation of one year has the consequential effect on the finality of the assessment by the provisions of Section 18 and the same has been filed as per the said provisions only. Here, we have specifically asked the learned Counsel as the appellant under what provision of law he is treating the nature of the money under him. He submits that this claim has been preferred in terms of the provisions of Section 18 notwithstanding the fact it cannot be said that it is per se under the provisions of Section 27 but he merely appreciate in the appellant. The Tribunal Counsel was not any adequate such explanation. He repeatedly submitted that the amount is paid voluntarily. In short it is not a case that should be treated without reference to or relation to section 18. We are not convinced by such submission.
>
> 8. ... Here it is relevant to note that in various cases the High Courts and the apex Court have allowed the claim of the parties for refund of money without applying the provisions of limitation under Section 27B by holding that the amount collected was not correctly or law as the same is not a duty or tax but accordingly. The same should be considered in the present matter. We note that, nevertheless in relation by the High Courts and Apex Court and a copy of electronic process under the Commissioner of Sales Section 11 is clear that in the non-obstante clause the authority has the power to condone the delay in presentation by the two Authorities. The emphasis is laid as it is, the refund can have claimed from the Government for erroneous and unnecessarily such the authorities are bound by the law governing the provisions to look to refund of any tax. There is no legal impediment to accept the re-payment not expired the statutory provisions namely as such. The Hon'ble Supreme Court in Mafatlal Industries case has specifically held that no claim for refund of any duty shall be entertained except in accordance with the provisions of the Act. Such claim for refund of excise duty can be made only under and in accordance with Section 11B of the terms provided in the Act. The apex Court further observed that the sole question is where the provision of the Act or enactment has duly been levied is found to be unconstitutional for violation of one of the constitutional limitations. This is a situation not contemplated by the Act. In other words, the present case there is no such situation of the provisions of any tax which is the subject matter is considered here to be unconstitutional. As already held by

the appellant is liable to pay service tax on reverse charge basis but for the exemption which was not availed [illegible]. It is held that the decision of the Tribunal in [illegible] (supra), has no application to decide the dispute in the present case. We take note of the decision of the Tribunal in [illegible] (supra) which examined the legal implication with reference to the limitation applicable under Section 11B. We also note that the said issue has been consistently followed by the Tribunal in various decisions. In fact one such decision reached Hon'ble Supreme Court in [illegible] Limited v. Assistant Collector of Customs – [illegible] (S.C.). The Apex Court upheld the decision of the Tribunal to the effect that the jurisdictional customs authorities are right in disallowing the refund claim in terms of time limit prescribed under Section 27(1) of the Customs Act, 1962. We also note that in Assistant Collector of Customs v. Anam Electrical Manufacturing Co. – [illegible] (S.C.) referred to in the decision of the Tribunal in [illegible] (supra), the Hon'ble Supreme Court held that the claim filed beyond the statutory time limit cannot be entertained.

9. The Apex Court in Mafatlal Industries Ltd. (supra), observed that the Central Excise Act and the Rules made thereunder including Section 11B (as amended in 1991) are within the meaning of Article 265 and that in the face of the said provisions - which are exhaustive in their nature no claim for refund is maintainable except and in accordance therewith. The Apex Court emphasized that the provisions of the Central Excise Act also constitute 'law' within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under 'the authority of law' within the meaning of the said Article.

10. Having considered various decided cases and the submissions of both the sides, we are of the considered view that a claim for refund of service tax is governed by the provision of Section 11B as regards time limitation. The statutory time limit cannot be extended by any authority, held by the Apex Court.

6.3 The Hon'ble High Court of Delhi in the case of [illegible] reported as 2017 (3) GSTL 114 (Del) has held that refund of excess payment of service tax is covered under time limit prescribed under Section 11B of the Act. Relevant part of the decision reads as under:-

"16. Here, however, the facts are different. The Appellant does not dispute that it is liable to pay service tax for the services rendered by it. In such a situation it is abundantly clear that the Appellant has to seek refund of service tax, paid in excess, in terms of and within the limitation period stipulated under Section 11B of the CE Act i.e. before the expiry of one year from the relevant date. The expression 'relevant date' has been defined in clause (f) of Explanation (B) to Section 11B of the CE Act as 'the date of payment of duty'.

17. In considering the application for refund filed by the Appellant on 20th September, 2007, the Assistant Commissioner rejected that part of the claim pertaining to the period prior to 20th September, 2006. In fact, the Appellant itself set out, in a table in its refund application, the dates on which payment of service tax was made by it. What has been rejected by the Assistant Commissioner is the claim for refund of service tax paid by the Appellant prior to 20th September 2006. Such claim was clearly barred by limitation in terms of Section

> [193] of the CE Act. Given the enactment of section 5 creating the said period was not under protest the Appellant was unable to take advantage of the second proviso to section 35(1) of the CE Act which states that the limitation of one year will not apply where any duty has been paid under protest.
> 12. That being the position as explained in para 11 of the CESTAT allowing the above appeal of the revenue, Commissioner and the Jurisdictional Dy. Commissioner of Customs, Mundra may not settle their issues. That is why the matter is unjustifiably adjourned by the respondent, even number of times, prejudicial and injurious to the appellant."

5.5 The Hon'ble CESTAT in the case of M/s. Jindal Steel has observed in para no. 7.4 (page 5 of 7) that the pre-deposit has already been adjusted against the duty liability of the assessee and refund of such payment is hit by unjust enrichment under Section 11B of the Act. The said para is reproduced below:

> "7.4 On careful examination of the submissions of the Learned Advocate, I find that it is not disputed by the learned Advocate that the refund claim has been filed beyond the period of one year from the payment of pre-deposit to the appellants. The reliance placed on the learned Advocate are not relevant in the facts of the case as in the case of M/s. Reva Sri Shakti Textile (I) (Pvt) Ltd., the High Court of Delhi has held the case of Customs is governed by the provisions of Section 35F of the Customs Act, 1962 which does not provide for any application for refund of pre-deposit made under Section 35F. The ratio of the case of Indian Oil Corporation also does not help the appellant as pre-deposit may also be taken by the appellant in the present case against which was asked by the Assistant Commissioner of Customs against the duty liability post finalization of the assessment. The above said decisions are clearly not relevant and the facts of the case are not identical. The appellant has to comply with the return claim and deposit the statutory period of one year as per Section 11B of the Central Excise Act, the appeal filed by the appellant is rejected. Accordingly the appeal is rejected."

5.6 Similarly, the Hon'ble CESTAT in the case of Jindal Drg. (Dir.), 2021 (Post Patent reported as 2021-(378) ELT 303 (Tri.-Ahmd.) in the case of M/s Narendra Pipes reported as 2019 (368) ELT 5 (Tri.-Ahmd.) has held that refund of excess amount made by the assessee is decided under sub-section (1) and (2) of section 11B of the Act.

7. Appellant failed to submit any evidence in terms of the said provisions in Section 11B of the Act required to be produced with the claim of refund of CVD & SAD & penalty was imposed vide O-in-O No. [illegible] dated 14.2.2018 and Declaration No. [illegible] dated 18.2.2017 and the said order dated 19.2.2018 and dated 17.2.2017 appellate CVD & certification for refund of

[illegible]

captively consumed saleable goods at annexure [illegible] and [illegible] of the previous Circular dated 01-2-2017 they shall not be required to furnish certificate for finalisation of provisional assessment. Further [illegible] for the purpose of finalisation of provisional assessment.

Circular No. 892/8/2003-CX, dated 13-2-2003

Subject: Valuation of goods captively consumed.

I am directed to say that on the recommendations of Cost & Price Negotiation Committee of Price Fixation Unit, Ministry of Petroleum & Natural Gas, the Board has decided that the value of goods captively consumed for the purpose of payment of duty under Section 3(1)(a) of the Central Excise Act, 1944 should be determined in the manner provided in Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4(4)(d)(ii) of the Act ibid. Accordingly, the goods captively consumed by the petroleum refineries will be valued at Cost & Works Accountants of India (CWAI) for determining selling price for costing of captively consumed goods.

2. The Institute of Cost & Works Accountants of India (ICWAI) has since developed the Cost Accounting Standards (CAS) 4 on cost of captively consumed goods & cost of production for captive consumption, respectively, which were released by the Council on 23-12-2011.

3. It is therefore directed that as and when the cost of captively consumed goods are computed as per the CAS 4, the assessee shall submit Cost Audit Report of CAE 4 duly certified by the Cost Accountant (CWAI).

4. Board's Circular No. 808/1/2002-CX, dated 28.10.02 [2003 (151) E.L.T. 130], may be deemed to be modified accordingly so far as it relates to determination of cost of production for captively consumed goods.

5. The Circular may be brought to the notice of the trade formations.

6. Pending Show Cause Notices may be issued in the light of the above instructions.

7. Hindi version will follow.

8. Receipt of these instructions may please be acknowledged.

Instruction F. No. 268/2/2017-CX.8, dated 1-4-2017

Subject: Mandatory CAS-4 certification - Regarding

Rule 8(a)(iii) is inserted in Valuation Circular No. 892/8/2003-CX dated 13th February, 2003 [2003 (151) E.L.T. (T42)] by which the method of determination of captively consumed goods shall be done strictly in accordance with CAS 4.

2. It is noticed from Service Tax Audit Reports that some assessees are not preparing CAS 4 and in some cases the audit reports mention that preparation of CAS 4 is not applicable. Non-furnishing of these documents could not be considered as duly audited.

3. In this regard, it is directed that assessees should be instructed that CAS 4 certificate of the previous year ending on 31st March must be issued by 31st December of the next financial year and accepted for the Financial Year 2016-17, CAS-4 certificate should be issued by 31-12-2017. The assessee may submit the Revised Return, if any, after the CAS-4 certificate is issued. The concerned assessment officers may verify the CAS-4 certificate and accordingly issue the Order-in-Original.

> "Generally, stamping of the [illegible] is a mandatory requirement [illegible] the Rules of the Central Excise authorities"

[illegible] Further CBEC Circular dated 10.6.2003 mandates CENVAT certification by [illegible] instructions dated 10.2.2017 stipulates that [illegible] as per Rule 5 of CCR, [illegible] stipulates finalization of assessment where assessee has provisionally assessed [illegible] Rules 2002 [illegible] Appellant has not adduced any evidence to the effect that they resorted to provisional assessment of duty under Rule 5 of CCR. It is also on record that appellant has obtained CENVAT Certificate on 15.6.2017 towards refund claim till 3.1.2018. Thus, I do not find merit in Appellant's argument and [illegible] any such evidence [illegible] cannot be held that assessment of [illegible] provisional assessment.

12. The Hon'ble CESTAT in the case of M/s Aurobindo Pharma [illegible] in the matter of 2019 (27) GSTL 147 (Tri-Hyd) has held as under :-

> 8. The first point of dispute in this case is as to whether because of wide variation exists in the service values placed by DRI and AG(Ins) on the Appellant employee the assessment [illegible] on the basis adopted by the Appellant needs [illegible] Rule 5 of the Service Tax (Determination of Value) Rules, 2006 which has been clarified by the Hon'ble Supreme Court and also the submissions of the Tribunal in the cases of CCE, Thane-I v. Ghatge Patil Industries Pvt. Ltd. [illegible] and Rajasthan Petrochem & Instruments Ltd. v. CCE, Jaipur-I [illegible] Tribunal has held that where a case is [illegible] assessment [illegible] against such [illegible] by the Department [illegible] Rule 5 of the Service Tax (Determination of Value) Rules, 2006 [illegible] Hon'ble Supreme Court in the case of Indorama Polymers (India) Ltd. v. CCE, Chandigarh reported in [illegible] and on the [illegible] Supreme Court it is seen that SLP was rejected on withdrawal and thus, the dismissal of the SLP by Hon'ble Supreme Court was not on merits of the decision [illegible] the Hon'ble Supreme Court in the case of CCE, Ghaziabad v. Hindustan National Glass and Industries Ltd. (supra) was only that no question [illegible] the case [illegible] Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 and the appellant already on provisional basis [illegible] and that the decision of the Hon'ble Supreme Court was [illegible] decision in the case of [illegible] Hongkong & Shanghai Banking Corporation Ltd. [illegible] [2015] and Oriental Bank of Commerce [illegible] 2015 (39) STR 3 (Del.) and Oriental Bank of Commerce Pvt. Ltd. v. Addl. CCE,

[illegible]

[illegible]

> [illegible] of Bombay reported at [illegible] [illegible] [illegible] of the Supreme Court in view of the provisions of Article 141 of the Constitution is binding on the Courts and Tribunals. In view of the settled legal position on this issue, following the Hon'ble Supreme Court's judgments, I hold that since in this case, there was neither any application from the Appellant for provisional assessment nor any such order under Rule 7 of the Central Excise Rules, 2002, (corresponding to Rule 25 of the Central Excise Rules, 1944) had been passed by the Assessing Officer, the assessments cannot be termed as provisional assessments. The supplies were agreed to be provisional only in the invoices issued. Therefore the refund claim amounting to [illegible] period prescribed under Section 11B of the Act. The rejection of refund claim of Rs. 35,265/- on this ground is hereby set aside and the appeal is allowed.

7.3 The Hon'ble CESTAT in the case of M/s Rajasthan Cylinders & Containers Ltd reported as 2008 (131) ELT 729 (Tri-Del.) was also in absence of an application for provisional assessment [illegible] payment was to be held as provisional and refund was [illegible] 11B of the Act. Relevant part of the decision is reproduced as under:-

> "14. I must mention the records and hearing only relate to the present case and there was no application by the appellant for provisional assessment. Nor was there any order passed for provisional assessment. Provisional assessments are provided under Rule 7(3) of the Central Excise Rules and there are specific requirements to be met for the same. In the absence of even an application for provisional assessment by the appellant the lower authorities rightly held that original payments of duty were permanent in the eyes of law and the appellant could not claim refund."

7.4 The Hon'ble CESTAT in the case of M/s [illegible] Power Engineering Co. P. Ltd. reported as 2014 (307) E.L.T. 513 (Tri-Del.) has also held that assessment by the appellant can not be considered as provisional assessment in absence of any order under the Central Excise Rules. Para 5 of the order is reproduced as under:-

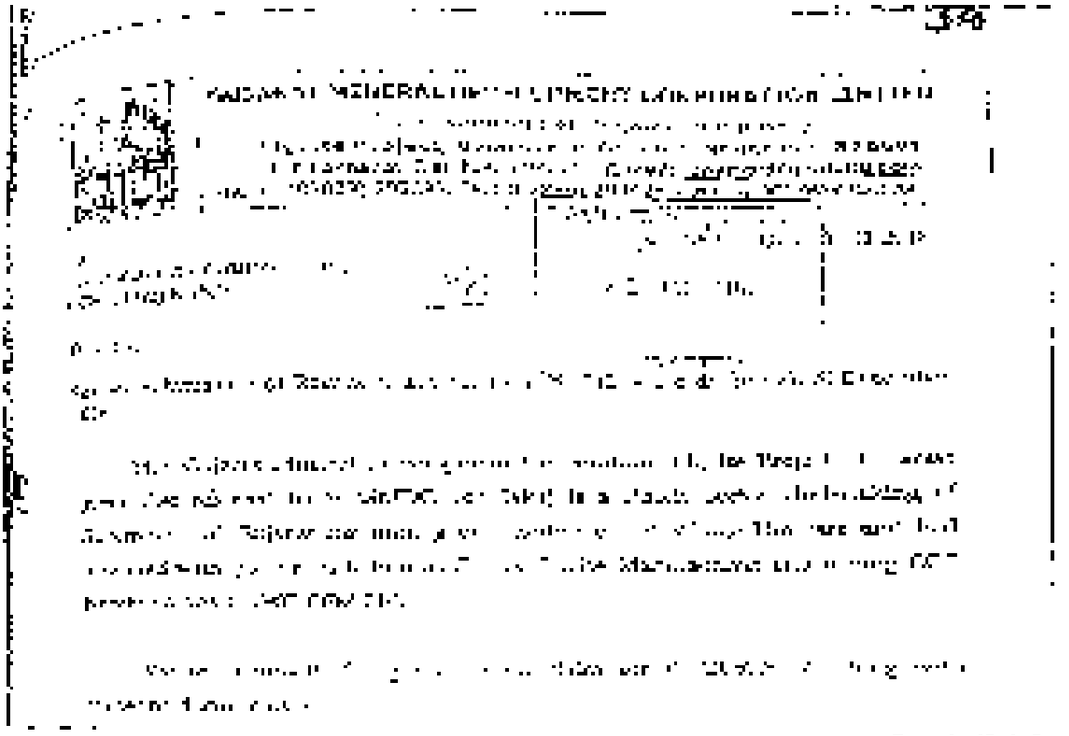
> "5. As regards the claim of the respondent that the assessment should be considered as provisional assessment in the light of the Board's Circular dated [illegible] Commissioner (Appeals) has observed that since there was no provisional assessment done in terms of Rule 7(3) of the Central Excise Rules, 2002 and no duty was paid provisionally on provisional basis and assessment in this case, there is no order of provisional assessment under Rule 7(3) of the erstwhile Rule or Rule 7 of the present Central Excise Rules, 2002. Further the learned AR also relies upon the decision in the case of Universal Cylinders Ltd. - 2005, Jaipur-I [2007 (7) S.T.T. 639 (Tri.-Del.)] to submit that [illegible] to avail Cenvat credit on capital goods and in view of this case, it is seen that there was [illegible] dated 19-10-2005 passed by the Deputy Commissioner, Central Excise, Kashipur (Uttaranchal) wherein it was held that only some services pertaining to the provisional assessment were allowed to be per

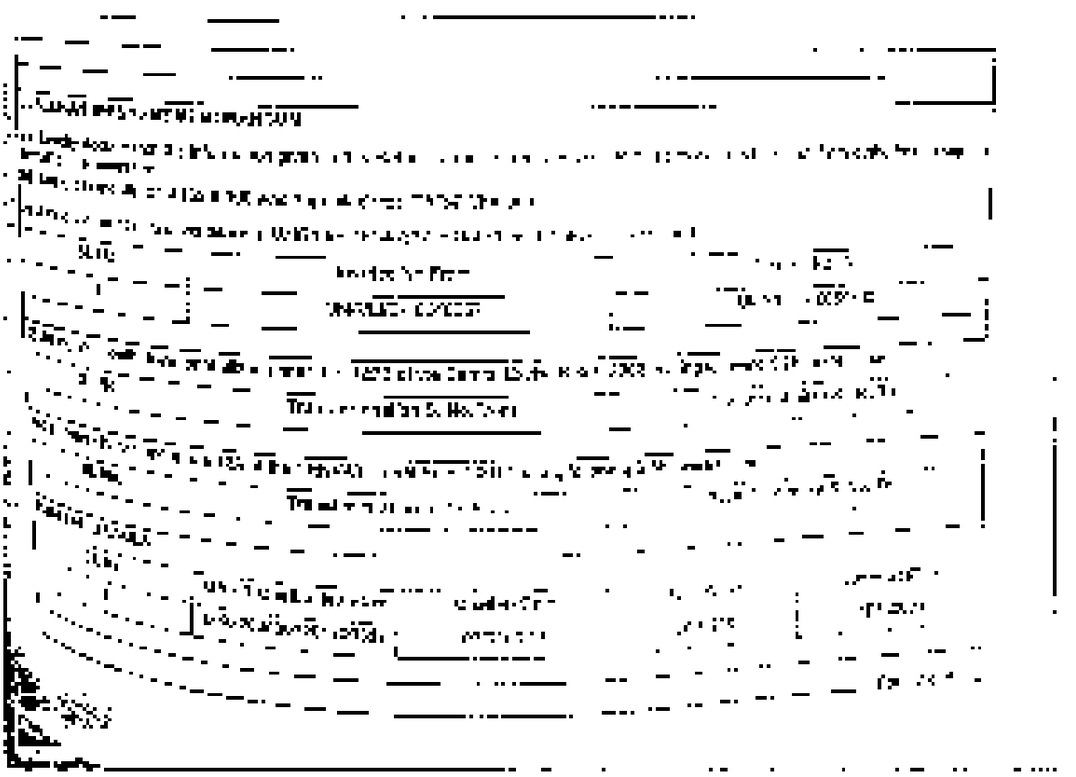
[illegible]

order passed in 2017 in the case of [illegible] decided after the provisional assessment was made by the adjudicating authority, it is clear that there shall be no revision of assessment in the case of the appellant. In the normal course, without giving any opportunity to the appellant, the submissions made by the appellant that they would not raise an provisional assessment and they would duly comply the terms of Advance payment, and make payment as the Government mandate is also perhaps, not the basis that I have no objection to the provisional assessment. Nevertheless, the submissions have been recorded. This does not help the appellant, as such, if they carried provisional assessment in order to negotiate, which have been finalized upon by them. The order passed by the Deputy Commissioner is not a speaking order in the sense, he has not recorded any reasons for the submissions made by the appellant. Under these circumstances, the contentions of the appellant cannot be considered as provisions of the said provisions.

5. I therefore set aside the impugned order passed by the appellant for the purpose of re-adjudication under Section 73 of the Central Excise Act 1944 and the matter is remanded to the basis of the payment of duty at the time of final assessment and adjudicate the same within a period of 3 months from the date of receipt of this order. The appellant is directed to submit the necessary documents and additional evidence, if any, in support of their claim. The appeal is allowed by way of remand."

6. As regards the [illegible] Order-in-Original issued at Sl. No. 7 of the assessment for the month of Dec,2012, was within one year from the date of payment of duty [illegible] that the appellant had filed refund claim on 31.03.18 as acknowledged on the face of the refund application. I have also copy of ST-3 return filed by the Appellant the appellant has made payment on 06.2.2017 under PAR-II Challan No. [illegible] dated 10.07.17 [illegible] Grounds of Application and [illegible] ER-1 which is reproduced below for ready reference:





6.1 [illegible] shall not be entitled to refund of [illegible] for the short period of one year from the date of [illegible] under Section 16(3) of the Act.

6.2 In view of above [illegible] is not entitled to refund as claimed by the lower adjudicating authority in respect of duty paid in cash. Hence, on the ground of limitation as well as on merit.

7. Regarding refund claims for the period [illegible] Dec, 2017, the lower adjudicating authority has rejected refund claims [illegible] on the ground that [illegible] commensurate nexus between the said input services and output services of exempted as well as taxable nature for different periods as under:

Sr. No.	Date of Certificate	Period covered in Certificate	Cost/MT Certified
1.	[illegible].2017	[illegible]	[illegible]
2.	15.5.2017	April 2016 to March 2017	747.58
3.	[illegible].2016	April 2016 to June 2016	910.50
4.	22.[illegible].2016	April 2016 to Sep 2016	760.23
5.	22.[illegible].2016	April 2016 to Dec 2016	[illegible]
6.	22.3.2018	April 2016 to March 2017	747.58

11.1 I find that appellant filed application for refund of excess payment made for the months of Jan 2017 and Feb 2017 wherein cost per MT is taken as 940.50. Whereas, certificates produced in the case, the certificate dated 15.5.2017 and dated 22.3.2018 both in respect of entire year certifies cost as Rs 747.58 PMT. I find that while rejecting refund the lower adjudicating authority has in one line recorded that CA/CMA certificate is not supporting the refund claim but not given detailed findings on this discrepancy. On contrary, the Appellant has shown higher cost, i.e. Rs 910.50 as against certified cost of Rs 747.58. At the same time, Appellant has only advanced his argument on the basis of ... and countered findings of the lower adjudicating authority in their appeal memorandum. Thus, I find that rejection of refund for the months of Jan 2017 and Feb 2017 is not on merit but merely made on technical ground. I am of the considered view that appellant should not be denied legitimate refund of duty and undue amount cannot be withheld by the exchequer. The lower authority has not considered this in order. Therefore, in the interest of justice, I find it appropriate to remand the matter to lower adjudicating authority to arrive at fair conclusion on the basis of certificates dated 15.5.2017 and dated 22.3.2018 submitted by the appellant and decide the matter afresh giving detailed finding in the matter.

12. I find that remanding matter to the lower adjudicating authority is legal and proper in the light of the decision of the Hon'ble CESTAT in the case of Singh Alloys (P) Ltd. reported as 2012 (284) ELT 97 (Tri-Del) wherein it is held that power to remand is implicit in the powers conferred under Section 35A(3) of the Central Excise Act, 1944 even after amendment. The Hon'ble CESTAT in the case of M/s. Honda Seil Power Products Ltd. reported as 2013 (287) ELT 353 (Tri-Del) has also held that Commissioner (Appeals) has inherent powers to remand a case under the provisions of Section 35A(3) of the Central Excise Act, 1944. The Hon'ble High Court of Gujarat, in Tax Appeal No. 276 of 2014 of Associated Hotels Ltd. has held that even after amendment in Section 35A(3) of the Central Excise Act, 1944 in 2001, the Commissioner(Appeals) has powers to remand.

8.6 In view of above facts of the case, I am of the view that there is no case to remand the matter back to the Jurisdictional Officer for denovo proceedings in respect of refund claims for the month of [illegible] Dec,2017. Appellate authority directs to forthwith release relevant sanctioned refund claims for the respective months within 30 days from the date of this order. It is also observed that adjudicating authority should grant personal hearing to the applicant before passing any order as the Appellant to explain their case.

10. In view of above facts and discussions, I pass the following order -

(i) I allow appeal by way of remand for the months of Jan,2018 and Feb,2018 with the direction to sanction refund claims for the months of Jan,2018 to Dec,2018

(ii) अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है

1. The appeal filed by the Appellant is disposed of in above manner

(Amit Gupta)
Joint Commissioner (Appeals)

दृष्टिकोण हेतु प्रेषित

सेवा में,

M/s. Gujarat Mineral Development Corporation,
Lignite Project,
Umarsar, P.O. SPG Nagar
Dist.Bachau,
Dist.Kutch-370621

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु:

1. प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद (उत्तर), को सादर सूचनार्थ।
2. संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भुज मण्डल, को सादर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
3. [illegible] को सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
4. गार्ड फाईल।

[illegible]