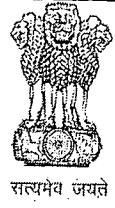




:: प्रधान आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001



सत्यमेव जयते

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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date:
	V2/3/EA2/BVR/2019	Refund/07/AC/JND/18-19	15.05.2019
ख	अपील आदेश संख्या (Order-In-Appeal No.)-		

BHV-EXCUS-000-APP-021-2020

आदेश का दिनांक / Date of Order:	27.05.2020	जारी करने की तारीख / Date of issue:	02.06.2020
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गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / भावनगर /
गान्धीधाम 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/Bhavnagar/Gandhidham :

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

1. The Assistant Commissioner, Central Goods & Service Tax Division, Junagarh, 2nd Floor, Sardar Patel Bhavan, Jayshree Takies Road, Jnagarh-362001.
2. M/s Tacon Infrastructure Pvt. Ltd, Tacon, Complex, 3-Wedi Plot, Porbandar-360575.

इस आदेश (अपील) से व्याधित 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:-

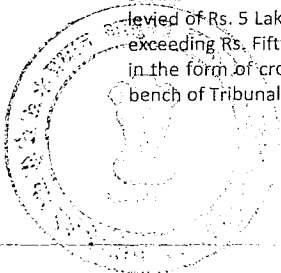
(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in 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- 360016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में 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। 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 is upto 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/-.

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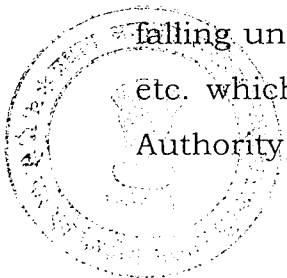


- वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न 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 (सेन्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विधीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(xxv) धारा 11 डी के अंतर्गत रकम
(xxvi) सेनवेट जमा की ली गई गलत राशि
(xxvii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विधीय (मं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकरार् के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे। /
- For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
- Under Central Excise and Service Tax, "Duty Demanded" shall include:
(xxv) amount determined under Section 11 D;
(xxvi) amount of erroneous Cenvat Credit taken;
(xxvii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर संचित, 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 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 विनियोग 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विनियोग प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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 को दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनियोजित 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 को अदायगी को जाना 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, उपयुक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकरार् को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी 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 ::

The present appeal has been filed by the **Assistant Commissioner, CGST Division-Junagadh** on behalf of the Commissioner, Central GST & Central Excise, and Bhavnagar (hereinafter referred to as **“the Appellant-Department”**) against the Order-in-Original No. Refund/07/A.C./JND/18-19 dated 15.05.2019 passed by the Assistant Commissioner, CGST Division, Junagadh (hereinafter referred to as **‘the refund sanctioning authority’**) in the case of **M/s Tacon Infrastructure Pvt. Ltd.**, Tacon Complex, 3-Wadi Plot, Porbandar-360 575(hereinafter referred to as **‘the Respondent’**).

2. The brief facts of the case are that the respondent had filed a claim for refund of Service Tax and interest totally amounting to Rs.67,87,399/- on 10.11.2016 under Section 11-B of the Central Excise Act, 1944 - as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994. The said refund claim was filed on the grounds that the Respondent were providing services in respect of “Commercial and Residential Complex construction services”, “Works Contract service”, etc. to the Government, a Local Authority or a Governmental Authority and the said services were covered under Sl. No. 12 of the exemption Notification No. 25/2012-ST, dated 20-06-2012. The said exemption was withdrawn vide Notification No. 6/2015-ST, dated 01.03.2015. However, again vide Notification No. 09/2016-ST, dated 01-03-2016, the services provided under a Contract which had been entered into prior to 01.03.2015 and on which appropriate Stamp Duty, wherever applicable, had been paid prior to such date, became exempted from payment of Service Tax. In terms of the Notification No. 6/2015-ST, the services viz. Works Contract service provided by the Respondent on or after 01.04.2015, to Governmental Authority and/or to the Government etc. became taxable and accordingly the Respondent had paid the applicable Service Tax on these services provided by them during the period from 01.04.2015 to 29.02.2016. The refund of claim of Rs.67,87,399/- (which includes Rs. 65,76,908/- Service Tax plus Rs.2,10,491/- interest) was filed by the Respondent in terms of the Notification No. 09/2016-ST, dated 01.03.2016 whereby retrospective effect of exemption from payment of Service Tax has been provided to the services falling under the category of “Construction service”, “Work Contract Service” etc. which were provided by a service provider to the Government, a Local Authority, or a Governmental Authority.



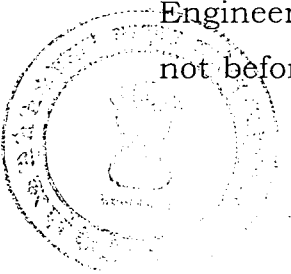
2.1 The said refund claim was duly verified and refund was sanctioned vide OIO dated 19.12.2016. The department reviewed the said OIO and preferred an appeal before Commissioner (Appeal), Rajkot. The Commissioner (Appeals) remanded the matter back for verification of unjust enrichment vide OIA dated 14.05.2018. The adjudicating authority after verification of the documents found that burden of tax has not been passed on to any other person and sanctioned the aforesaid refund claim vide the impugned Order in Original dated 15.05.2019.

3. Being aggrieved by the impugned order, the appellant-department filed the present appeal, *interalia*, on the following grounds:-

3.1 That the doctrine of unjust enrichment has not been addressed properly by the refund sanctioning authority; that a debit entry has been made by the respondent which included service tax in the ledger account of EE, R & B Jamnagar for the year 2015-16 and 2016-17; that just three days before filing the refund claim i.e. on 7.11.2016, the ledger account of E.E., R & B, Jamnagar was credited with Service Tax; that the same was done with the sole purpose of getting refund from department and knowing very well that liability of service tax can again be created in Balance Sheet since the same is finalized only after March-2017.

3.2 That in case of Military Engineering Services (MES), Gandhinagar, out of the total Service Tax amount of Rs. 11,71,518/-, the respondent had collected Service Tax amount of Rs. 8,48,142/- from the service recipient and the remaining amount of Rs. 3,23,376/- was debited to the recipient ledger and shown as amount receivable, so that the respondent can claim the same at any time; that they again credited the receivable amount i.e. Rs. 3,23,376/- on 07.11.2016 before submitting the refund claim on 10.11.2016 which implied that this had been done by the respondent just to make themselves eligible for the refund and the same liability could be again raised in the books of account as the Balance Sheet would be finalized after March-2017.

3.3 That the respondent had claimed Rs.8,48,142/- that was paid by MES to them as Service Tax and this amount was claimed by them from department as refund, therefore unjustly enriching themselves at the cost of Government exchequer; that this amount was refunded to MES, Garrison Engineering, Nalia on 04.01.2017 i.e. after the refund was sanctioned and not before; that at the time of filing of refund claim, the respondent shifted



the liability of service tax to the recipients and therefore, the claim is hit by the doctrine of unjust enrichment; that they relied upon the judgement of the Hon'ble Supreme Court of India, in the case of **M/s. Mafatlal Industries Ltd. Vs. Union of India**, reported in **1997 (89) E.L.T. 247 (S.C.)**.

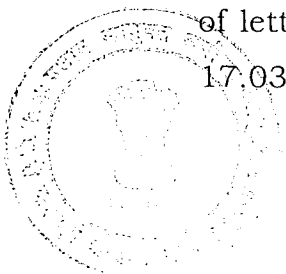
3.4 That the refund sanctioning authority has erroneously sanctioned the refund of interest amounting to Rs. 2,10,491/- paid by the respondent on the amount of Service Tax which was not paid by them in time, thus payment of interest in this case is a penal action, therefore, the refund sanctioning authority has erred in sanction of refund of interest under Section 102 of the Finance Act, 1994 to the Respondent.

3.5 That, the impugned order passed by the refund sanctioning authority sanctioning refund of Service Tax amounting to Rs. 65,76,908/- plus interest amounting to Rs.2,10,491/-, (total Rs.67,87,399/-), under Section 11B of the Central Excise Act, 1944 - as made applicable to the service tax matters vide Section 83 of the Finance Act, 1994, read with Section 102 of the Finance Act, 1994, is not proper, correct and legally sustainable and hence liable to be set aside.

4. The Respondent vide letter dated 11.02.2020 submitted Memorandum of Cross Objections, inter alia, submitting as under:

4.1 That they filed their claim for refund on 10.11.2016 for Rs. 67,87,399/- under Section 102 of the Finance Act, 2016 for retrospective exemption granted for services provided to Government for the contracts entered prior to 01.03.2015; that their claim was duly verified and refund was sanctioned.

4.2 That out of refund of Rs. 67 Lacs, refund for Rs. 56 lacs pertains to services provided to Executive Engineer, Jamnagar, Government of Gujarat for construction of Jilla Seva Sadan; that in the departmental appeal, it is mentioned that they have debited the service tax amount regularly and hence it can be recovered from the service recipient at any time later on; that the same paragraph also mentions that they have already credited the same amount before filing the claim; that this fact has already been verified by two different refund sanctioning authorities and at paragraph 27(iv) of the OIO dated 15.05.2019 it has been mentioned that in the second contract i.e. with Government of Gujarat, there has not been any payment that has been received by the claimant toward tax and evidence has been adduced by way of letter from the Executive Engineers, Road and Building, Jamnagar dated 17.03.2016; that in w.r.t the second contract the refund has been



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sanctioned only after due verification and relying upon letter dated 17.03.2016 issued by the Government of Gujarat.

4.3 That rest of the refund of Rs. 11.71 lacs pertained to construction services provided to Military Engineering Services (MES), Government of India; that for this contract also, out of this refund claim amount, Rs. 8,48,142/- was already refunded to the MES on 04.01.2017; that this amount is transferred to the MES and this fact is not disputed; that the entire claim was made only on approval from the MES, Government of India vide their letter dated 24.10.2016 and the said findings has also been recorded in impugned OIO at para 27(iii); that they are not unjustly enriched, therefore the departmental appeal should be rejected.

4.4 That the department has disputed the refund of interest in the present appeal; that the Commissioner (Appeal) vide OIA dated 14.5.2018 has held that interest is also refundable under Section 102 of the Act in the first appeal, then the said issue should not have been raised in the second appeal.

5. The Appellant-Department did not appear for the personal hearing.

5.1 In Hearing, Shri Punit Prajapati, C.A and authorized representative of the Respondent appeared on behalf of the respondent for the personal hearing. He reiterated the submissions already made and requested to disallow the appeal filed by the Department.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum of the Appellant-department and cross objections filed by the Respondent. The limited issue to be decided in the present appeal is whether the impugned order passed by the refund sanctioning authority is legal, correct and in order or not.

7. I note that the respondent had filed the claim for refund on 10.11.2016 for Rs. 67,87,399/- (which includes Rs. 65,76,908/- Service Tax plus Rs.2,10,491/- interest) in terms of the Notification No. 09/2016-ST, dated 01.03.2016 whereby retrospective effect of exemption from payment of Service Tax has been provided to the services provided by a service provider to the Government, a Local Authority, or a Governmental Authority. The said refund claim was duly verified and refund was sanctioned. The department preferred an appeal before Commissioner Appeal against the said Order. The Commissioner (Appeals) remanded back the case for verification of unjust



enrichment through order dated 14.05.2018. The refund sanctioning authority found that burden of tax has not been passed on to any other person and the refund was sanctioned vide the impugned order. The department reviewed the impugned order and hence the present appeal.

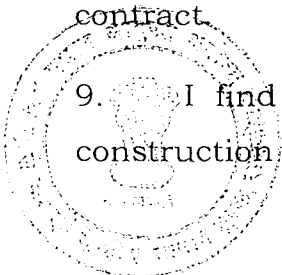
8. I note that the respondent had provided construction service to 2 Government authorities viz. (i) E.E. Jamnagar (Road & building) Division of Govt. of Gujarat and (ii) Chief Engineer (Air Force), Military Engineering Services (MES), Gandhinagar.

8.1 I find that the appellant-department had vehemently contended that the refund sanctioning authority has not addressed the doctrine of unjust enrichment properly.

8.2 In this regard, I find from the records that, out of refund of Rs. 67,87,399/-, refund of Rs. 56 lacs pertains to services provided to Executive Engineer, Jamnagar, Government of Gujarat for construction of Jilla Seva Sadan. On going through the appeal filed by the appellant-department, I find that the appellant has mentioned that the respondent has periodically debited the service tax amount to the ledger account of E.E, R&B Jamnagar and the liability has been raised so that the Respondent can claim and get it reimbursed on any later date. The appellant-department has also stated that the respondent has already credited the same amount before filing the claim.

In this regard, I find that the refund sanctioning authority has verified various documents like Ledger Accounts, Audited Financial Statements, Chartered Accountants' Certificate, communications with MES, Bank Statements (which revealed that the amount has been returned though after filing of the refund claim) etc. and has then only has come to a conclusion that the respondent was not unjustly enriched. Further, at paragraph 27(iii) of the impugned order the refund sanctioning authority has clearly found that the refund has been claimed on 10.11.2016 only after approval by the service recipient MES through their letter dated 24.10.2016. I have also gone through the letter and find that the entire claim was made only on approval from the MES, Government of India. Also the money has been refunded to the service recipient and the same is supported by the evidences issued by the Government of India and verified by the refund sanctioning authority. Thus, there is no question of unjust enrichment with respect to the first contract.

9. I find that the rest of the refund of Rs. 11,71,518/-, pertains to construction services provided to Military Engineering Services (MES),



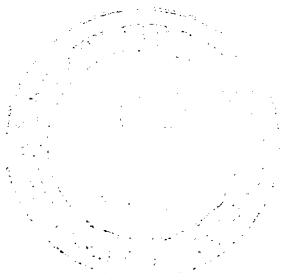
Government of India. With respect to this contract, I find that, out of the above refund amount, an amount of Rs. 8,48,142/- has already been refunded to the MES on 04.01.2017 i.e after receipt of the refund from the department. I find that the refund sanctioning authority at paragraph 27(iv) of the impugned order has relied upon the Executive Engineers, Road and Building, Jamnagar's letter dated 17.03.2016 and have found that the claimant (respondent) has not received any payment towards tax. I also note that the appellant-department has noticed that this amount was refunded to MES, Garrison Engineering, Nalia on 04/01/2017 i.e. after the refund was sanctioned. Thus, I find that the refund has been sanctioned only after due verification and relying upon letter dated 17.03.2016 issued by the Government of Gujarat.

9.1 In view of the above, I find no merits in the Revenue's appeal. I also note that when the legislation itself has legislated for the refund of Service Tax in terms of the provisions of Section 102, the objections raised by Revenue cannot be appreciated.

10. Now, I proceed to examine the admissibility of the refund of interest in the instant appeal. I observe that the Respondent has claimed refund of interest amounting to Rs. 2,10,491/-, paid by them on the amount of Service Tax which was not paid by them in time and the refund sanctioning authority has sanctioned the same. I note that in the present case, as per the amended (new) provisions, the respondent was not required to recover service tax and deposit with the Department, hence, the amount paid as service tax during the period 01.04.2015 to 29.02.2016 is the amount, which is not recoverable as tax /duty. Thus, I find that when no duty is payable, interest thereon is also not payable Therefore, I find that the refund sanctioning authority has rightly sanctioned the refund to the Respondent.

Moreover, I find that this issue has been settled by the Commissioner (Appeals) vide order dated 14.05.2018 wherein it has been held that interest is also refundable and the said OIA has not been challenged by the Department at the relevant time.

11. As regards the case law relied upon by the appellant-department held by the Hon'ble Supreme Court of India, in the case of **M/s. Mafatlal Industries Ltd. Vs. Union of India**, reported in **1997 (89) E.L.T. 247 (S.C.)**, it is ruled that that refund is "grantable" only when it is established that burden of duty has not been passed on. However, this judgement nowhere states that refund is "claimable" only after payment of tax to the



service recipient. Thus, the above case is not applicable to the facts of the present case.

12. In view of my above discussions, I uphold the impugned order and reject the appeal filed by the Revenue.

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

12.1 The appeal filed by the Appellant-Department stand disposed off in the above terms.

सत्यापित
A
अ. अ. अधिकारी
अधीक्षक (सर्वीस)

(Gopi Nath)
Commissioner (Appeals)
71512020

By Regd. Post AD

1. The Assistant Commissioner, Central Goods & Services Tax Division, Junagadh 2nd Floor, Sardar Patel Bhavan, Jayshree Talkies Road, Junagadh-362 001,
2. M/s. Tacon Infrastructure Pvt. Ltd., Tacon Complex, 3-Wadi Plot, Porbandar -360 575.

Copy to :

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST, Bhavnagar.
3. Guard File.

