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

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश स / O.I.O. No	दिनांक/ Date
	V2/ 6/RAJ/2020	110/ST/2018-19	16-12-2019

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

RAJ-EXCUS-000-APP-083-2020

आदेश का दिनांक / Date of Order:	**30.07.2020**	जारी करने की तारीख / Date of issue:	**30.07.2020**

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 the **Appellants** & Respondent :-

M/s Saurashtra Gramic Bank, 1st floor, LIC Jivan Prakash Building, Wing-2, Tagore Marg, Rajkot-360001.

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 निम्नलिखि+त 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 में 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 क्रमश: 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 रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकती 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 क्रमश: 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 रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत 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 होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो मे,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के 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 outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट 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 समायावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 पढी कार्य मे बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-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 ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

M/s Saurashtra Gramin Bank, Rajkot (*hereinafter referred to as* "Appellant") filed Appeal No. V2/6/RAJ/2020 against Refund Order No. 110/ST/2018-19 dated 16.12.2019 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, Central GST Rajkot-I Division (hereinafter referred to as "refund sanctioning authority").

2. The brief facts of the case are that during the course of the audit conducted by CERA, Ahmedabad, it was observed that appellant had received commission from SBI Life Insurance Co. Ltd for selling their insurance products and had paid service tax of Rs. 30,14,898/- on the said commission income during the period from May,2011 to March,2015; that the Appellant had availed 50 % of service tax paid by them, as Cenvat credit to the tune of Rs. 15,07,449/- considering the service rendered by them as their input service; that service tax on life insurance service was to be discharged by SBI Life Insurance on reverse charge basis in terms of Notification No. 30/2012-ST, dated 20.06.2012 and not by the Appellant; that service rendered by the appellant was not their 'input service' in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR,2004) and hence, the Appellant had wrongly availed and utilized the Cenvat credit of Rs. 15,07,449/-.

2.1 The Show Cause Notice dated 10.03.2016 was issued to appellant for wrong availment of Cenvat credit of Rs.15,07,449/- along with interest under Rule 14 of CCR,2004 and proposed penalty under Section 77 of the Finance Act, 1994 and Rule 15(3) of CCR,2004. The said Show Cause Notice was adjudicated vide Order-in-Original No. 46/ST/2016-17 dated 10.01.2017 wherein demand of Rs.15,07,449/- was confirmed and penalty of Rs. 15,07,449/- was imposed under Rule 15(3) of CCR, 2004 and Rs. 10,000/- was imposed under Section 77(3) of the Act.

2.2 Aggrieved, the appellant preferred appeal before the then Commissioner (Appeal), Central Excise, Rajkot who vide his Order-in-Appeal No. RAJ-EXCUS-000-APP-227-2018 dated 07.02.2018 rejected the appeal. On rejection of their appeal, the Appellant deposited confirmed demand of Rs. 15,07,449/- along with interest of Rs. 13,87,614/-, penalty of Rs. 15,07,449/- and penalty of Rs. 10,000/-.

2.3 The appellant preferred appeal before the Hon'ble CESTAT who vide its Order No. A/11560/2018 dated 27.07.2018 partially allowed the appeal by setting aside the demand for extended period and penalties imposed under Section 77 of the Act and Rule 15(3) of CCR,2004.

2.4 Subsequently, the appellant filed two refund claims before the refund sanctioning authority who vide the impugned order

(i) confirmed demand for wrongly availed Cenvat credit for normal period amounting to Rs. 5,87,785/- along with interest of Rs. 4,15,224/- under Rule 14 of CCR, 2004;

(ii) sanctioned refund of pre-deposit of Rs. 1,50,744/- and refund of penalty of Rs. 15,17,449/- under Section 11B of the Central Excise Act, 1944;

(iii) sanctioned refund of Rs. 17,41,311/- pertaining to Cenvat credit availed during extended period and interest paid thereon but ordered to deposit the said amount in Consumer Welfare Fund in accordance with the provisions of Section 11B ibid; and

(iv) rejected refund of service tax of Rs. 30,14,998/- as time barred under Section 11B ibid.

3. Aggrieved, the Appellant has preferred the present appeal on various grounds, *inter alia*, as under :-

(i) That adjudicating authority has erred in rejecting refund claim of Rs.30,14,898/- on limitation; that it is not duty which appellant is liable to pay, but it was inadvertently paid by them; that duty liability and amount paid inadvertently should not be treated as same.

(ii) That adjudicating authority has erred in applying the doctrine of unjust enrichment on the ground that the burden of duty has been passed to customer by appellant, however, as it was not passed but paid by them.

(iii) That adjudicating authority has erred in rejecting refund claim of Rs. 17,41,311/- on the ground that it is barred by limitation, as it is pre-deposit paid under protest and not the duty. Further, adjudicating authority has erred in applying doctrine of unjust enrichment as this amount has been paid by appellant at the time of forwarding appeal before the Hon'ble CESTAT to limit their interest liability in case of adverse outcome of appeal. Therefore, doctrine of unjust enrichment should not be applicable to this amount.

4. In hearing, Shri Guatam Acharya, C.A. appeared on behalf of the Appellant and reiterated the grounds of appeal and submitted additional

submission dated 28.01.2020 along with various case laws and requested to allow the appeal.

4.1 In additional submission, the Appellant contended that,

(i) The refund sanctioning authority erred in rejecting refund claim of Rs. 30,25,898/- on the ground that it was barred by limitation; that it was not duty which they were liable to pay but it was inadvertently paid by them and hence, amount paid by them should not be considered as duty or tax and relied upon following case laws:

(a) 3E infotech - 2018 (18) G.S.T.L. 410 (Mad.)
(b) Joshi Technologies International Ltd - 2016 (339) E.L.T. 21 (Guj.)
(c) Parijat Construction - 2018 (359) ELT 113.

(ii) The refund sanctioning authority erred in applying doctrine of unjust enrichment for rejecting the claim. They inadvertently paid service tax on commission income earned for selling insurance policies of SBI Life; that buyer of the policy directly paid insurance premium to SBI Life and they acted only as insurance agent and were not in a position to receive anything from their client or raise any invoice; that they discharged service tax on commission income on mistaken belief that they were statutory liable to pay service tax and hence they had not shown service tax so paid by them under the head of receivable duty and relied upon case law of Radico Khaitan Ltd - 2014 (34) S.T.R. 586 (Tri. - Del).

(iii) The refund sanctioning authority erred in rejecting refund claim of Rs. 17,41,311/- by applying doctrine of unjust enrichment. The said amount was paid by them at the time of filing appeal before the Hon'ble Tribunal to limit their interest liability in case of adverse outcome of their appeal and hence, doctrine of unjust enrichment is not applicable to such amount and relied upon case law of N.K. Overseas- 2015 (317) E.L.T. 356 (Tri. - Ahmd).

5. I have carefully gone through the facts of the case, the impugned order and grounds of appeal and additional submission filed by the appellant during the course of personal hearing. The issues to be decided in the present appeal is,

(i) whether rejection of refund claim of Rs. 30,14,898/- on the grounds of limitation and unjust enrichment is correct, legal and proper, and

(ii) whether or not doctrine of unjust enrichment is applicable in respect of

refund claim of Rs. 17,41,311/- filed in respect of payment made towards wrongly availed Cenvat credit and interest paid thereon.

6. On going through the records, I find that the Appellant had acted as an agent of SBI Life Insurance Co. Ltd for selling their insurance products during the period from May,2011 to March,2015 and earned commission income. The Appellant discharged service tax of Rs. 30,14,898/- on the said commission income and also availed Cenvat credit of 50% of said service tax, amounting to Rs. 15,07,449/-, considering the service rendered by them as their 'input service'. Proceeding were initiated against the Appellant on the grounds that insurance service rendered by them was not covered under 'input service' in terms of Rule 2(l) of CCR, 2004 and demand of Rs. 15,07,449/- was confirmed for wrongly availing Cenvat credit of service tax. The matter reached before the Hon'ble CESTAT, Ahmedabad who vide its Order dated 27.7.2018 set aside demand for extended period of limitation. The Appellant had deposited confirmed demand of Rs. 15,07,449/- along with interest of Rs. 13,87,614/-, penalty of Rs. 15,07,449/- and penalty of Rs. 10,000/- during appeal proceedings.

6.1 I find that the Appellant filed two separate refund claims before the refund sanctioning authority. The first refund claim of service tax of Rs. 30,14,898/- was filed on the grounds that service tax on life insurance was to be discharged by SBI Life Insurance Co. Ltd on reverse charge mechanism but they inadvertently paid service tax on commission income. The said refund claim was rejected by the refund sanctioning authority on the ground of limitation as well as on unjust enrichment. The Appellant has pleaded that service tax was not payable on the service rendered by them, but it was inadvertently paid and hence, it should not be considered as duty or tax and consequently bar of limitation and doctrine of unjust enrichment prescribed under Section 11B of the Central Excise Act, 1944 would not be applicable.

7. I find that it is not under dispute that the Appellant had paid service tax of Rs. 30,14,898/-, which was not payable by them. It is also not under dispute that the Appellant had filed refund claim beyond one year from the date of deposit of Service Tax. The refund application was filed under Section 11B of the Central Excise Act, 1944 made applicable to the service tax by virtue of Section 83 of the Finance Act, 1994. When the refund claim was filed under the provisions of Section 11B of the Central Excise Act, 1944, it is natural that all the

provisions of Section 11B, including limitation prescribed therein, would be applicable to said refund claim. Hence, the refund sanctioning authority was justified in rejecting the refund claim on the ground of limitation.

7.1 I rely upon the decision passed by the Hon'ble Kerala High Court in the case of Southern Surface Finishers reported as 2019 (28) GSTL 202 (Ker.). In the said case, the Appellant had paid service tax but later realized that they were not required to pay service tax due to exemption. The refund claim filed by the assessee was beyond limitation prescribed under Section 11B of the Central Excise Act, 1944 and hence was rejected. The Hon'ble High Court by following the judgment of the Hon'ble Supreme Court passed in the case of Mafatlal Industries Ltd held that mistake committed by the assessee may be one on law or on fact but remedy available would be only under the statute and hence, no refund application is maintainable after limitation period of one year provided under Section 11B of the Central Excise Act, 1944. The relevant portion of the decision is reproduced as under:

> **"9.** The Learned Single Judge who referred the matter, rightly noticed the different views expressed, which however on the question of mistake of law and the manner in which refund has to be applied for; we have to concede to the majority view of five Learned Judges. From the above extracts, it has to be noticed that Justice B.P. Jeevan Reddy in his majority judgment; concurred to by a majority of five out of nine, held the refund to be possible only under the provisions of the Act. We need only refer to the category of payment under a mistake of law. We do not agree with the Learned Single Judge that the facts of the case discussed in WP (C) No. 18126/2015 do not fall under any of the categories. A payment made on a mistaken understanding of law finding the levy to be exigible for the services rendered, would be a levy made or paid under mistake of law and not one categorized as an unconstitutional levy or illegal levy. We cannot agree with the elastic interpretation made by the Learned Single Judge that the case would be one on account of mistake of fact in understanding the law. The mistake committed by the assessee may be one on law or on facts; the remedy would be only under the statute. Here we are not concerned with a case as specifically noticed in *Mafatlal Industries Limited* (supra) of an assessee trying to take advantage of a verdict in another case. Here the assessee had paid the tax without demur and later realised that actually there was no levy under the provisions of the statute. However, that again is a mistake of law as understood by the assessee and for refund, the assessee has to avail the remedy under the provisions of the statute and concede to the limitation provided therein.
>
> **10.** B.P. Jeevan Reddy, J. after elaborate discussion, finds the Excise Act to be a self contained enactment with provisions for collecting taxes which are due according to law and also for refunding the taxes collected contrary to law, which has to be under Sections 11A and 11B. Both provisions were found to contain a uniform rule of limitation, namely six months at that time and then one year and now two years. Relying on the decision in AIR 1965 SC 1942 *[Kamala Mills Ltd.* v. *State of Bombay]*, it was held that where a statute creates "a special right or a liability and also provides the procedure for the determination of the right or liability, by the Tribunals constituted in that behalf

and provides further that all questions above the said right and liability shall be determined by the Tribunal so constituted, the resort to Civil Court is not available, except to the limited extent pointed out in *Kamala Mills Ltd.* (supra). Central Excise Act having provided specifically for refund, which provision also expressly declared that no refund shall be made except in accordance therewith, the jurisdiction of the Civil Court was found to be expressly barred. It was held that once the constitutionality of the provisions of the Act, including the provisions relating to refund is beyond question, then any and every ground, including violation of principles of natural justice and infraction of fundamental principles of judicial procedure has to be urged under the provisions in the Act, obviating the necessity of a suit or a writ petition in matters relating to a refund. The only exception provided was when there was a declaration of unconstitutionality of the provisions of the Act, in which event, a refund claimed could be otherwise than under Section 11B. We, specifically, emphasise the underlined portion in paragraph 79 of the cited decision as extracted hereinabove. The earlier view that the limitation was three years from the date of discovery of mistake of law was specifically differed from, since the refund had to be under the remedy as provided in the statute, which prescribed a limitation.

11. At the risk of repetition, here, the assessees paid up the tax and later realised that they are entitled to exemption. Going by the majority judgment, in *Mafatlal Industries Limited* (supra), we have to find such cases being subjected to the rigour of limitation as provided under Section 11B. The limitation, in the relevant period, being one year, there could be no refund application maintained after that period. We, hence, find the order impugned in the writ petitions to be proper and we dismiss the writ petitions. We hold that the judgment dated 6-7-2015 in WP (C) No. 18126/2015 [2015 (39) S.T.R. 706 (Ker.)] [*M/s. Geojit BNP Paribas Financial Services Ltd.* v. *Commissioner of Central Excise*] is not good law, going by the binding precedent in *Mafatlal Industries Limited* (supra). The writ petitions would stand dismissed answering the reference in favour of the Revenue and against the assessees. No costs."

(Emphasis supplied)

7.2 I also rely upon the order passed by the Hon'ble CESTAT, Mumbai in the case of State Bank of India reported as 2020 (34) G.S.T.L. 562 (Tri. - Mumbai), wherein it has been held that,

"**5.** The facts are not under dispute that the appellant had filed refund application on 4-5-2011, claiming refund of service tax paid during the period 2007-08 and 2008-09; that the said application was filed under Section 11B of the Central Excise Act, 1944 made applicable to the service tax matters vide Section 83 of the Finance Act, 1994; and that the refund sanctioning authority had adjudicated the refund applications under the said statutory provisions. Section 11B ibid deals with the situation of claim of refund of duty (service tax). Clause (f) in explanation (B), appended to Section 11B ibid provides the relevant date for the purpose of computation of the limitation period for filing of the refund application. In the case of the present appellant, the relevant date should be considered as the date of payment of service tax. Section 11B ibid mandates that the refund application has to be filed before expiry of one year from the relevant date. In this case, it is an admitted fact on record that the refund application was filed by the appellant beyond the statutory time limitation prescribed under the statute. Therefore, the refund sanctioning authority adjudicating the refund issue under the statute has no option or scope to take a contrary view, than the limitation period prescribed in the statute, to decide the issue differently. In other words, 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. In this context, the Hon'ble Supreme Court in the case of *Doaba Co-operative Sugar Mills* [1988 (37) E.L.T. 478 (S.C.)] (supra) have 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. Further, the Hon'ble Supreme Court in the case of *Anam Electrical Manufacturing* (supra) have also 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. With regard to the issue, whether the jurisdictional authorities can entertain the refund application filed beyond the statutory prescribed time limit, the Hon'ble Supreme Court in the case of *Miles India Ltd.* (supra) have endorsed the views expressed by the Tribunal that the Customs authorities acting under the Act were justified in disallowing the claim of refund, as they were bound by the period of limitation provided under Section 27(1) of the Customs Act, 1962 [*pari materia* with Section 11B (supra)].

6.1 In view of the above settled principles of law and in view of the fact that the refund application was filed and decided under Section 11B ibid, the time limit prescribed thereunder was strictly applicable for deciding such issue. Since, the authorities below have rejected the refund applications on the ground of limitation, I do not find infirmity in such orders, as the same are 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 study of the judgment/orders relied upon by the Learned Consultant for the appellant for deciding the issue differently.

7. In view of the foregoing discussions and analysis, I do not find any infirmity in the impugned order dated 28-2-2017 passed by the Commissioner of Service Tax (Appeals-I), Mumbai. Accordingly, appeal filed by the appellant is dismissed."

7.3 I have examined the case laws of 3E infotech - 2018 (18) G.S.T.L. 410 (Mad.), Joshi Technologies International Ltd - 2016 (339) E.L.T. 21 (Guj.) and Parijat Construction - 2018 (359) ELT 113 relied upon by the Appellant. I find that said decisions have been rendered by the Hon'ble High Courts by invoking powers vested under Article 226 of the Constitution of India in writ jurisdiction whereas this appellate authority is a creature of statute and has to function within the ambit of the statute which has created it and cannot assume powers and jurisdictions of constitutional courts such as the Hon'ble High Court. I, therefore, cannot condone delay in filing refund application, ignoring the limitation prescribed under Section 11B of the Central Excise Act, 1944.

7.4 In view of above, I hold that the refund claim filed beyond limitation prescribed under Section 11B ibid is not maintainable and correctly rejected by the refund sanctioning authority as barred by limitation. Since, the refund claim is not sustainable on limitation, I do not find it necessary to examine whether

doctrine of unjust enrichment is applicable or not. I uphold the impugned order to the extent of rejection of refund claim of Rs. 30,14,898/-.

8. Regarding second issue, I find that the Appellant had deposited amount of Rs. 15,07,449/- towards demand confirmed for wrong availment of Cenvat credit along with interest of Rs. 13,87,614/- during appeal proceedings as narrated in para 6 *supra*. The Hon'ble CESTAT vide Order dated 27.7.2018 set aside demand for extended period of limitation. Consequently, the Appellant filed refund claim. The refund sanctioning authority sanctioned refund of Rs. 17,41,311/- vide the impugned order and credited the same to Consumer Welfare Fund by applying the doctrine of unjust enrichment. The Appellant has contended that the said amount was paid by them at the time of filing appeal before the Hon'ble Tribunal to limit their interest liability in case of adverse outcome of their appeal and hence, doctrine of unjust enrichment is not applicable to such amount.

8.1 I find that the refund claim amount is pertaining to Cenvat credit of service tax availed by the Appellant which was denied by the Department and hence, the Appellant had paid the same along with interest. The doctrine of unjust enrichment is applied in every refund claim filed under Section 11B of the Act to ensure that claimant is not getting double benefit. If duty or tax has been passed on to the client then claimant is not eligible to get refund under Section 11B. In the present case, refund claim pertained to Cenvat credit of service tax and interest paid thereon which cannot be passed on to service recipient. Apart from that, the said Cenvat credit was in respect of service tax which was erroneously paid on commission income received from SBI Life Insurance Company Ltd. The Appellant had not passed on service tax to their recipient and was borne by them. Considering the facts of the case, I am of the opinion that refund amount consisting of Cenvat credit of service tax and interest could not be passed on by the Appellant to their service recipient. Further, amount voluntary paid during pendency has to be considered as pre-deposit and doctrine of unjust enrichment is not applicable to such amount. My views are supported by the decision rendered by the Hon'ble Gujarat High Court in the case of J.M. BAXI & Co. reported as 2011 (271) E.L.T. 19 (Guj.), wherein it has been held that,

> "4. The undisputed facts of the case are that the assessee had deposited the amount payable under the order made by the adjudicating authority voluntarily without there being any order of the appellate authority directing the assessee to deposit the amount as a precondition for hearing the appeal. The issue that arises for determination in the present appeal is as to whether or not the amount

paid voluntarily after the order of the adjudicating authority, pending the appeal before the appellate authority is to be treated to be a deposit made under Section 35F of the Act.

5. The controversy involved in the present appeal is no longer *res integra* inasmuch as, this Court in the case of *Commissioner of Customs (Preventive)* v. *Ghaziabad Ship Breakers Ltd.* vide judgment and order dated 7-10-2010 rendered in Tax Appeal No. 2042 of 2009 [2010 (259) E.L.T. 522 (Guj.)], in the context of the provisions of Section 129E of the Customs Act, 1962 which are in *pari materia* with the provisions of Section 35F of the Central Excise Act, 1944, has held thus :

> "On a plain reading of section 129E of the Act, it is apparent that the same provides that a person desirous of appealing against an order relating to any duty or interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under the Act, is required to deposit the duty and interest demanded or penalty levied with the proper officer. Under the section such amount has to be paid by such person on his own and does not require any order to be passed before making such deposit. Deposit of the said amount is a pre-condition for entertaining the appeal. What is important to note is that the amount to be deposited before the appeal can be entertained on merits is nothing else but the amount of duty and/or interest, or penalty demanded in consequence of an order-in-original. In principle the deposit is of duty or interest or penalty. The term "pre-deposit" is conveniently used to denote payment before entertaining the appeal. It is only a mode of payment prescribed by legislature with an intention to protect interest of Revenue.
>
> However, if the person desirous of preferring appeal seeks waiver of the pre-deposit on the ground of undue hardship as contemplated under sub-section (2) of section 129E, he is required to file an application seeking dispensation of such deposit, in which case he is required to make the pre-deposit in terms of the order that may be passed by the Commissioner (Appeals) or the Appellate Tribunal. Thus, the contention that it is only the payment made pursuant to any order of any appellate authority or judicial forum under section 129E or section 131 of the Act which would fall within the ambit of pre-deposit under the said provision is fallacious and contrary to the provisions of the section itself and as such does not merit acceptance."

6. The court accordingly held that any amount deposited during the pendency of an appeal would be by way of pre-deposit under Section 129E of the Customs Act and has to be treated accordingly. The controversy in issue in the present appeal, therefore, stands concluded against the revenue, by the said decision of this Court.

7. In the circumstances, for the reasons stated in the judgment and order dated 7-10-2010 rendered in the case of *Commissioner of Customs (Preventive)* v. *Ghaziabad Ship Breakers Ltd.* in Tax Appeal No. 2042 of 2009, this appeal is also dismissed."

8.2 In view of above, I hold that doctrine of unjust enrichment is not applicable in respect of refund claim of Rs. 17,41,311/- and Appellant is eligible

to get refund of Rs. 17,41,311-, which shall be paid forthwith. The impugned order is set aside to that extent.

9. In view of above, I partially allow the appeal and set aside the impugned order to the extent of not sanctioning refund claim of Rs. 17,41,311/- to the Appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपीलका निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the Appellant is disposed off as above.

सत्यापित,

चिराग शाह
अधीक्षक (अपील)

30/7/2020
(Gopi Nath)
Commissioner (Appeals)

By Regd Post A.D.

To, M/s Saurashtra Gramin Bank, 1st Floor, LIC Jivan Prakash Building Wing-2, Tagore Marg, Rajkot-360 001	सेवामें, मे॰ सौराष्ट्र ग्रामीण बैंक, प्रथम मजला, जीवन प्रकाश बिल्डिंग, टागोर मार्ग, महिला कॉलेज चौक, राजकोट॰

प्रतिलिपि :-

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,राजकोट आयुक्तालय,राजकोट को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-I मण्डल,राजकोट आयुक्तालय,राजकोट को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।