



भारत सरकार का सर्वोच्च न्यायिक निकाय एवं न्यायिक अख्यतः निकाय
 THE SUPREME COURT OF INDIA (NATIONAL TAX TRIBUNAL)



समाचारिका, नौ नं. लो. भवन, 27, Hill Road, New Delhi-110002,
 एड. नॉर्ले, एड. एड. 200002, New Delhi-110002

उपरोक्त निकाय, दिल्ली

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आदेश संख्या: टी. ए. 100/2018

क्र.	आदेश संख्या (Date of Order)	आदेश दिनांक (Date of Order)	आदेश संख्या (Date of Order)
1	1201170000-000	12/06/2018	12/06/2018

क्र. 100/2018 (Date of Appeal No.)

REV. EXCUS-000-APP-065-2018-19

आदेश का दिनांक (Date of Order)	22.05.2018	आदेश पत्र की तारीख (Date of Order)	14.05.2018
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कुमार सतीश, आयुक्त (व्यक्ति) - उच्चतर इकाय (आदेश)
 Issued by Shri Kumar Santosh, Commissioner (Appeals), Jaipur

- 1. आदेश संख्या: टी. ए. 100/2018 (Date of Appeal No.)
- 2. आदेश संख्या: टी. ए. 100/2018 (Date of Appeal No.)
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- 18. आदेश संख्या: टी. ए. 100/2018 (Date of Appeal No.)
- 19. आदेश संख्या: टी. ए. 100/2018 (Date of Appeal No.)
- 20. आदेश संख्या: टी. ए. 100/2018 (Date of Appeal No.)



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ORDER IN APPEAL :

M/s. Madhu Silica Pvt. Ltd. (BU-V, Plot No. 147, Veta, Bhavnagar (hereinafter referred to as 'Appellant') filed an appeal against the Order (No. Original No. 89/Excise/Demand/2015-17 dated 21.03.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, City Division, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority').

2 The material facts of the case are that scrutiny of records of Appellant for the period from March, 2014 to February, 2015 revealed that Appellant had availed Service tax credit in respect of various services, which were allegedly not admissible as per the definition of Input services as provided under Rule 2(i) of the Central Excise Rules, 2004 (hereinafter referred to as 'the Rules') on the alleged ground that the services have been used for making structures for support of capital goods installed for expansion of existing manufacturing unit and hence, is specifically excluded from the purview of availment of General credit if those services were said to have been used for providing (i) Construction of a building or a civil structure or a part thereof and (ii) Laying of foundation or making of structures for support of capital goods.

3.2 Since Appellant availed General credit which was not as per the provisions of the Rules, Show Cause Notice was issued to Appellant, which was adjudicated vide the impugned order whereby the demand of General credit of Rs. 47,03,454/- was confirmed under Rule 14 of the Rules, read with Section 11(A) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') along with interest under Rule 14 of the Rules read with Section 61(A) of the Act and penalty of Rs. 47,30,454/- was imposed under Rule 15 of the Rules read with Section 7(AA) of the Act.

3.3 Being aggrieved with the impugned order, Appellant preferred the present appeal inter alia contending as under:

3.1 Appellant contended that the lower adjudicating authority has wrongly observed that General credit is not available as fabrication was carried out on the material supplied by Appellant; that the service provider has provided labour who carried out fabrication of plant as per design given by the Appellant and such work fell within the purview of definition of input services as provided under the Rule 2(i) of the Rules since, the service provider had not carried out any (i) construction work and therefore, exclusion part of the definition was not

applicable to them; that in view of this fact the demand is not sustainable and interest ordered and penalty imposed in the impugned order are required to be set aside.

3.2 It was also contended that the charges of compression of loads are not tenable inasmuch as Central credit taken by them was duly reported in corresponding monthly CR-1 returns, that the judgments of Hon'ble Supreme Court in the cases of *Uthamandra Textile Finishing* reported as 2008 (251) ELT 3 (SC) and *Rajasthan Spinning and Weaving Mills* reported as 2009 (ELT) 1 (SC) relied upon by the lower adjudicating authority are not applicable.

4. Personal hearing in the matter was attended to by Shri R. H. Dave, Counsel, when he, reiterated the grounds of appeal and submitted detailed written submissions contending that the work order has been given to different service providers for erection and commissioning of various plant and machineries fabricated at the factory site; that fabrication and erection of these plants and machineries and parts thereof were essentially required to manufacture their exportable line product, "Periplex 5000", that Central credit of Service Tax paid on input services used by them needs to be allowed. No one appeared from the Department despite personal hearing notice issued to the Commissioner.

4.1 Appellant also submitted written CR-1 submission stating that M/s. Maruti Handon - Hannonan had provided services of fabrication of cable tray which was required in C.F. Plant for laying cables from Transformer to Plant and no civil work was done for preparation of Cable Tray Trays hence Central credit is admissible; that M/s. U.T. Associates provided services as per Order No. MSPL/PROJ-009/2012-13 pertaining to fabrication and erection of MS Tank and Vessels, Stairs, Duct support etc. which did not require any Civil Construction Work and therefore, Central Credit is admissible on such services, M/s. Sharma Associates provided services in relation to fabrication and erection of pipeline for transfer of material as per work order No. MSPL/Project-009/2012/2014, and hence, Central Credit is admissible; that M/s. Rana Engineering and Fabrication provided services as per Work Order No. MSPL/005/55/21/13-14 dated 29.09.2014 pertaining to fabrication and erection of steel in C.F. PLANT Hot Air Duct as well as Chimney and no civil work was done/required, hence, Central credit is admissible; that M/s. Nirmal Engineering were providing services in relation to collection of sweeping waste etc. and no civil construction work was done and therefore Central credit is available; that M/s. Day Consultant Service provided services of fabrication and erection of IUC

Pipeline, installation of leader, T&S and T&V and no civil construction work was required and hence, General credit is admissible, that M/s. Contact Engineering has provided labour service in relation to this bundle as per Work Order No. MSF 0000130012-11 and therefore, General credit is admissible, that M/s. Jagdish H. Gohel, provided services in relation to work in F.D.S.D. Plant and stacking section and no civil construction work was undertaken and hence, General credit is admissible.

Findings:

5. I have carefully gone through the facts of the case, the impugned order on the grounds of appeal, written and oral submissions made by the Appellant. The issue to be decided in the instant appeal is whether the impugned order denying General credit of Service Tax of Rs. 47,60,454/- paid on the various services on the ground of non-compliance of Rule 2(i) of the Rules is correct or not.

6. The Appellant has submitted that availing of General credit of service tax paid on various non-civil services has been wrongly disallowed to them, even when Work orders (Purchase orders are raised if necessary) in case that they have not carried out any civil construction or any work in laying of foundation or making of structures for support of capital goods. Therefore, there is need to examine admissibility of General credit availed on the basis of work orders and/or invoices issued by each service provider. It is examine work orders and description given in the miscellaneous cases (Hills etc.) to come to the conclusion in each case.

6.1. Illustrative scanned copy of Bill in respect of M/s. New Consultant indicates description of the services provided as below :-

Page 6 of 10

DEY CONSULTANT

6, Harnagar, Sector-10,
Gurgaon, Haryana
Phone: 01299-421000
Fax: 01299-421000

Bill No. 00270/14-15
Dated: 27.05.2014
C&A: Civil Engineer

15.05.2014

Sl. No.	Description	Unit	Rate	Amount	
				Rs.	Paise
1	1.0000	1000	1000	00	
2	2.0000	2000	2000	00	
3	3.0000	3000	3000	00	
4	4.0000	4000	4000	00	
5	5.0000	5000	5000	00	
6	6.0000	6000	6000	00	
7	7.0000	7000	7000	00	
8	8.0000	8000	8000	00	
9	9.0000	9000	9000	00	
10	10.0000	10000	10000	00	
11	11.0000	11000	11000	00	
12	12.0000	12000	12000	00	
13	13.0000	13000	13000	00	
14	14.0000	14000	14000	00	
15	15.0000	15000	15000	00	
16	16.0000	16000	16000	00	
17	17.0000	17000	17000	00	
18	18.0000	18000	18000	00	
19	19.0000	19000	19000	00	
20	20.0000	20000	20000	00	
21	21.0000	21000	21000	00	
22	22.0000	22000	22000	00	
23	23.0000	23000	23000	00	
24	24.0000	24000	24000	00	
25	25.0000	25000	25000	00	
26	26.0000	26000	26000	00	
27	27.0000	27000	27000	00	
28	28.0000	28000	28000	00	
29	29.0000	29000	29000	00	
30	30.0000	30000	30000	00	
31	31.0000	31000	31000	00	
32	32.0000	32000	32000	00	
33	33.0000	33000	33000	00	
34	34.0000	34000	34000	00	
35	35.0000	35000	35000	00	
36	36.0000	36000	36000	00	
37	37.0000	37000	37000	00	
38	38.0000	38000	38000	00	
39	39.0000	39000	39000	00	
40	40.0000	40000	40000	00	
41	41.0000	41000	41000	00	
42	42.0000	42000	42000	00	
43	43.0000	43000	43000	00	
44	44.0000	44000	44000	00	
45	45.0000	45000	45000	00	
46	46.0000	46000	46000	00	
47	47.0000	47000	47000	00	
48	48.0000	48000	48000	00	
49	49.0000	49000	49000	00	
50	50.0000	50000	50000	00	
51	51.0000	51000	51000	00	
52	52.0000	52000	52000	00	
53	53.0000	53000	53000	00	
54	54.0000	54000	54000	00	
55	55.0000	55000	55000	00	
56	56.0000	56000	56000	00	
57	57.0000	57000	57000	00	
58	58.0000	58000	58000	00	
59	59.0000	59000	59000	00	
60	60.0000	60000	60000	00	
61	61.0000	61000	61000	00	
62	62.0000	62000	62000	00	
63	63.0000	63000	63000	00	
64	64.0000	64000	64000	00	
65	65.0000	65000	65000	00	
66	66.0000	66000	66000	00	
67	67.0000	67000	67000	00	
68	68.0000	68000	68000	00	
69	69.0000	69000	69000	00	
70	70.0000	70000	70000	00	
71	71.0000	71000	71000	00	
72	72.0000	72000	72000	00	
73	73.0000	73000	73000	00	
74	74.0000	74000	74000	00	
75	75.0000	75000	75000	00	
76	76.0000	76000	76000	00	
77	77.0000	77000	77000	00	
78	78.0000	78000	78000	00	
79	79.0000	79000	79000	00	
80	80.0000	80000	80000	00	
81	81.0000	81000	81000	00	
82	82.0000	82000	82000	00	
83	83.0000	83000	83000	00	
84	84.0000	84000	84000	00	
85	85.0000	85000	85000	00	
86	86.0000	86000	86000	00	
87	87.0000	87000	87000	00	
88	88.0000	88000	88000	00	
89	89.0000	89000	89000	00	
90	90.0000	90000	90000	00	
91	91.0000	91000	91000	00	
92	92.0000	92000	92000	00	
93	93.0000	93000	93000	00	
94	94.0000	94000	94000	00	
95	95.0000	95000	95000	00	
96	96.0000	96000	96000	00	
97	97.0000	97000	97000	00	
98	98.0000	98000	98000	00	
99	99.0000	99000	99000	00	
100	100.0000	100000	100000	00	

DEY CONSULTANT
 6, Harnagar, Sector-10,
 Gurgaon, Haryana
 Phone: 01299-421000
 Fax: 01299-421000
 27.05.2014

6.8.1 Bill No. 00270/14-15 dated 27.05.2014 submitted by the Appellant established nature of designated work as 'Fabrication and installation of HRR pipelines / (under about 200000 / TDS / TDS)', which cannot be said Civil Construction work by any stretch of imagination. Therefore, Credit credit of Rs. 2.16.3804 on account of M/s. Dey Consultant is not nil by mischief of the exclusion clause of Rule 2(f) of the Rules and is available to the Appellant.

6.7 Scanned copy of Invoice of M/s. Search Engineering, Pune indicates description of the service provided as below :-

G-TECH ENGINEERING

S.No. 1, Plot No. 203, MONTEA, Ghora, Puna, OH
 Pin: 422407
 Tel: 020-25440982

TAX INVOICE

Bill To: M/s. GTECH
 Plot No. 203, Puna, Ghora, Puna, OH
 Pin: 422407, OH
 GSTIN No. 27A0001000000000
 Registration No. 27A0001000000000

Invoice No: 12
 Invoice Date: 28/01/2014
 Bill To: M/s. GTECH
 Bill From: M/s. GTECH

Description	Qty	Unit	Rate	Amount
Material charges for fabrication of iron bundle etc. including 10% weight	100	kg	10000	1000000
Ab Total				44322.00
Goods Tax			12.35%	5479.20
Net Charges Only				53008
Total				

Stamp: M/S. GTECH ENGINEERING
 28/01/2014
 GSTIN: 27A0001000000000

Spells four lakh and seven thousand seven hundred and ninety two only

MR. T. N. 27010344-0000
 MR. T. N. 27010344-0000
 MR. T. N. 27010344-0000

For G-Tech Engineering

6.2 The above scanned copy of Invoice No. 12 dated 28.01.2014 submitted by Appellant clearly indicates that it is for providing of Sub-section 151 Fabrication of Iron Bundle etc. which is pertaining to fabrication of plant and machineries and hence, Central credit of Rs. 5.5121 is available.

6.3 Illustrative scanned copy of Bill of Mis. Jagdish H. Gehel indicates description of services provided as below :-

JAGDISH H GOHEL
LARGE CONTRACTOR

ALL TYPE OF KHALAS WORK, LOADING, UNLOADING & COPY RECHER
RANGE: P. CT NO. 3 SURHAD KASAP, BHAWANAH ■ PRADHANA, LANSIHO

SI No. 2019/2020/3/100/1000 No. 2019/179

10	100% KHALAS WORK	150000.00
11	100% KHALAS WORK	100000.00
12	100% KHALAS WORK	27500.00
13	100% KHALAS WORK	20000.00
14	100% KHALAS WORK	180000.00
15	100% KHALAS WORK	150000.00
16	100% KHALAS WORK	100000.00
17	100% KHALAS WORK	100000.00
18	100% KHALAS WORK	100000.00
19	100% KHALAS WORK	100000.00
20	100% KHALAS WORK	100000.00
TOTAL		1177476

For, JAGDISH H GOHEL
Signature: _____
Date: _____

6.2.1 The description of services provided in quotation. I find that services provided is very clear and the services are related to Material supply and Weight Calculation sheet. The services provided by M/s Jagdish H Gohel provide services are certainly not a oral construction work or like. The above Contract amount of Rs. 75,95,000/- on file of M/s Jagdish H Gohel need to be made available to Appellant as it is not hit by mischief of the exclusion clause of Rule 2(f) of the Rules.

6.4 Illustrative scanned copy of Invoice of M/s Maruti Nandan Fabrication Bhavnagar indicates description of the services provided by them shown as below:-

FORM NO. 100A
 H.I. No. 231/78 - H, Gadhambhaji Road,
 Near Ayodhya Nagar, Akhola, Dhulegaon
 Maharashtra - 413002

Invoice No. 100A/100 Date 17/04/2014

Bill To: State of Maharashtra Bill From: M/s. Maruti Nandan Fabricator

Address: State of Maharashtra Address: M/s. Maruti Nandan Fabricator

Sl. No.	Description of Goods	Quantity	Rate	Amount
1	Welding of S.I.C. FD ware house	1	10000	10000
2	Painting of S.I.C. FD ware house	1	10000	10000
3	Labour charges for fabrication and erection work	1	10000	10000
4	Material charges for fabrication and erection work	1	10000	10000
5	Transport charges	1	10000	10000
6	Overhead charges	1	10000	10000
7	Profit	1	10000	10000
8	Grand Total			80000

Total Invoice Amount: 80000/-

Taxable Value: 80000/-

Tax Amount: 12000/-

Total Amount Payable: 92000/-

Signature: [Signature] Date: 17/04/2014

For: M/s. Maruti Nandan Fabricator

6.4. Bill No. 231 dated 30/04/2014 submitted by the Appellant indicates description of services provided as labour charges for fabrication and erection work at EDCO site pertaining to welding of S.I.C. FD ware house, painting, etc. therefore, note that the services do not fall under the exclusion clause and Genva. credit of Rs. 9,11,596/- in respect of the services provided by M/s. Maruti Nandan Fabricator is not hit by misinterpretation clause of Rule 2(g) of the Rules.

6.5. Illustrative scanned copy of invoice of M/s. Narayn Engineering, Ghosari, Pune indicates description of the services provided as below :-

Tax Invoice

0000

NEERAV ENGINEERING

H.No. 1043, S.No. 85, Milledan Nagar, Pune 41

Ph. No. 2612345678

Form No: 0218904083
 Invoice No: ANRPT123456789

Invoice Date: 15/05/2024
 Invoice No: 0000
 Bill No: 0000
 Bill Date: 15/05/2024

Item Description	Qty	Unit	Rate	Amount
Material charges for the difference of material and its weight	1000	kg	15000	15000.00
				15000.00
Sub Total				15000.00
Service Tax			12.36%	1854.00
Total				16854.00

MAHARASHTRA SILVER PAPER LTD
 S.C.B. BACKPRINT
 CHC 1/2 SA 10A
 CHC 7/10 2 2 8

15/05/2024

15/05/2024

Rs. 16854.00 (Sixteen thousand seven hundred and eighty five rupees only)

For
 Date

15/05/2024

(315)

For Neerav Engineering

WORK ORDER

Work Order No: MSPL/10-DFHAG/MSPL/009/01/12-13
 DATE : 21.04.2013

To
 M/s. Neera Engineering,
 Plot No. 104, Phase-2
 KOTDA,
 Durgam, Pune, 411

Ref. Attention : Mr. Kishor Desai (9422337703)

Subject : Work order for fabrication of Equipment (s).

Reference : Your Email letter dt. 12. February 2013 and your work order dated 06. April 2013 under Ref. No. MSPL/10-DFHAG/MSPL/009/01/12-13.

Dear Sir,

We acknowledge your order & has been received. We are pleased to place this work order for fabrication of Equipment (s) for your order. Please refer to the attached drawing details.

1. SCOPE OF WORK:

Sr. No.	Items	Total Qty.	Approx. weight
1.1	Fabrication & loading of Tube Bundle assembly in SS 316 - Alloy Steel Tube for Module 1 - 0104 001	2 nos.	52500 Kg

2. LABOUR CHARGES FOR FABRICATION :

Sr. No.	Description	Rate In Rs. per kg	Approx. Qty./nos.	Amount
2.1	SS 316 Fabrication of Tube Bundle string with Alloy Steel with 200% efficiency for Module 1 - 0104 001. About 50000 Kg.	Rs. 50 per kg	20000	1000000.00
2.2	SS 316 Tube sheet cutting 3/8" x 1mm	Rs. 60 per sq ft	1000	60000.00
2.3	SS 316 Tube Bending 3/8" x 1mm	Rs. 80 per sq ft	1000	80000.00
2.4	SS 316 Fabrication of Tube Support Yokes in SS 316 - 001 string with tubes, tube sheet & all parts.	Rs. 60 per kg	11000	660000.00
2.5	Fabrication of Supporting & Transport Structures in SS for Module 1 - 0104 001	Rs. 15 per kg	6500	97500.00
2.6	Loading, Unloading & labor transport			including
	Total labour charges			1843500.00

Total labour charges shall be Rs. Forty Lacs Eighteen Thousand Two Hundred Eighty only.

D.S.1 From Invoice No. 01 dated 15.05.2014 and Work Order No. MSPL/10-DFHAG/MSPL/009/01/12-13 dated 11.03.2013 submitted by Applicant indicate description of the services provided as Fabrication of Tube bundle module, tube sheet drilling, tube bending and fabrication of Transport structures etc. Hence, the description provided in invoice does not indicate any kind of Service falling under the exclusion clause and Grant credit of Rs. 1,16,200/- in respect of services provided by M/s. Neera Engineering. Same is available to the applicant.

3.6 Blue/black scanned copy of Bill of Materials Engineering and Fabrication indicates description of services provided as shown below -

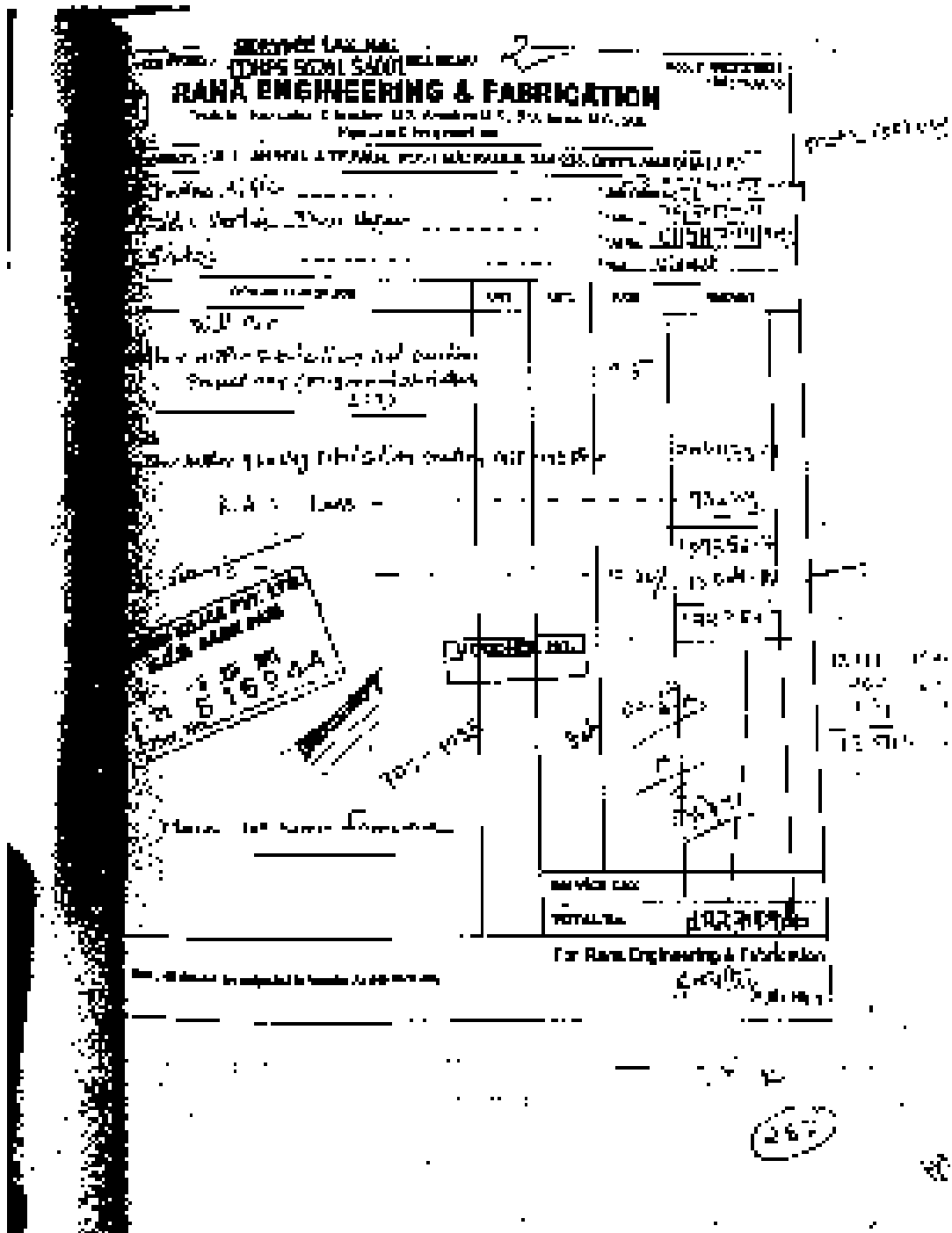


Exhibit - From Bill No. 12 (dated 30.04.2014) submitted by Appellant, indicates scope of Work as Metal Hopper Fabrication and Erection for Project 009. Hence, the description provided in the invoice, do not include falling under the exclusion clause and hence credit of Rs. 4,82,371.4 in respect of services provided by M/s. Rana Engineering & Fabrication cannot seem to be off by misreading of exclusion clause of Rule 2(f) of the Rules.

6.7 Illustrative scanned copy of Bill of Materials (BOM) for M/S Sharma Associates, Delhi. Salavtshah T. P. indicates description of the service provided as below.

SHARMA ASSOCIATES
 101 Kirti Khand, Post Bag, Delhi
 Phone: 2611 1111

Qty	Unit	Rate	Value
100	meter	1000	100000
100	meter	1000	100000
100	meter	1000	100000

21/11/2014

6.7.1 The above scanned copy of Bill No. 10 dated 21/11/2014 submitted by Applicant clearly indicates that it is for Fabrication and Creation of M/S Piping. Dismantling of MS piping etc. which is pertaining to fabrication of plant and machinery and hence General credit of Rs. 742951/- is available to the Applicant.

3.6 Illustrative scanned copy of invoice in respect of M/s. L. T. Associates indicates details of the services as shown below:

FROM		TO			
NAME	L.T. ASSOCIATES	10/15, Gandhi Nagar, Sec-20, Delhi-110028. Tel: 011-26111111, 011-26111112 Fax: 011-26111113			
DATE	12/14/2013				
TIME	10:00 AM				
REF	1000000000				
Description of Goods/Services		QTY	UNIT	RATE	AMOUNT
Being the amount charged towards consultation and training fees for 07 hrs measurement work & technical assistance.				50000	50000
T. S. S. S. S.				10000	10000
(10% of net amount)				5000	5000
Grand Total				65000	65000
TOTAL NET AMOUNT PAID				65000	65000
GATE NO. 51000				DATE: 12/14/2013	
SIGNATURE		FOR L.T. ASSOCIATES			
DATE: 12/14/2013		11/11/13			
NAME: S. S. S. S.		M/S. L. T. ASSOCIATES			

U. T. ASSOCIATES
 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

8.7.1 The description of services shown in Bill No. LT/MSP/003914/13 dated 26.04.2014 and Work Order LT/MSP/LP/01/00912/13 dated 26.02.2013 clearly states fabrication and erection of MS Tanks, since rating etc. which do not fall under exclusion clauses and hence, General credit of Rs 22,31,490/- on Service Tax paid for the services provided by M/s. U. T. Associates is required to be held admissible to the Appellant.

7. In view of above facts, I allow Credit credit for Service Tax part on the services provided by M/s. Dev Consultant (Rs. 2,25,366/-), M/s. G Tech Engineering (Rs. 1,67,24/-), M/s. Jash H. Gohil (Rs. 28,083/-), M/s. Manish Nandan Fabrication (Rs. 8,11,889/-), M/s. Neeraj Engineering (Rs. 1,46,366/-), M/s. Rana Engineering and Fabrication (Rs. 4,62,371/-), M/s. Shama Associates (Rs. 7,42,851/-), M/s. U.T. Associates (Rs. 22,21,458/-) totaling to Rs. 47,20,454/- I hold that Credit credit claimed by the Appellant is admissible to them and hence, I have no alternative but to set aside the demand confirmed by the impugned order and I do so.

7.1 Since the demand has been set aside, the question of recovery of interest and imposition of penalty do not arise.

8. In view of above, set aside the impugned order confirming demand, interest and imposing penalty and allow the appeal.

9. अपीलकर्ता द्वारा दई की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the appellant is disposed of in above terms.



कुमार शशीश
 (कुमार शशीश)
 आगुता (अपीलकर्ता)

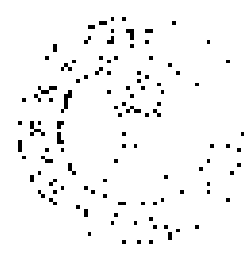
By S.T.A.D.

To
 M/s. Machu Silika Pvt. Ltd.,
 D-114
 Plot No. 147,
 Vashi,
 Maharashtra - 404 060.

आदेश नं. 10/1655016
 दिनांक 24/11/2016
 आगुता (अपीलकर्ता)
 आदेश नं. 10/1655016
 दिनांक 24/11/2016

Copy for information and necessary action to :-

1. To Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
 2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar
 3. The Additional Commissioner, GST & Central Excise, Bhavnagar, Bhavnagar
 4. The Assistant Commissioner, GST & Central Excise, Bhavnagar
- 3/4/16/1655016





आयकर (अपील) का अपीलकर्ता/आपील आदेश एवं अपील का और अपील सुनना:
AND THE COMMISSIONER (APPELLATE CENTRAL TAX & CUSTOMS)



अपील नं. 15 का 20 वें भाग - अधिकांश अधिनियम,
आ. सं. 15 का 20 वें भाग - अधिकांश अधिनियम

आयकर (अपील) अधिनियम, 1961

Tax Appeal No. 155 - 1961 under Section 35(1)(b) of the Income Tax Act, 1961

संबंधित काव्य नं. की सूची :-

क्र.	संबंधित काव्य नं.	सं. अधिनियम	दि. 1961
1	155-1961-155	155	15-12-1961

अपील आदेश संख्या (Case Reference No.) :-

111V-EXCLUS-000-APP-064-2018-19

अपील का दिनांक :- Date of Filing	01.05.2018	अपील करने की तिथि :- Date of Appeal	03.05.2018
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सुनार संतोष, (अपीलकर्ता) द्वारा पारित :-
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajahmundry

I. **आयकर (अपील) अधिनियम, 1961 के अंतर्गत अधिनियमित किया गया है, कि -**
 Along with the appeal, the appellant has filed a written statement of facts and grounds of appeal in support of his appeal.

II. **अपीलकर्ता के द्वारा अधिनियमित किया गया है, कि -**
 Mr. Devaraj Devaraj S. Sarda, Nagar Sahi, No. 1, Chakkarahadh Road, Amal - 530 901,

1. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

2. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

3. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

4. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

5. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

6. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

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8. अधिनियम के अंतर्गत अधिनियमित किया गया है, कि -
 The appellant has filed the appeal under Section 35(1)(b) of the Income Tax Act, 1961, against the order of the Commissioner (Appeals), Rajahmundry, dated 15.12.1961.

ORDER-IN-APPEAL

The Principal Commissioner, Central Excise and Service Tax Bhavnagar (hereinafter referred to as 'the department') filed present appeal against the Order-in-Original No. F/38/2016 dated 25.12.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority') in the matter of Mrs. Dharti Engineers, Sankar Nagar Street No. 1 Chakkargadh Road, Anand - 385 001 (hereinafter referred to as 'the Respondent').

2. The brief facts of the case are that the respondent, a service provider of construction and works contract services to the Government, Government authorities and to local Government authorities, filed application claiming refund of service tax of Rs. 11,77,372/- on 11.11.2016 in terms of Section 102 of the Finance Act, 1994 (hereinafter referred to as 'the Act'), inserted vide Finance Act, 2016, in respect of service tax paid by them during the period from 01.04.2015 to 29.02.2016. The query letter dated 23.11.2016 to cover by SCN dated 02.12.2016 were issued to the respondent to submit required documents as narrated therein, which were submitted by the respondent on 25.11.2016 and 16.12.2016. The lower adjudicating authority vide impugned order sanctioned refund claim of Rs. 5,53,626/- in terms of Section 102 of the Act.

3. Being aggrieved with the impugned order, the department filed appeal, ~~present~~ on the following grounds:

(i) The respondent did not submit copy of any contract entered into by them with service receiver for providing the services on which they had paid service tax and filed refund claim. Therefore, it cannot be ascertained that the respondent had provided construction service to the Government, Government authority or a local Government authority under a contract which has been entered into before 01.03.2015 and payment of stamp duty was made. This is a prime condition under Section 102(1) of the Act for sanction of refund of service tax paid on any

Stamp Duty
Paid

specified taxable service provided to the Government, Government authority or local government authority.

(ii) The lower adjudicating authority has held that burden of service tax has not been passed on to any other person without scrutiny of contract, though facts can be ascertained only through scrutiny/verification of contract and Bills/Invoices issued by the respondent in respect of work pertaining to the said contract.

4. The respondent has submitted Memorandum of Cross Objections along with copy of contract with Hindustan Steel Works Construction Limited (main contractor) and copy of ST-3 returns for FY 2015-16 and submitted that the contract had been entered into before 01.03.2015 and hence, they were eligible to get refund. That they had also filed letter dated 28.11.2016, submitted Certificate issued by Chartered Accountant certifying that burden of service tax paid by them was not passed on to any other person.

5. Personal hearing in this matter was attended to by Shri Chetan Dethariya, Chartered Accountant, who reviewed the Grounds of Memorandum of Cross Objections; submitted copy of contract dated 16.07.2015 duly signed or stamp paper; also submitted that the contract was against tender No. H-147 dated 12.12.2014; that R.A. bills mentioned NIT No. dated 12.12.2014, that sanctioning authority has satisfied himself on above basis. Fault in the order cannot be traced on arguments advanced by Review Order/Grounds of Appeal filed by the department; that the refund was payable to them as per Section 102 of the Act; that only that amount has been refunded to them what was refundable to them and hence appeal of the department is liable to be rejected in view of the facts of the case. No one appeared from department despite P.H. Notices issued to the Commissionerate.

FINDINGS: -

6. I have carefully gone through the facts of the case, impugned order, Appeal Memorandum filed by the Department, Memorandum of Cross Objections submitted by the respondent, and written as well as oral

submissions made by the respondent. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority sanctioning refund claim of Rs. 5,55,886/- of the respondent under Section 102 of the Finance Act, 2008 is correct or not.

7. The department contended that the respondent has not submitted copy of contract entered into by them with service receiver for providing the services, therefore, it cannot be ascertained that the respondent had provided construction service under a contract which has been entered into before 01.03.2015. The respondent in their Memorandum of Cross objections submitted copy of agreement dated 16.02.2015 awarded by M/s. Hindustan Steel Works Construction Ltd., Kolkata (hereinafter referred to as 'Contractor') for construction of boundary wall across the land allotted to Aligarh Muslim University Centre, Kishanganj, Chakia (2 bar) with reference to invitation to tender vide NIT No. H&CL/Hesc (Kolkata Proj.)/AMU-Kishanganj (B Wall)2014/51050-147 dated 12.12.2014. I find that Aligarh Muslim University Centre is an Institute of National Importance provided under the Seventh Schedule of the Constitution at its commencement and therefore to be considered as 'Government Authority' as defined under Para 2(a) of Notification No. 28/2012-SI dated 20.08.2012, as amended. Since the agreement of construction service provided to Aligarh Muslim University, Kishanganj has been entered prior to 01.03.2015 in terms of Section 102(1) of the Act, I find that respondent is eligible for refund of service tax paid by them.

8. The department has contended that the lower adjudicating authority has held that the burden of service tax has not been passed on to any other person without scrutiny of contract whereas facts can be ascertained only through scrutiny/verification of the contract and 3-bills/invoices issued by the respondent in respect of work pertaining to the said contract. I find that lower adjudicating authority has observed that the incidence of service tax paid by the respondent has not been passed on to service receiver or to any other person by relying on

W/2016-17/0207

Certificate dated 25.11.2018 issued by A.B. Kothiya & Co. Chartered Accountant; I also find that the respondent had submitted R.A. Bills, which had mentioned Tender No. (NIT No.) 0-117 dated 12.12.2014 and the respondent had provided 'Construction Service' to Aligarh Muslim University, a Govt. authority during the period from 01.04.2015 to 29.02.2016 for which the contract was signed on 16.02.2016 when service tax was exempted vide Notification No. 25/2012-57 dated 20.08.2012 on the construction services provided to the Government authorities. I further find that the contract price was not amended or modified by the Respondent to Government authority when the exemption of service tax was withdrawn by the Government of India w.e.f. 1.4.2013 making the said services liable to service tax. I also find that the respondent had submitted certificate dated 25.11.2018 of Chartered Accountant certifying that the incidence of service tax has not been passed on by the respondent to any other person and the department has not produced any documentary evidence challenging the said documents except arguments. The respondent has also submitted audited Balance Sheet of 2015-16 clearly showing the amount as 'Service Tax Receivable' under Loans & Advances under Schedule E-Current Assets. Therefore, I am of the considered view that the respondent has not passed on the incidence of service tax to the service recipient or to any other person.

9. In view of above I find no infirmity in the impugned order and hence I uphold the impugned order and reject the appeal.

११ डिपार्टमेंट द्वारा पूर्व जर् गई अपीलगत अर्ग्य का निपटारा उपरोक्त शर्तों से किया जाता है।

9.1 The appeal filed by the Department is disposed off as above.



कुमार संदीप
अध्यक्ष (अपील)

By Regd. Post A/D

To,

(i) The Commissioner CGST & Central Excise, Bhavnagar	(ii) સાચીત, કેન્દ્રીય વસ્તુ સેવા કર અને કેન્દ્રીય સત્તાવાર સુલક, ખાલનગર
(iii) Mrs. Disha Engineer, Sankar Nagar Street No. 1 Chakrangadh Road, Anand - 385 301	(iii) મે. ડરલી ઈન્જીનિયર, સાચીક નગર, સ્ટ્રીટ નં. ૧, ચક્રાંગદ સેઠ, અમરેલી - ૩૮૫ ૩૦૧

Copy to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Deputy Commissioner CGST & Central Excise Division, Bhavnagar
- 3) Custd file.

