



::आयुक्त (अपील्स) 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

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/74/RAJ/2017	03/ST/Ref/2017	05-01-2017

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

RAJ-EXCUS-000-APP-037-2018-19

आदेश का दिनांक / Date of Order:	18.04.2018	जारी करने की तारीख / Date of issue:	24.04.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

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 :-**

1. M/s. Backbone Enterprises Ltd., Backbone House M-43, Gujarat Housing Board Kalawad Road, ,
 Rajkot

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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 को की जानी चाहिए। /

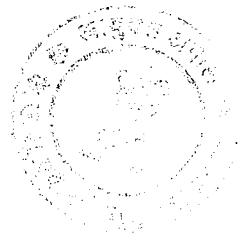
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied 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 नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (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" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगी।
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 मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के 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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा 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 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 रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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 ::

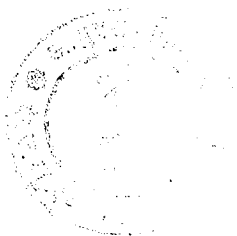
M/s. Backbone Enterprises Ltd., "Backbone House", M-43 Gujarat Housing Board, Kalawad Road, Rajkot (hereinafter referred to as 'the appellant') is holding Service Tax Registration No. AABCB9255EST001 and has filed the present appeal against the Order-In-Original No. 03/ST/REF/2017 dated 05.01.2017 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Brief facts of case is that appellant filed an application for refund claim for Rs. 31,93,322/- on 11.11.2016 under Section 102 of the Finance Act, 1994 inserted vide Finance Act, 2016. They provided services in the nature of construction services, works contract services to various government, local authorities etc falling under Sr. No. 12 of mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. The said exemption from Service Tax was withdrawn on certain services vide Notification No. 06/2015-Service Tax with effect from 01.04.2015. The appellant paid the Service Tax on activities carried out by them on or after 01.04.2015. The exemption withdrawn on certain activities has been restored vide Notification No. 09/2016-Service Tax dated 01.0.2016.

2.1 The lower adjudicating authority observed that the appellant had not produced all the required documents and hence issued Show Cause Notice No. V/18-170/S.T./Ref/2016-17 dated 29.11.2016 proposing to reject the refund claim of Rs. 31,93,322/- and asked the appellant to produced the documents as enumerated in Show Cause Notice from (a) to (k) of Para 4. The lower adjudicating authority decided the Show Cause Notice vide the impugned order wherein he rejected the refund claim by observing that the appellant failed to provide (i) Service Tax payment invoices, (ii) separate sheet, supporting documents & calculation sheet to prove that the availed Cenvat credit is not for the works for which the appellant has claimed refund etc.

3. Being aggrieved with the impugned order, the appellant filed appeal on the following grounds:

- (i) They are a Government contractor and had provided services to various Government and local authorities in the nature of Works Contract Services falling at Sr. No. 12 of mega exemption Notification No. 25/2012-S.T. dated 20.6.2012. However, the said exemption from payment of Service



Tax was withdrawn on certain services vide notification No. 06/2015 ST with effect from 01.04.2015. Since at the time of Bidding for the said projects the service tax exemption was available, on the services provided to various Government and local authorities, W.E.F. 01.04.2015 due to withdrawal of exemption as referred above, they had paid service tax on the said taxable services provided. But the said exemptions again restored vide notification No. 09/2016 ST dated 01.03.2016. The conditions laid down for claiming the service tax refund claim has been mentioned at Sec. 102 of the Finance Act, 1994, are reproduced as below:

“(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 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.”

- (ii) They being a Government Contractor, provided works contract service to various Government and Local Authorities. They had submitted Copy of Work Orders issued by the various Government and Local Authorities in the form of CD through their submission dated 22.11.2016 alongwith abstract of work order as detailed below:

Sr. No.	R. A. Bill No. & Date	Amount of Service Provided	Taxable Value @40% after abatement	Amount of Service Tax	Appellant Liability of St Amount @ 50%	Service tax Paid Challan No. & Date	Nature of Work
1	3rd RA 03/07/2015	94,09,398	37,63,759	5,26,926	2,63,463	00697 26/10/2015	Construction of Government polytechnic Institute
2	4th RA 19/09/2015	82,50,435	33,00,174	4,62,024	2,31,012	00706 26/10/2015	Construction of Government polytechnic Institute
3	11th RA 24/06/2015	70,55,264	49,38,685	6,10,421	3,05,211	00723 26/10/2015	Renovation of work of udyog Bhavan
4	6th RA 23/05/2015	40,29,431	28,20,602	3,48,626	1,74,313	00733 26/10/2015	Strengthening of Existing Residential Building
5	3rd RA 02/09/2015	75,77,250	30,30,900	4,24,326	2,12,163	00743 26/10/2015	Construction of Government polytechnic Institute
6	28 th RA 11/09/2015	66,67,235	26,66,894	3,73,365	1,86,683	00751 26/10/2015	Construction of Government polytechnic Institute
7	29 th RA 11/09/2015	44,50,758	17,80,303	2,49,242	1,24,621	00763 26/10/2015	Construction of Government polytechnic Institute
8	29 th RA 23/09/2015	1,21,50,621	48,60,248	6,80,435	3,40,217	00772 26/10/2015	Construction of Government polytechnic Institute
9	2nd RA 07/09/2015	13,61,564	5,44,626	76,248	38,124	00782 26/10/2015	Construction of School and Girls Hostel
10	7th RA 07/09/2015	74,56,868	29,82,747	4,17,585	2,08,792	00789 26/10/2015	Construction of School and Girls Hostel

11	8th RA 07/09/2015	1,18,15,246	47,26,098	6,61,654	3,30,827	00792 26/10/2015	Construction of School and Girls Hostel
12	5th RA 19/10/2015	27,46,212	10,98,485	1,53,788	76,894	00716 26/10/2015	Construction of Government polytechnic Institute
13	6th RA 03/11/2015	61,55,755	24,62,302	3,44,722	1,72,361	01872 12/05/2015	Construction of Government polytechnic Institute
14	7th RA 14/11/2015	40,08,523	16,03,409	2,24,477	1,12,239	02112 05/12/2015	Construction of Government polytechnic Institute
15	8th RA 25/01/2016	32,11,428	12,84,571	1,86,263	93,131	02819 04/02/2016	Construction of Government polytechnic Institute
16	12 th RA 01/10/2015	51,41,861	35,99,303	5,03,902	2,51,951	02245 04/11/2015	Renovation of work of udyog Bhavan - Ghandhinaga r
17	3 rd RA 04/11/2015	12,16,063	4,86,425	68,100	34,050	02172 05/12/2015	Construction of Government polytechnic Institute
18	6th RA 04/11/2015	13,31,073	5,32,429	74,540	37,270	02222 05/12/2015	Construction of Government polytechnic Institute
Total		10,40,34,985	4,64,81,961	63,86,645	31,93,322		

They from time to time, discharged their Service Tax duty liability and submitted following documents:

- i. Copy of the R. A. bills raised by the Government & Local Authorities to them.
- ii. Copy of the Service Tax paid challans of Rs. 31,93,322/-.
- iii. Copy of the ST-3 Return showing details like Amount of Service provided, Service Tax paid by the appellant etc.
- iv. Copy of the Calculation Sheet which correlates the amount of service provided, amount of Service Tax payable and paid through the challans etc.

Finance Bill 2016 got assent of the President as on 14th May, 2016, and they

had filed service tax refund claim as on 11.11.2016 i.e. will within the time limit prescribed at Sr. No. 3 of the Sec. 102 of the Finance Act, 1994. Thus, they followed all the conditions prescribed under Sec. 102 of the Finance Act, 1994.

(iii) The adjudicating authority while giving finding at para 13, 15, 16 & 18 of the impugned order, has completely failed to give consideration to the fact that they had already submitted detailed Calculation Sheets along with relevant supporting documents which clearly gave relevant details like RA Bill No. & Date, Assessable value of the Service Provided, Service Tax Portion payable and paid by the Appellant and the sub-contractor respectively under the Reverse Charge Mechanism, Details of Service tax paid challans, scope of work of Work Contract Services provided to various Government and Local Authorities, Starting date of work and current status of work. The calculation sheet as well established the correlation between, RA bills issued by the Various Governmental Authorities, Service Tax paid challan and ST-3 returns periodically filed by the appellant. The following documents had been submitted by them along with the service tax refund claim application dated 11.11.2016 & 22.11.2016, in support to the above contention:

- i. Copy of the Work Order in the form of CD, Further we have also submitted the abstract of relevant work orders
- ii. Copy of the R. A. bills raised by the Government & Local Authorities to M/s. Backbone Enterprise Ltd.
- iii. Copy of the Service Tax Paid Challans of Rs. 31,93,322/-.
- iv. Copy of the ST-3 Return showing details like Amount of Service provided, Service Tax paid by the appellant etc.
- v. Copy of the Ledgers of various Government and local authorities to whom the Works Contract Services has been provided by the appellant showing the payment received from them.
- vi. Copy of the Calculation Sheets which correlates the Amount of Service Provided, Amount of Service Tax payable & Paid through the Challans, etc...

Therefore, the impugned order having been passed contrary to the documentary evidences, is not sustainable in the eyes of law and hence, the same is liable to be quashed and set aside.

- (iv) They further submitted that the observation made by Adjudicating Authority in paragraph 14 of the impugned order was contrary to the documentary evidence placed on record since they had submitted copies of all work order allotted by the Government Authorities through their submission dated 11.11.2016 & 22.11.2016 in the form of CD, and during the personal hearing held as on 16.12.2016, the Adjudicating Authority specifically asked to submit relevant abstract of the work order showing applicability of Service Tax for the relevant to the work order executed by them which was submitted vide their letter dated 20.12.2016.

The Adjudicating Authority has contended that CA certificate does not speak about the applicability of Service Tax of Services provided by them to the Government Authorities & certificate does not speak about cenvat credit avail by the claimant and also the treatment given to the service tax paid by the sub contractor in the accounts of claimant, is totally irrelevant to the Service Tax applicability to the work allotted to them because the CA Certificate submitted by the appellant is only given for the purpose of unjust enrichment, stating that "M/s. Backbone Enterprises Limited., has provided Works Contract Services to the various Government Authorities and they have paid Service Tax of Rs. 31,93,322/- for the same. Further we also certify that they have not passed on the Service Tax paid of Rs. 31,93,322/- to the Government Authorities."

With respect to cenvat credit avail by the appellant with respect to service tax paid by the sub contractor, they clarified that, they has debited the Service Tax claimed by the Sub Contractor in their invoices to respective ledgers of Sub contractor. Ledger of the respective sub contractor has also attached with their submission dated 22.11.2016. Further, they stated that they had taken credit with respect to service tax paid by the sub contractor only in the case of services provided by sub contractor on reverse charge mechanism and it is also appears in the periodically filed Service Tax Return, and appellant has also clarified in their refund claim that they have not filed the Service Tax Refund claim with respect to service tax paid by the sub contractors and it is also clarified in the calculation sheet submitted by them.

4. The appellant filed additional written submissions dated 05.12.2017

stating as under:

4.1 That they are a Government Works contractor and had provided services to Various Government and local authorities in the nature of Works Contract; that these works are falling at Sr. No. 12 of Mega Exemption Notification No. 25/2012-ST Dated 20.06.2012, which was withdrawn on certain services vide Notification No. 06/2015 ST with effect from 01.04.2015; that since at the time of Bidding for the said projects the service tax exemption was available, on the services provided to various Government and local authorities, due to withdrawal of exemption as referred above w.e.f. 01.04.2015, the claimant paid service tax on the said taxable services provided; that the said exemptions was again restored vide Notification No. 09/2016 ST dated 01.03.2016 and the said Notification allowed Service Tax Refund for the Services provided during the period from 01.04.2015 to 28.02.2016, which falls originally at Sr. No. 12 of Mega Exemption Notification No. 25/2012 ST along with certain conditions. So, they filed service tax refund of Rs. 31,93,322/- along with all the necessary supporting documents on 11.11.2016 but the Adjudicating Authority passed the impugned order holding that in order to claim refund of service tax, the appellant was required to prove with documentary evidences that correlate payment particulars with the value of services provided, Challans, invoices, and the respective ST-3 returns filed by the applicant, and rejected the refund claim of Rs. 31,93,322/.

4.2 They have filed a fairly detailed submission along with appeal memorandum dated 27.02.2017, and various documents are also submitted with this reply as Annexures; that they appeared for personal hearing and they requested to allow to submit additional submissions, and accordingly, they have submitted this. The submissions made herein are in addition to the submissions and explanations made as well as contentions raised in the above appeal memorandum filed as on dated 27.02.2017, and though they have referred to some of explanations, submissions and contentions made in the said appeal memorandum filed as on dated 27.02.2017, the submissions made hereunder are only in addition to those made in the above referred reply.

(i) The conditions laid down for claiming the service tax refund claim has been mentioned at Sec. 102 of the Finance Act, 1994:-

❖ *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.*

In this regard, they stated that they are a Government Contractor and provided works contract service to various Government and Local Authorities. They have also submitted Copy of Work Orders issued by the various Government and Local Authorities in the form of CD through our submission dated 22.11.2016 and further they have also submitted the abstract of the Work orders vide letter dated 11.11.2016.

❖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 material times.

They discharged their Service Tax duty liability as mentioned in the table shown at Sr. No. b (1) and in support they have already submitted following documents to our submission dated 22.11.2016;

1. Copy of the R. A. bills raised by the Government & Local Authorities to M/s. Backbone Enterprise Ltd.
2. Copy of the Service Tax Paid Challans of Rs. 31,93,322/-.
3. Copy of the ST-3 Return showing details like Amount of Service provided, Service Tax paid by the appellant etc.

4. Calculation Sheets which correlates the Amount of Service Provided, Amount of Service Tax payable & Paid through the Challans, etc...

- ❖ 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."

The Finance Bill 2016 has got assent of the President as on 14th May, 2016, and the appellant has filed service tax refund claim as on 11.11.2016. So, they have filed the above mentioned Service Tax Refund claim well within the time limit prescribed at Sr. No. 3 of the Sec. 102 of the Finance Act, 1994. So, from the above submission they stated that they have followed all the conditions prescribed under Sec. 102 of the Finance Act, 1994. So, it is submitted that the impugned order is not sustainable.

- (ii) Contention of the Adjudicating Authority that appellant has not submitted Require Documents & Calculation sheet which can prove that the availed credit is not for the works for which he is claiming refund, Work sheet showing Details of Work/Abatement/ST paid which are co-relate with ST-3, failed to give the correlation of service tax with invoices, ST-3 and the payment received from the service receiver:-

The appellant submitted that they have already submitted detailed calculation sheet along with all the supporting documents vide submission dated 11.11.2016, 22.11.2016 & 20.12.2016, copies of the same is also attached with appeal memorandum as annexure A, C & E. They have submitted the Detailed calculation sheet as **Annexure A**, which clearly shows relevant details like RA Bill No. & Date, Assessable value of the Service Provided, Service Tax Portion payable and paid by the Appellant and the sub-contractor respectively under the Reverse Charge Mechanism, Details of Service tax paid challans, scope of work of Work Contract Services provided to various Government and Local Authorities, Starting date of work and current status of work. The calculation sheet has well established the correlation between, RA bills issued by the Various Governmental Authorities, Service Tax paid challan and ST-3 returns periodically filed by them.

(iii) Other adjudicating authority has sanctioned the Service Tax refund for the Services provided during the period of 01.04.2015 to 28.02.2016 to various Government Authorities as per notification No. 09/2016 ST dated 01.03.2016:-

They relied upon the Order-In-Original No. R/68/2016 issued by Assistant Commissioner, Service Tax Division, Bhavnagar, in the case of M/s. Dharti Engineers, Amreli. In this case M/s. Dharti Engineers, Amreli has filed refund claim as per notification No. 09/2016 dated 01.03.2016, for the Service tax of Rs. 5,88,686/- paid during the period of 01.04.2015 to 28.02.2016 for the Works Contract services provided to various Government Authorities. The Assistant Commissioner, Bhavnagar has sanctioned the Service tax refund claim as law bound in nature. They case is follows all the conditions lay down in the notification No. 09/2016 dated 01.03.2016. The adjudicating authority fails to appreciate the aforesaid fact while passing the OIO and therefore the impugned order is not sustainable. In the above premises, there is no justification in any of the allegations and proposals leveled thereunder and requested to set aside the aforementioned Order In Original, with consequential relief thereon.

5. Shri Chetan Detharia, CA appeared in personal hearing and reiterated grounds of appeal; submitted that all required documents were given to the adjudicating authority but he did not go through these documents; that the construction services had been provided to the government and local government authorities through works contract, which got exempted in March, 2016 with retrospective effect from February, 2015; that refund of Service Tax paid was allowed by the government but the lower adjudicating authority rejected refund on incorrect grounds; that refund of Service Tax paid is required to be refunded as bar of unjust enrichment is not applicable in the present case as the contract rate remained same from 2012 to 2016 and no change in contract rate due to Service Tax imposed in 2015; that they have produced certificates from govt. authorities that no Service Tax has been paid by them; that they have been showing this amount as Service Tax receivable under Current Assent/Advances in their books of accounts since 2015-16 till now; that Service Tax paid by them is required to be refunded to them as they fulfill all conditions of the Notification; that their appeal may be allowed and refund may be ordered to be given.

5.1 The appellant submitted additional written PH submissions dated

12.04.2018 as detailed below:

❖ The burden of Service Tax has not been passed on to the service recipients by the claimant.:-

They submitted that they have not received any amount, over and above the Tender Amount from the various service recipient Government Authorities. In support of this plea, they have submitted the following documents, over and above other documents submitted earlier;

- a. Certificate issued by the Government Authorities, certifying that the Service tax paid by the M/s. Backbone Enterprise Ltd., Rajkot, for works contract service provided to them, has neither paid nor reimbursed by them,
- b. Certificate of independent Chartered Accountants Certificate, Certifying that, *"Service Tax of Rs. 31,93,322/- paid by M/s. Backbone Enterprises Limited., Rajkot., is shown in their Books of Accounts as Service Tax Receivable under the head of Current Asset/Advances and the Service Tax of Rs. 31,93,322/- paid by the M/s. Backbone Enterprises Limited., Rajkot., has neither been taken as Input Tax Credit nor the same is utilized for payment of Service Tax against service tax liability of any other services directly or Indirectly."*
- c. Self-certified Copy of the trial balance sheet for the for the year ended 31st March 2008, showing Service Tax Receivable for the F.Y. 2015-16 of Rs. 31,93,322/- under the head receivables.
- d. Self-Declaration of M/s. Backbone Enterprise Ltd., Rajkot., declaring that, *"Service Tax of Rs. 31,93,322/- paid by them us is shown in our Books of Accounts as Service Tax Receivable under the head of Current Asset/Advances and the Service Tax of Rs. 31,93,322/- paid by us has neither been taken as Input Tax Credit nor same is utilized for payment of Service Tax against service tax liability of any other services directly or Indirectly."*

Certain Works Contract Services provided to Government Authorities are exempted under Sr. No. 12 of Mega Exemption Notification No. 25/2012 - ST Dated 20.06.2012. However, the said exemption from payment of Service Tax was withdrawn on certain services vide notification No. 06/2015 ST with effect

from 01.04.2015. But the said exemptions again restored vide notification No. 09/2016 ST dated 01.03.2016.

5.2 The Adjudicating Authority has misdirected himself while stating that the Appellant has provided Works contract services to various Government Authorities before 01.04.2015, during the period of 01.04.2015 to 28.02.2016, i.e. during the period of withdrawal of exemption, and after the period of 01.03.2016. But the Works contract value shown by the Appellant in RA Bill issued to Government Authorities is without Service Tax throughout the tenure of Tender. So, it can be said that appellant has not collected Service tax from Government Authorities during the period of 01.04.2015 to 28.02.2016, i.e. during the period of withdrawal of Service Tax Exemption. The same is also clear from details of works contract services provided to the various Government Authorities.

So, in the above premises, it can be said that Government Authorities has not paid any amount over and above the Tender Amount for the services provided to Government Authorities. Therefore, there is no justification in the allegations and proposals leveled thereunder and the Service Tax refund should be granted on the above premise.

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made by appellant. The issue to be decided in the present appeal is as to whether the impugned order rejecting refund of Rs. 31,93,322/- to the appellant is correct or not.

7. I find that during the material time, Service Tax under Works Contract service was chargeable on 40% of value of services provided and Works Contract service was under reverse charge mechanism wherein the service provider had to pay 50% of Service Tax and service receiver had to pay remaining 50% of Service Tax. In this scenario, the appellant had paid Rs. 31,93,322/- during the period from 01.04.2015 to 29.02.2016 @50% of Service Tax payable and had filed S.T.-3 returns.

7.1 I also find that the appellant had sub-contracted the work relating to Construction of Government Polytechnical Institute, Renovation of work of Udyog Bhavan, strengthening of existing residential building, construction of

govt. school and its girls hostel etc. It is on record that these works were allotted to the appellant by Road & Building Department of Govt. of Gujarat and by Gujarat Industrial Development Corporation of Government of Gujarat. The sub-contractors had paid 50% of Service Tax and the appellant had paid 50% of Service Tax under reverse charge mechanism under Works Contract services.

7.2 I find that the lower adjudicating authority has rejected refund to the appellant on the ground of non-submission of related documents and worksheet to verify the claim. However, the appellant has stated that they had vide their letter dated 22.11.2016 and again reply dated 16.12.2016 to Show Cause Notice submitted copies of documents like RA Bills, audited Balance Sheets, invoices issued by the sub-contractors, work orders in hard form as well as in CD and other relevant documents but the lower adjudicating authority did not go through these documents and rejected the refund claim. The appellant again submitted those documents with the Appeal Memorandum including details of Bank Challans vide which Service Tax was paid by them in cash.

8. The appellant has also submitted that Service Tax payable was required to be paid by sub contractors (50% as service providers) and by the appellant (50% as service receiver) as per guidelines in respect of works contract. The Service Tax paid by sub contractors in cash was claimable by them and that 50% has not been claimed by the appellant, however, 50% of Service Tax paid by the appellant in cash through Bank challans has been claimed to be refunded by the appellant and this amount has neither been taken credit nor been claimed earlier, and hence refundable to them in view of Section 102 of the Act.

8.1 The appellant has further submitted that the contracts were signed before 01.03.2015 and had stated 'all taxes' but that can't include Service Tax as earlier, Service Tax was not payable for works contract to government/ government authorities/ local government authorities; that they have not been paid more than the original contract value even though Service Tax was paid by the appellant in 2015-16 to the Government of India account; that the government/local government authorities have given in writing and such certificates have been submitted to this effect.


8.2 I find that it is correctly submitted by the appellant that at the time of entering into the contracts/agreements with Govt. authorities/Local Govt.

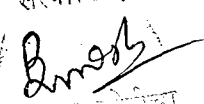
authorities during the period before 01.03.2015, service tax was not payable for the said services provided to the Govt. authorities/Local Govt. authorities and hence mere words 'all taxes' in the contracts/agreements cannot be a ground to reject the refund claims without going into the evidences available in this case. I find that the appellant has provided 'Construction Service/Works Contract Service' to the various Govt. authorities/Local Government authorities during the period from 1.4.2015 to 29.2.2016 for which the contracts/agreements were signed prior to 1.3.2015 during which service tax was exempted vide Notification No. 25/2012-ST dated 20.06.2012 on the construction services/works contract services provided to the Government, Government authorities and local government authorities and there is no dispute on this fact. It is also a fact that the contract price was not amended or modified when the exemption of service tax was withdrawn by the Government of India w.e.f. 1.4.2015 and the said services were made liable to service tax. I find that the appellant had submitted copy of their audited Balance Sheets wherein the amount of service tax paid by them was accounted for under sub-head 'Service Tax Receivable FY 15-16' under head 'GST/VAT Receivable', which clearly establish that the appellant has not passed on the incidence of service tax to such service recipients or to any other person. The certificate of Chartered Accountant produced by the appellant also clarifies that incidence of service tax has not been passed on by the appellant to any other person. The appellant has also produced copy of letters of their service receivers clearly stating that they have not reimbursed the service tax amount under the said projects. In view of these documentary evidences submitted by the appellant, there is no doubt that the appellant has paid Service Tax but the incidence of service tax has not been passed on to any service recipients or to any other person. Hence, I have no option but to hold that the impugned order is not correct, legal and proper and hence, needs to be set aside.

9. In view of the above factual and legal position, I set aside the impugned order and allow the appeal filed by the appellant with consequential relief.

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

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


 (कुमार संतोष)
 आयुक्त (अपील्स)

सतनापित्त,

 आर. एन. बोरीका
 आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Backbone Enterprises Ltd., "Backbone House", M-43 Gujarat Housing Board, Kalawad Road, Rajkot	मे. बेकबोन एंटरप्राइज़ लिमिटेड, "बेकबोन हाउस", एम-४३, गुजरात हाउसिंग बोर्ड, कालावड़ रोड, राजकोट.
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Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise, Division-I, Rajkot.
- 4) The Superintendent, GST & Central Excise, Range-Rajkot.
- 5) Guard File.