::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142
Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/177/RAJ/2017	**DC/JAM/R-447/2016-17**	**14-02-2017**

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

RAJ-EXCUS-000-APP-026-2018-19

आदेश का दिनांक / Date of Order:	**20.04.2018**	जारी करने की तारीख / Date of issue:	**23.04.2018**

Passed by **Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री चन्द्रकान्त वलवी, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क ,भावनगर को वित्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता **& प्रतिवादी** का नाम एवं पता /Name & Address of the Appellants **& Respondent** :-
M/s. S. T. Modi, Gjanchiwad, Suleman Kasam Street, Nr. Fatimabai Masjid, Jamnagar 361 001

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत 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 की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६ 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of 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 अंतगेत 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम, 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय 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 रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

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

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

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

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, 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 विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

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

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

(D) यदि इस आदेश में कई मूल आदेशो 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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 प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

::ORDER IN APPEAL ::

M/s. S.T.Modi, Ghanchivad, Suleman Kasam Street, Near Fatimabai Masjid, Jamnagar (hereinafter referred to as **'the appellant'**) , holding the Service Tax Registration No. ACXPM6131DSD001, has filed the present appeal against the Order in Original No. DC/JAM/R-447/2016-17 dated 13/14.02.2017 (hereinafter referred to as **'the impugned order'**) passed by the Deputy Commissioner, Central Excise, Jamnagar (hereinafter referred to as **'the Lower Adjudicating Authority'**).

2. The facts of the case are that the appellant filed a refund claim of Rs. 6,82,270/- of Service Tax on account of retrospective exemptions granted to the Service Provided to the Government Department and local Authorities as provided in the Section 102 Finance Act, 1994 as amended vide Section 159 of the Finance Act, 2016. The Refund claim was claimed under Notification No. 09/2016-ST. The claim pertains to Refund of Service Tax under Section 102 of the Finance Act, 1994 (as enacted vide Section 159 of the Finance Act, 2016). On scrutiny of the refund claim by the proper officer, it was found that the appellant was required to submit following documents/ information and they have not submitted the same.

i. The copies of contract of relevant contracts/ agreements with terms & conditions duly stamp duty paid, since the refund is to be granted only in respect of contracts entered prior to 01.03.2015 , this is a mandatory requirement.

ii. Evidence of Service Tax payment in respect of Service provided to the Government organization for which refund claim filed.

iii. Invoice/ Bill raised by the appellant to the Government authority.

iv. Detailed calculation sheet detailing contract-wise / Bill wise payments received and service tax thereon payable. The appellant has not submitted any details regarding their total gross income and actual service tax payable thereon and further they have not specified gross income on which they had made the excess payment of service tax , then of actual required to be made and merely on submission of service tax payment challans , the claim has been filed. Appellant has not submitted any evidence/ calculation sheet to that effect that the refund claimed is part of the service tax returns filed by them.

v. Nothing is forthcoming from the records , whether the appellant has reversed CENVAT credit amount towards the services so exempted retrospectively.

vi. The appellant has not mentioned specific service category under which they have provided service to the Government and now claimed as Refund.

vii. Refund application Form-R in duplicate with pre-receipt.

viii. Final Bills & R.A. raised by the Government authority.

3. The above observation culminated into issuance of Show Cause Notice No. V.44(18)86/Refund/2016-17 dated 22.12.2016 for rejection of refund claim of Rs.

6,82,270/-. The said show cause notices was adjudicated by the proper adjudicating authority vide the impugned order, under which the Refund claim of Service Tax and interest totally amounting to Rs. 6,82,270/- was rejected.

4. Being aggrieved by the impugned order, the appellant filed the present appeals, *interalia,* on the following grounds:

(i) The appellant submitted that at the time filing of refund claim, they had enclosed Tender Acceptance Letter/ Summery of Contract, Copies of Challans under which Service Tax has been paid. Copies of ST-3 Returns and Audit Reports etc.. Appellant has put effort to obtain necessary documents / information and Contract Agreement and requested Garrison Engineer to provide the said document vide letter dated 10th January 2017, but the same could not be made available from Garrison Engineer.

(ii) The appellant has also submitted that the adjudicating authority has not considered tender which were opened prior to 1.3.2015 and also not given any opportunity to provide any other sustainable documents for the same.

(iii) The appellant has also submitted that adjudicating authority has overlooked the summary reflecting nature of work, date of work order, contract wise ledger, Books of Accounts and copy of Service Tax payment challans alongwith summary of all challan paid submitted with Refund application.

(iv) The appellant has also submitted that "Works Contract' as defined in Section 65B(54) which read as "Works Contract" means a contract where in transfer of property in Goods involved in the execution of such contract is leviable to tax as sale of Goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property, as the transfer of property in Goods is involved said category of Service are taxed under "Works Contract".

(v) The appellant further submitted that adjudicating authority has committed grave error in rejection of refund claim and the Order-in-Original is required to be set-aside and appeal may be allowed ;

5. Opportunity of personal hearing in the matter was granted to the appellant on 15.02.2018 and 27.02.2018. Mr. Mehul Vora, authorized representative of the appellant appeared for personal hearing in the matter. He reiterated submission dated 14.04.2017 submitted with the appeal and requested to allow the appeal.

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order and the submissions of the appellant in the memorandum of appeals. The limited issue

to be decided in the present appeal is whether the appellant is entitled to the refund of Service Tax of Rs. 6,82,,270/- claimed to have been paid towards the Service tax liabilities during the period from 01.04.2015 to 29.02.2016 in respect of Service provided to the Military Engineering Services- Garrision Engineer.

7. I find that the lower adjudicating authority has rejected the refund claim, *interalia*, on the grounds that appellant has not declared any ground or provisions for filing the refund application. The appellant has submitted the refund claim under Notification No. 09/2016-ST, dated 1st March 2016 however the adjudicating authority has mentioned that amendment came into effect from 01.03.2016 and the refund application pertains to period prior to 01.03.2016 i.e. 01.04.2015 to 29.02.2016 and **the appellant has failed to provide copies of the relevant contracts/ agreements with terms & conditions which is a mandatory requirement.** The adjudicating authority has also mentioned that the refund claim pertains to refund of Service Tax under Section 102 of the Finance Act, 1994 (as enacted vide Section 159 of the Finance Act, 2016) and is required to be filed under the same provisions of law. The Order-In-Original rejecting the refund claim also mentioned that the refund claim filed merely on the basis of Service Tax payment challans and tender acceptance letters, is not admissible. The adjudicating authority had also mentioned that there is no provision of claiming refund in interest paid on refund under the provisions of Section 102 or Notification No. 09/2016-ST. The refund claim was also rejected on the ground that it was hit by bar of unjust enrichment.

7.1. I find that the service related to various construction work and work contract, when provided to the Government, a local authority or to the Governmental authority were exempted under the mega exemption Notification No. 25/2012-ST, dated 20.06.2012. The said exemption was withdrawn vide Notification No. 06/2015-ST, dated 01.03.2015. Section 102 was inserted to the Finance Act, 1994 by the Finance Bill, 2016, which is reproduced at below.

Section 102 (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.

7.2 Notification No. 25/2012-ST dated 20.06.2012 amended Notification No. 09/2016 dated 29.02.2016, wherein after entry No. 12, entry 12 A was inserted. According to the amendment exemption was granted w.e.f 01.03.2016 to the services provided to the Government, a local authority or to a Government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services provided under a contract which had been entered into prior to the 1st March 2015 and on which appropriate stamp duty, wherever applicable, had been paid prior to such date. I find that refund claim filed by the appellant pertains to the period from 01.04.2015 to 29.02.2016 in respect of service provided to MES (Military Engineering Service), a Government authority under the above said category. Relevant entry in the Notification No. 09/2016-ST, clearly stipulates that amendment has been effected from 01.03.2016 and not retrospectively. Hence, I find that lower adjudicating authority has correctly contended that refund claim, in the instant case, which pertains to period prior to 01.03.2016 is not admissible as the appellant has failed to submit any contract with respect to service provided to MES.

7.2 I find that appellant has filed refund in respect of 17 contracts and they have not submitted any contracts/ agreements with necessary terms & conditions in respect of any of these contracts/agreement. On scrutiny of the documents i.e. tender acceptance letter, it is noticed that some of the contracts are not falling within the purview of Section 102 of the F.A. 1994 because these contracts have been awarded to the appellant after 01.03.2015. I also find that in some of the contracts, the appellant have not even submitted tender acceptance letters.

7.3. I find that appellant has not mentioned under which Notification, they have claimed abatement @ 40 % and they have not provided invoices under Rule 4 A of the Service Tax Rule 1994. Further, appellant, has failed to give proper quantification of refund amount claimed and also failed to justify that the amount was paid towards the service provided to the Government during the period from 01.04.2015 to 29.02.2016 in respect of contract entered prior to 01.03.2015 in as much as no correlation details in respect of services charged and service tax paid thereon has been submitted. Further, the appellant has failed to provide any particulars gross income.

7.4 I also find from the ST-3 returns for the relevant period, that in the instant case, the claimant has provided taxable service and paid service tax under the category of " works contracts service" , which does not fall under the ambit of Section 102 of the Finance Act, 1994, hence refund claim is not admissible in light of the enabling provisions.

7.5 I find that appellant has not given separate calculation in respect of service tax paid and interest paid on delayed payment of refund. However, from the challans submitted, I find that the appellant had also claimed the refund of interest paid by them for delayed payment of service tax. There is no specific provision in Section 102 of the Finance Act, 1994 or Notification No. 09/2016-ST for refund of interest paid on delayed payment of service tax. Hence, refund of interest is beyond the scope of the provisions of law.

7.6 As regards, appellant's request to grant refund so that they can reimburse to the Government department, I find that there is no such provision in Section 11B of the Central Excise Act, 1944 to grant refund for passing on the same to the customers. The claimant has already passed on the burden of the service tax to the customer i.e. Government department. I find that lower adjudicating authority has correctly placed the case law of M/s Grasim Ind. (Chem. Divn) Vs CCE, Bhopal [2003(153) ELT 694(Tri.LB)] which is applicable in the facts and circumstances of the present case. In this case the appellant – assessee had contended that the provisions of Section 11B are not applicable in their case as they had already issued credit note to the buyer. Hon'ble Tribunal, while relying the decision in the case of Sangam Processors (Bhilware) Ltd Vs CCE [1994(71)ELT 989(Tri)] dismissed the appeal filed by the appellant-assessee. In appeal, **Hon'ble Supreme Court vide order dated 18.08.2011 in the case of M/s Grasim Industries Ltd [2011-TIOL-82-SC-CX] held as under**:

" 15. So far as the issuance of the credit note is concerned , the same was issued only on 07.08.1991 although the duty was paid on 19.07.1989 and, therefore, the credit note was issued after two years of the payment of the duty and the clearance of the goods. In this connection, Section 12 of the Central Excise Act becomes relevant which indicates that the party who is liable to pay excise duty on any goods, has to file the sales invoice and other documents relating to assessment at the time of clearance of the goods itself. Therefore, when at the time of clearance no such document was filed and what is sought to be relied upon is a document after two years, the same raises a doubt and can not be accepted as a reliable document. "

7.7 I find that in the instant case, the appellant has requested the refund claim, so that they can reimburse the same to the customer, which can be equated with issuance of credit notes. Therefore, the findings of the Hon'ble Supreme Court in the case of M/s Grasim Industries, supra, are squarely applicable in the facts and circumstances of the present case. Further, in the case of CCE, Madurai, Madurai Vs Vanithamani Chemicals Pvt Ltd [2009 (238) ELT 492 (Tri. Chennai)], **Hon'ble tribunal has held that post clearance adjustments between assessee and its buyers not relevant in deciding eligibility of refund under Section 11B of Central Excise Act, 1944- Bar of unjust enrichment applicable and refund to be deposited in Consumer Welfare Fund**. Similar view has been expressed by Hon'ble CESTAT in case of M/s Ballarpur Industries Ltd [2005(184) E.L.T 87(Tri-Del.)]. **Thus, even if the refund is found admissible on merits, the same is hit by the bar of unjust enrichment.**

7.8 Scrutiny of the Balance sheet for F.Y. 2015-16 reveals that the service tax amount claimed as refund are not shown as " receivable". Thus, the claimant has not produced any evidence to prove that the amount of service tax claimed as refund was borne by them and has not been passed on to the customers or has not expensed out. From the above discussion, I find that claimant has failed to prove that incidence of duty has not been passed on to any other person as required under Section 11B of Central Excise Act 1944 for claiming refund.

7.9 I find that appellant has neither produced the mandatory document i.e. Contracts / agreement with terms & conditions nor produced any supporting documents from M/s Garisson Engineer's regarding services provided by the appellant.

7.10 I find no force in the arguments put forward by the appellant in their appeal as they are neither supported by any legal documents or law.

8 In view of the above discussion and findings I am of the opinion that the lower adjudicating authority has correctly rejected the refund claim under Section 102 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1944 as made applicable to service tax matters under Section 83 of the Finance Act, 1994. Hence, I do not find any reason to interfere with the same.

9. In view of the above factual and legal position, I uphold the impugned order ***in toto*** and reject the appeal.

९.१. अपीलकर्ताओ द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9.1. The appeal filed by the appellants stand disposed off in above terms.

सत्यापित,

दिनेश एम्.रेलिया
अधीक्षक (अपील्स)

(चंद्रकान्त वलवी)
आयुक्त

By Speed Post

M/s. S.T.Modi, Ghanchivad, Suleman Kasam Street, Near Fatimabai Masjid, **Jamnagar-361 001**	**मै. एस टी मोदी,** घांचीवाड, सुलेमान कासम गली, फातिमाबाई मस्जिद के पास , **जामनगर -361 001**

Copy to:

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
4. The Deputy Commissioner, GST & Central Excise Division, Jamnagar.
5. The Superintendent, Service Tax, AR-I Jamnagar.(Through CGST Divn. Jamnagar)
6. Guard File.

::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2444510 Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

F. No. V2/694/RAJ/2010 Date: 06.06.2018

CORRIGENDUM

Corrigendum to Order-in-Appeal No.: RAJ-EXCUS-000-APP-148-TO-150-2017-18 dated 01.01.2018 passed by the Commissioner (Appeals), GST & Central Excise, Rajkot.

In the aforesaid Order-in-Appeal at preamble (घ), for the words and phrases "M/s. DML Exim Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot-360 001" are substituted and be read as "M/s. DML Exim Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot-360 001 and M/s. DML World Trade Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot-360 001."

2. In the aforesaid Order-in-Appeal, the word "appellant", whenever it appeared, is substituted by "appellants".

3. Para No. 1 at Page No. 3 of the aforesaid Order-in-Appeal and table appended therein having: -

"M/s. DML Exim Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot – 360 001 (hereinafter referred to as "the appellant") filed three appeals against three Orders-in-Original stated below in Table (hereinafter referred to as "the impugned orders") issued by the Deputy Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority"):-"

Sr. No.	Appeal No.	Order-In-Original No. & Date	Amount involved (in Rs.)
1.	V2/694/RAJ/2010	286/ST/Refund/2010 dated 24.09.2010	5,65,081/-
2.	V2/695/RAJ/2010	287/ST/Refund/2010 dated 24.09.2010	2,10,854/-
3.	V2/696/RAJ/2010	548/ST/Refund/2010 dated 06.10.2010	4,62,252/-

are substituted to read as:-

"The following appeals filed by the appellant as shown against each appeal number (hereinafter referred to as "the appellants") against the Order-In-Original as mentioned at Column No. 4 of the Table below (hereinafter referred as "impugned orders") issued by the Deputy Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority")."

Sr. No.	Appeal File No.	Name of the appellant	Order-In-Original No. & Date	Amount involved (in Rs.)
1	2	3	4	5
1.	V2/694/RAJ/2010	M/s. DML Exim Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot – 360 001	286/ST/Refund/2010 dated 24.09.2010	5,65,081/-
2.	V2/695/RAJ/2010	M/s. DML World Trade Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot-360 001	287/ST/Refund/2010 dated 24.09.2010	2,10,854/-
3.	V2/696/RAJ/2010	M/s. DML Exim Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot – 360 001	548/ST/Refund/2010 dated 06.10.2010	4,62,252/-

सत्यापित,
6/6/18
आर. पी. शाह
अधीक्षक (अपील्स)

6/6/2018
(कुमार संतोष)
आयुक्त (अपील्स)

By Regd. Post AD

To,

1) M/s. DML Exim Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot – 360 001;
2) M/s. DML World Trade Pvt. Ltd., 405, Embassy Tower, Opp. Jubilee Garden, Jawahar Road, Rajkot-360 001.

Copy for information and necessary action to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
2) The Commissioner, GST & Central Excise Commissionerate, Rajkot.
3) The Assistant Commissioner, GST & Central Excise Division-I, Rajkot.
4) Guard File.
5) F. No. V2/695/RAJ/2010.
6) F. No. V2/696/RAJ/2010.