



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



द्वितीय तल, जी एम टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001  
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सत्यमेव जयते

DIN-20200964SX00009B1C62

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal / File No. V2/01/BVR/2020	मूल आदेश सं / O.I.O. No. 21/OIO/DIV/SNR/2019-20	दिनांक/ Date: 16/01/2020
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

**BHV-EXCUS-000-APP-047-2020**

आदेश का दिनांक/ Date of Order:	17.09.2020	जारी करने की तारीख / Date of issue:	24.09.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Gopi Nath, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से मृजित: /  
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 Appellant & Respondent :-

**M/s. Sukrut Construction, Near Jain Temple, Lakhu Pole, Wadhwan, Surendranagar**

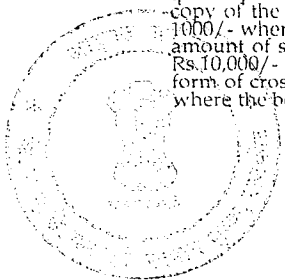
इस आदेश (अपील) से व्यथित कोई व्यक्ति/व्यक्तिगत तंत्रक में उपयुक्त प्राधिकरण / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं विन 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) अर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक सं 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 बतलाया गया अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित क्रिय 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी मार्बजित बैंक के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगत आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपये 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.5,000/-, 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) अपील न्यायाधिकरण के समक्ष अपील, विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी है, 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी मार्बजित बैंक के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगत आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपये 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 fee 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) विधि अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत, जो कि अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी एवं अपील के साथ अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी एवं अपील के साथ अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी एवं अपील के साथ अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी। / The appeal under sub section (2) and (2A) of the section 85 of 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) (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 सेवाकार अपीलीय प्राधिकरण (सेटट) के अंतर्गत अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो कि विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत, जो कि अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी एवं अपील के साथ अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी। / सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकार अपीलीय प्राधिकरण (सेटट) के अंतर्गत अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो कि विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत, जो कि अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी एवं अपील के साथ अपील, सेवाकार नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा रहेगी। / The appeal against the order of the Appellate Tribunal in respect of the levy of duty on goods, 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) (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.

- (i) धारा 11 डी के अंतर्गत नकद
- (ii) सेटट जमा की गयी गैर गत राशि
- (iii) सेटट जमा नियमावली के नियम 6 के अंतर्गत नकद

उपरोक्त कि इस धारा के प्रावधान विनियम (नं० 2) अधिनियम 2014 के अंतर्गत से पूर्व किमी अपीलीय प्राधिकारी के समक्ष विचारार्थीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। / 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.

For an appeal to be filed before the CESTAT, under Section 35E of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपर्यन्तक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चांदी सड़क, जवाहर दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाता चाहिये। / 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-35E ibid:

(i) यदि माल के किमी नुकसान के मामले में, जहां नुकसान किया माल को किमी कारखाने से भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या फिर किमी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह से या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के निर्यात में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (फिरेट) के मामले में, जो भारत के बाहर किमी 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) मुनिश्रित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा निर्यात की गई जारी अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इन आदेश के संप्रमाण के 3 माह के अंतर्गत की जानी चाहिये। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिये। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिये। / 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 O/O 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.

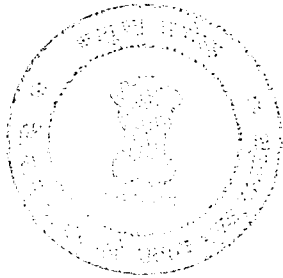
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिये। जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(vii) 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 पट्टी कार्य में प्रचलन के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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.

(viii) यथानुसंधित 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 चाहिये। / 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.

(ix) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकार 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.

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



**:: ORDER IN APPEAL ::**

M/s. Sukrut Construction, Near Jain Temple, Lakhu Pole, Wadhwan, Surendranagar (here in after referred to as "the appellant") filed present appeal against Order-in-Original No. 21/OIO/DIV/SNR/2019-20 dated 16.01.2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central GST Division, Surendranagar (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the Appellant had filed a refund claim of Rs. 3,80,305/- for the financial year 2015-16 for refund of service tax paid for construction purpose in terms of Section 102 of the Finance Act, 2016 read with Section 11B of the Central excise Act, 1944 (As amended) to the Assistant Commissioner, Service Tax Division, Bhavnagar on 11.11.2016 and same was sanctioned vide Order-in Original No. R/92/2016 dated 07.02.2017 by the Assistant Commissioner, Service Tax, Division, Bhavnagar.

2.1 Subsequently, the department filed appeal against the said refund OIO dated 07.02.2017 before the Commissioner (Appeals), Rajkot who vide OIA BHV-EXCUS-000-APP-085-2018-19 dated 14.05.2018 remanded the matter to the refund sanctioning authority to decide the matter afresh after verifying the relevant contracts.

2.2 Accordingly, the lower adjudicating authority has carried out de-novo proceedings and issued the impugned order, wherein he confirmed the demand of service tax of Rs.3,80,335/- (as refunded erroneously vide OIO No. R / 92 / 2016 dated 07.02.2017) under the provision of Section 73 of the Finance Act 1994 and ordered to charge and recover interest at appropriate rate as per provisions of Section 75 of the Finance Act, 1994.

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

3.1 The lower adjudicating authority grossly erred in rejecting the refund claim without analyzing the facts of the case and accordingly the Impugned Order should be set aside and refund already granted to the Appellant should not be demanded from the Appellant as same was legally claimed under the provisions of service tax law.

3.2 The Appellant has been sub-contracted by the main contractor (Work Order



dated 29.09.2014) for the work of construction of classrooms of primary school at various places in District of Surendra Nagar. The contract for construction of classrooms of the primary school has been executed between the main contractor and the government (under package no. DIP/ACN/91/1990, said contract has been entered into on 14.07.2014 i.e. prior to April 01, 2015).

3.3 Further "definition of government" as provided under Section 65B(25A) includes departments of central government; and departments of state government, accordingly Gujarat Council of Elementary Education being education department of state government is therefore government.

3.4 Thus, the Appellant has executed construction work for government based on contract entered into, prior to April 01, 2015 and accordingly eligible for retrospective exemption from payment of service tax on aforesaid work as per Entry No. 12A of Notification No. 25/2015-ST and also eligible for refund of service tax paid by them during the period from April, 2015 to February, 2016 under Section 102 of Finance Act, 2016.

3.5 The appellant submitted that the amount of refund claimed by them has not been claimed as refund by the main contractor; that the amount of refund claimed by the appellant has not been recovered from the main contractor in order to get double benefit or unjust enrichment of the tax amount; that the chartered accountant also certified the correlation between work order and GAR-7 challan.

3.6 The Appellant placed reliance on the following case laws:

- Oudh Sugar Mills Vs. UOI [1978 (2) ELT 172 (SC)]
- Premium Moulding & Pressings V/s Commissioner [2004 (177) ELI 904 (T)]
- National Aluminium Company V/s Commissioner [2004 (177) ELT 599 (T)]
- Nutech Polymers Ltd. V/s Commissioner [2004 (173) ELI 385 (T)]

4. Personal Hearing in the matter was attended by Shri Fejal Kagthala, authorized representative on behalf of the Appellant. Personal hearing conducted through virtual mode. He reiterated the submissions of appeal memo for consideration and requested to allow the appeal.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal and submissions made by the appellant. The issue to be decided in the present appeal is as to whether rejection of the refund claim vide impugned order is correct, legal and proper or not.



6. I find that the appellant contended that they were a sub-contractor, who entered into agreements/contracts with main contractor namely M/s. Bhumi Procon Pvt. Ltd. to undertake the work of construction of classrooms of schools. The main contractor i.e. M/s. Bhumi Procon Pvt. Ltd. had agreements with the Gujarat Government; that, thus the appellant had provided construction service to the Government department; that on issuance for Notification No. 9/2016-ST 01.04.2016, the service given by the appellant became non-taxable by virtue of E. No. 29(h) of Notification No. 25/2012-ST dated 01.03.2015; that the appellant had claimed refund of service tax of Rs. 3,80,305/- paid during the period from 01.04.2015 to 31.03.2016 on construction service provided to the Government department, under Section 102 of the Finance Act, 2016.

6.1 I would like to reproduce Section 102 of the Finance Act, 2016, which is as under:

"SECTION 102. Special provision for exemption in certain cases relating to *construction of Government buildings.* –

(1) *Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –*

- (a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;*
- (b) *a structure meant predominantly for use as –*
  - (i) *an educational establishment;*
  - (ii) *a clinical establishment; or*
  - (iii) *an art or cultural establishment;*
- (c) *a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,*

*under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.*

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) *Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.*

6.2 From the above, it can be seen that the prime condition for availing of exemption from payment of service tax for construction of Government buildings under Section 102(1) of the Finance Act, 2016 is that the said service to the Government departments under contract which had been entered into before 01.03.2015 and on which stamp duty had been paid before 01.03.2015. I, thus, find that the appellant is exempted from payment of service tax, if they entered into contract for providing of construction service with the Government before 01.03.2015 and on which stamp duty had been paid before 01.03.2015.

6.3 I find that the appellant has submitted copy of the contract entered into with their main contractor as well as copy of contract entered into by their main contractor with the



*a*

Government in these proceedings by not providing the copy of the contract entered into with the Government by them for the service under question. I, therefore, find that the appellant is a sub-contractor of the main contractor and has not entered into contract with the government for the service under question. I find that the appellant has provided service to the main contractor but not to the government as envisaged under the provision of Section 102 of the Finance Act, 2016. I, therefore, find that the appellant being a sub-contractor is not eligible to claim refund under Section 102 of the Finance Act, 2016 as the prime condition i.e. *in respect of taxable services provided to the Government, a local authority or a Government authority* would not satisfy in the present case.

6.4. In the backdrop of above provisions I hold that refund eligibility claimed by the appellant is not in tune with the provisions of the Act.

7. Therefore, in view of the foregoing discussions and analysis, I uphold the impugned order and reject the appeal filed by the appellant.

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

7.1 The appeal filed by the Appellant stands disposed off in above terms.

(GOPI NATH)

Principal Commissioner (Appeals)

By RPAD  
To

M/s. Sukrut Construction, Near Jain Temple, Lakhu Pole, Wadhwan, Surendranagar

मैसर्स सुकृत कंस्ट्रक्शन, जैन मंदिरके पास, लखूपोल, वढवान, सुरेंद्रनगर

Copy for information and necessary action to:

- 1) The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise, Surendranagar Division, Surendranagar.
- 4) Guard File.

