::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
	V2/186/RAJ/2017	**DC/JAM/R-437/2016-17**	**10-02-2017**

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

RAJ-EXCUS-000-APP-056-2018-19

आदेश का दिनांक / Date of Order:	**19.04.2018**	जारी करने की तारीख / Date of issue:	**01.05.2018**

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

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 गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट 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 Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad 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 :-

1.M/s Standard Buildcon, "Standard Buildcon", Indira Marg, Opp : Celebration Hotel,Jamnagar

इस आदेश(अपील) से व्यथित कोइ व्यक्ति निम्नालेखित 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 अंतगत 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 मामलों 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

This order arises out of the appeal filed by M/s Standard Buildcon, "standard House", Indira Marg, Opp. Celebration Hotel, Jamnagar (hereinafter referred to as "the appellant") against the Order In Original No. DC/JAM/R-437/2016-17 dated 10.02.2017 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner, Central Excise, Jamnagar (hereinafter referred to as the "Adjudicating Authority").

2. Briefly stated the facts of the case are as under:-

(i) The appellant are registered as service provider and holding service tax registration No. AAHFS3664BST001 and filed refund claim of Rs.15,71,016/- (Service Tax of Rs. 15,65,873/- and interest of Rs. 5,143/-), on account of retrospective exemptions granted to the services provided to the government departments and local authorities, as provided in Section-102 of the Finance Act, 1994. The said claim was filed on 10.11.2016 alongwith documents as detailed at Para-02 of the impugned order. However, the same found lacking with the documents/information as detailed at Para-04 of the impugned order and hence, for the said deficiencies, it appeared that the said refund claim was required to be rejected. Accordingly, a Show Cause Notice dated 22.12.2016 asking them as to why the Refund Application filed by them for Rs. 15,71,016/- should not be rejected under the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and why the amount if any sanctioned, should not be transferred to consumer welfare fund as per the provisions of section 11B and 12C of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994.

(ii) The Adjudicating Authority under the impugned order rejected the refund of service tax and interest paid on delayed payment of service tax, totally amounting to Rs.15,71,016/- under the provisions of Section 102 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1944 as made applicable to service tax matter under Section 83 of the Finance Act, 1994on the issues of 'Works Contract Services not covered under section 102 of the Act', 'Claiming of abatement', 'Non-payment of stamp duty', 'not following the Rule 6 of CENVAT Credit Rules', as well as on the grounds of unjust enrichment. Thus, both on merits as well as on the grounds of unjust enrichment, the claim was rejected under the impugned order.

3. Being aggrieved by the above impugned order, the appellant has filed an appeal on the grounds as interalia mentioned under.

(i) The appellant claimed the refund in respect of the service tax paid on the contracts of the construction to the Government for which the work orders/agreements have been entered into before 01.03.2015 which are retrospectively exempted from the levy service tax as per the special provisions under Section 102 of the Finance Act, 1994. The appellant duly complied with the provisions of the newly inserted special section 102 to the Finance Act, 1994 read with section 11B of the Central Excise Act, 1944. Therefore, rejecting the claim of the refund of the service tax without considering the under lying law and the document submitted by the appellant, is bad in law.

(ii) The Adjudicating Authority erred on fact and in law in contending that the appellant has provided taxable services and paid the service tax under the Category of "Works Contract Service" which is not falling within the ambit of Section 102 of the Finance Act, 1994 and not correctly shown the details in ST – 3 Return under the 'Works Contract Service'.

(iii) The Adjudicating Authority erred on fact and in law by contending that the appellant has not specified as how and under what provisions the deduction @60% is claimed while paying the service tax on these services and thereby, failed to give proper justification that the amount was correctly paid towards the services provided to the government during the period 01.04.2015 to 29.02.2016 in respect of contract entered into prior to 01.03.2015, in as much as no correlation details in respect of services charged and service tax paid thereon.

(iv) The Adjudicating Authority erred on fact and in law in contending that the contract agreement with MES does not contain details of stamp duty paid thereon and it is mandatory criteria prescribed under section 102 of the Finance Act, 1994.

(v) The Adjudicating Authority erred on fact and in law by contending that the appellant claimed CENVAT credit without complying the provisions of Rule 6 of the CENVAT Credit Rules and thus, the refund claim filed by the appellant fails on this count also. The Adjudicating Authority has not considered the fact that the appellant has claimed CENVAT against this taxable amount only by maintaining separate accounts as per Rule 6 of CENVAT Credit Rules.

(vi) The Adjudicating Authority has erred in fact and in law by rejecting the claim of refund of service tax on the grounds that in the agreement/tender with MES specifically provides for the reimbursement of new levies and the amount of refund is not lying as 'Service Tax Receivable' in the Balance Sheet. The Adjudicating Authority has wrongly concluded that service tax amount has already been recovered from MES. The Adjudicating Authority made this contention without any basis or the evidences and facts that can prove that the appellant has received the service tax from the Military Organizations. Thus, the contention made by the Adjudicating Authority is totally on their

own surmises and conjecture which is not tenable in the eyes of law.

(vii) The Adjudicating Authority erred on fact and in law in case of work of Okha Nagar Palika, the rate/contract value is inclusive of all the taxes and it is contended that the burden of the service tax has been passed on to the service recipient. However, that was not the case. The Adjudicating Authority has to appreciate the fact that the service tax is exempted on such services provided to the government and as per section 102 to the Finance Act, 1994 and Entry no. 12A to Notification 25/2012-ST, the service tax is not to be levied on such work even from 01.04.2015 (FY 2015-16). Therefore, the question of including and charging of service tax dose not arise at all and the service tax paid on such exempted services is to be refunded to the appellant. Further, Without prejudice to any of the grounds of appeal, the Adjudicating Authority has to appreciate that the taxes which was not leviable at all at the time of entering into the contract and late on imposed, it cannot be interpret to include such taxes in the rate/value of the contract when the same again exempted with the insertion of a special provision (Section 102 to the Finance Act, 1994) which also includes to grant refund of such service tax paid during that period.

(viii) The Adjudicating Authority has erred on fact and in law in not considering the relevant documents submitted by the appellant on time to time viz. with Application of Service Tax Refund in Form- R, in reply to the letter from the Deputy Commissioner, Service Tax Division, Jamnagar and in reply to the Show Cause Notice, which includes Affidavit of the appellant firm, CA Certificate and Submission of Audit Report which reflect Service Tax Refund Receivable from the Department in order to prove that the appellant has neither charged nor reimbursed nor the burden of service tax has been passed on to the service recipients and therefore, the refund is duly eligible as per the law and therefore, the refund claim is not hit by the bar of 'unjust enrichment'.

(ix) The Adjudicating Authority has erred in law and fact regarding the non-admissibility of the refund claim of the interest of Rs. 5,143/- on the delayed payment of Service Tax which is admissible as per Section 11B of Central Excise Act, made applicable to service tax vide Section 83 of Finance Act, 1944.

(x) Without prejudice to any of the grounds of appeal stated as above, the appellant contended that when the appellant has proved with the documentary proofs about the payment of the service tax out of its pocket only and the incidence of tax not passed on to any other person and no evidences were adduced or forth coming from revenue showing that the appellant had passed incidence of tax to the service recipient, the appellant is entitled for the refund.

(xi) The Adjudicating Authority has to accept the fact that the appellant had provided the services in the earlier years also under the contracts/agreement covered in the appeal and claimed the exemption, which is accepted by the department at the time of

service tax audit and no comment, has been made. Further, the audit party has also asked to pay the service tax on the government works under the appeal for the FY 2015-16 on withdrawals of the exemption. Then after, the contention of the Adjudicating Authority to reject the refund on the ground of 'passing the incidence of tax/duty to the other person/customer' and hence, concluded that the claim of refund is hit by the bar of 'Unjust Enrichment' is seems to be the different of the views of the department on the same contract/agreement and not at all acceptable.

4. Personal hearing was held on 28.12.2017 wherein Shri Bharat R. Ozha, Chartered Accountant appeared on behalf of the appellant and reiterated the grounds of appeal and also submitted additional submission dated 28.12.2017 for consideration.

5. I have carefully gone through the facts of the case on records, grounds of the appeal memorandum, written submission and oral submission made at the time of personal hearing. I take up the appeal for the final decision. I find that the appellant had entered into agreement prior to 01.03.2015 Chief Engineer (Air Force), Military Engineering Services, Jamnagar and Chief Officer, Okha Nagar Palika, Okha to provide works contract services. The above mentioned services provided to the Government in relation to the construction work, was exempted vide entry 12(a) and (c) of Mega Exemption Notification No. 25/2012 dated 20.06.2012, applicable from 01.07.2012 under the new levy of negative list based service tax. Accordingly, the appellant had claimed the exemption, showing the amount as 'Exempted' in the Service Tax Return ST-3 filed for the period after 01.07.2012 onwards, in respect of the bills submitted to the above stated Government Department under the said agreement and not paid the service tax on the same. However, these exemption entries of Notification No. 25/2012-ST were deleted vide the Finance Act, 2015 and accordingly, a Notification No. 06/2015-ST dated 01.03.2015 issued for withdrawal of the said exemption. Hence, with effect from 1st April 2015, services provided to the Government, a Local Authority or a Governmental Authority in respect of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any original works meant predominantly for use other than for commerce, industries, or any other business or profession and or a structure meant predominantly for use as educational, clinical, art or cultural establishment became taxable. Accordingly, the appellant paid service tax on bills raised from 01.04.2015 for abovementioned services (under the category of Works Contract Services) provided to various government departments under the contract entered into with them prior to 1st March, 2015. Such service tax is aggregating to Rs. 15,65,873/- on bills raised during the period from 01.04.2015 to 29.02.2016 and interest amounting to Rs. 5,143/- on delayed payment of such service tax under the above mentioned contracts. Through the Finance Act, 2016, the exemption in respect of such construction related services provided

to the Government etc. has been restored to. Accordingly, Notification No. 9/2016-ST dated 01.03.2016 has been issued to amend notification 25/2012-ST dated 20.06.2012 so as to insert entry 12A, to exempt above stated services in respect of which contract has been entered into prior to 1st March, 2015. However, in respect of such services provided and bills raised by the assessee during the period from 01.04.2015 to 29.02.2016 (both days inclusive) to the Government, Local Authority, Governmental Authority etc., on which the service tax had been paid by the service provider due to withdrawn of the exemption entry of Notification 25/2012-ST ibid which was operative during that period, a new provision –Section 102 has been inserted through the Finance Act, 2016, to grant the refund of the said service tax paid on such services during that period. Therefore, the appellant claimed refund of Rs. 15,71,016/- (Service Tax of Rs. 15,65,873/- and interest of Rs. 5,143/-) paid by them in respect of the services provided to the government during the FY 2015-16 as per newly introduced Section 102 of the Finance Act, 1994.

6. I find that there is no dispute that the provisions of Section 102 of the Finance Act, 1994 provided for the refund of service tax paid in respect of service provided to the Government under the specified categories i.e. construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration for the purpose specified in the provisions. There is also no dispute that the nature of services provided by the appellant is the construction services to the Government and Local Authority during the FY 2015-16 and the said services were exempted till 31.03.2015 (i.e upto FY 2014-15) as per entry No. 12 of Mega Exemption Notification No. 25/2012-ST. There is also no dispute that the appellant paid the service tax of Rs. 15,65,873/- along with interest of Rs. 5,143/- on delayed payment of service tax through the challans and by way of utilizing CENVAT Credit. However, the Adjudicating Authority under the impugned order had rejected the said refund claim both on merits as well as on the grounds of unjust enrichment. The appellant had vehemently contended as interalia mentioned at Para-3 above. Thus, issue for decision before me is to decide whether the refund rejected by the Adjudicating Authority under the impugned order is legally sustainable or not. Now, I take up the each issues on which refund is rejected under the impugned order, for decision.

7. The Adjudicating Authority at para-15 of the impugned order has observed that the appellant provided taxable service and paid service tax under the category of "Works Contract Service" which is not falling within the ambit of Section 102 of the Finance Act, 1994. Since, the said Section 102 ibid provides for refund of service tax paid in respect of specified services viz. construction, erection, commissioning, installation, completion, fitting out , repair, maintenance, renovation or alteration for the purpose of as specified under the said Section 102 ibid, and the service provided by the appellant is under the

category of "Works Contract Service", which is not falling within the ambit of Section 102 of the Finance Act,1994, the Adjudicating Authority held that the refund is not admissible.

7.1 The appellant has vehemently contended in its appeal memorandum and additional submission on this issue. I find force in the contention of the appellant on this issue. I find that up to 30.06.2012, the service tax was leviable considering the category of that respective service, however, w.e.f. 01.07.2012 when the service tax regime shifted from "Specified Services" to the "Negative List based Service" (an hence, all other services are taxable), the levy of the service tax under 'Specified Category' is became redundant. Further, On the basis of the Tender and other relevant Documents available on records, it is undisputed fact that the appellant had provided the construction services with material to the Government Department for which the refund is claimed. Thus, any type of Construction related Services as specified under section 102 of the Act and provided to the Government or the Government Organisations is to be covered under section 102 of the Act. In the new regime of the service tax applicable from 01.07.2012, the Works Contract Service is not a 'Category' but it had been defined because of its very nature of inclusion of the material while providing the service and therefore, exclusion of service tax on that 'Material' part included in it. Therefore, service of 'Construction, Commissioning, Installation, Completion, Fitting out, Repair, Maintenance, Renovation, Alteration etc. stated in Section 102 of the Act, when provided with the material, it has been suitably categorised as 'Works Contract' to specify that 'this construction services has been provided with Material and thus, as per the Valuation Rules, the service tax would be applicable only on the 'Service Part' of the construction work. So the 'Works Contract Service' is not a separate Category in the new regime of the service tax but a different method for valuing the Service due to inclusion of the 'Material Value' with the labour while providing the services. Therefore, the services provided by the appellant to the Government Organisations for which the refund is claimed, duly fall with the ambit of Section 102 ibid. Thus, I hold that the rejection of refund claim on this ground under the impugned order is not sustainable and is bad in law.

8. Further, the Adjudicating Authority at para-14 of the impugned order has observed that the appellant provided taxable service under the category of "Works Contract Services" and availed abatement/deduction in the value of the taxable service so provided during the relevant period ; that the appellant had not mentioned under which notification or rule, they have claimed abatement @60% ; that the appellant failed to give proper quantification of refund amount claimed and also proper justification in respect of the amount paid towards the service provided to the Government during the period 01.04.2015 to 29.02.2016 for the contract entered prior to 01.03.2015, in as much as no correlation details in respect of services charged and service tax paid thereon had been

submitted and thus, failed to justify the service tax refund claimed was paid towards the services covered under Section 102 ibid.

8.1 The appellant has vehemently contended on this issue that they had provided the 'Construction Service' in nature of 'Works Contract' and hence, raised the bills under Works Contract Service, amounting to Rs. 2,80,65,730/- the respective Government Organizations for work undertaken by them and paid service tax amounting to Rs. 15,65,873/- on the abated value at the rate of 40% along with interest of Rs. 5,143/- the details working for taxable value of service provided, abatement claimed and the service tax refund claimed on it is as under:

Chief Engineer (Air Force), Military Engineering Services (MES)
(Contract No. : CE(AF)G/JAM/24 OF 2013-14 dated 23.08.2013)

Date	Bill Amount	Value of Service Portion @40% (Note - 1)	Abatement @ 60%	Service Tax Payable (Inclusive of cess)	Interest	Total of Service Tax and Interest
(A)	(B)	(c)	(D) = (B) - (c)	(E) = (C)*14%	(F)	(G)
01/8/2015	14,160,000	5,664,000	8,496,000	792,960	796	793,756
03/10/2015	11,950,000	4,780,000	7,170,000	669,200	-	669,200
Total (a)	**26,110,000**	**10,444,000**	**15,666,000**	**1,462,160**	**796**	**1,462,956**

Chief Officer, Okha Nagar Palika, Okha
(Contractor No. 13/14/7 of 2013-14 dated 07.02.2014)

Date	Bill Amount	Gross Amount Charged (Note - 2)	Value of Service Portion @40% (Note - 1)	Abatement 60%	Service Tax Payable (Inclu. cess)	Interest	Total of Service Tax and Interest
(A)	(B)	(C) = (B)/1.056	(D) = (c)*0.4	(E) = (C) - (D)	(F) = (D) *14%	(G)	(H)
06/07/2015	1,955,730	1,852,017	740,807	1,111,210	103,713	4,347	108,060
Total (b)	**1,955,730**	**1,852,017**	**740,807**	**1,111,210**	**103,713**	**4,347**	**108,060**

Grand Total (a) + (b)	Total amount of Bill	Total Service Tax paid	Interest	Total
	2,80,65,730	15,65,873	5,143	15,71,016

8.1.1 From above, I find that the appellant had paid service tax on the abated value and thus, availed abatement of 60%. I find that provisions relating to determination of value of service portion involved in the execution of work contract are contained in Rule - 2A of Service Tax (Determination of Value) Second Amendment Rules, 2012

(Notification 24/2012 – ST dated 06.06.2012). As per the said rule, either the value of the material included in the provision of the service is to be deducted as provided in sub section (i) or a fixed percentage is to be deductible considering the nature of the work, as per sub section (ii), to determine the Taxable Service Portion. I find that the appellant has taken the value of service portion @ 40% on the total amount charged for the work of construction. Thus, the appellant has claimed the abatement and paid the service tax accordingly in respect of the bills submitted for the Refund Claim and the observation made by the Adjudicating Authority that in the absence of notification number or rule under which abatement claimed, the appellant has failed to give proper quantification of refund claimed and also failed to justify that the amount was paid towards the service provided to the Government during the period 01.04.2015 to 29.02.2016 in respect to contract entered prior to 01.03.2015, is not sustainable in the eyes of law. Thus, I hold that the rejection of refund claim on this ground under the impugned order is not sustainable and is bad in law.

9. Further, with regards to the issue of stamp duty, I find that the Adjudicating Authority at para-11 of the impugned order has observed that the refund claimed by the appellant pertains to the period from 01.04.2015 to 29.02.2016 in respect of services provided to Military Engineering Service (MES) and Okha Nagarpalika; that in case of MES, the appellant has submitted copies of the terms and conditions, R.A. bills, tender acceptance letter dated 23.08.2013 etc, however, no stamp duty appear to have been paid.

9.1 On this issue, the appellant contended vehemently that in the work of Military Engineering Services (MES), the contractor have to submit e–tender by following their technical procedures and the work is allotted to the contractor whose rates of contract are lower compare to others and then, the respective authority accepts such e-tender on behalf of the President of India and provides the work order (named as "Contractor's Order Sheet) to the respective contractor; that this work order shall be sole repository of the contract as specifically stated in the Contractor's Order Sheet. The appellant also contended that that there is no such requirement to enter into any formal agreement in the work of Air Force and they are issuing the 'Contractor's Order Sheet' on acceptance of Tender and hence, there is no requirement to payment of stamp duty on such 'Order Sheet'. I find force in this contention of the appellant. Further, careful reading of the Section 102 ibid of Act which clearly state in Sub-section (1) that " ***.... 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".*** Hence, the Section clearly state that the stamp duty is to be paid where it is applicable and it is not mandatory to pay stamp duty if it is otherwise not payable in view of the circumstances narrated above. Further, I find that the purpose of insertion of this criteria of payment of Stamp Duty given

in the Section, is to confirm the date of contract entered with Government to ensure that the same is prior to 01.03.2015 only and I find from the records available in the present case and also in the findings under the impugned order that the refund claimed in the present case is in respect of contracts entered before 01.03.2015 only. Hence, I hold that the said observation of the Adjudicating Authority is not sustainable in eyes of law.

10. Further, with regards to the rejection of refund claim in the present case on the grounds of non-compliance of the provisions of Rule 6 of the CENVAT Credit Rules, 2004, I find that the Adjudicating Authority at Para-17 of the impugned order has observed that the appellant provided exempted as well as taxable services and availed CENVAT credit, without complying with the provisions of Rule 6 of the CENVAT Credit Rules, 2004; that from the ST-3 Returns, it was observed that during the period 2015-16, the appellant had availed and utilised total cenvat credit of Rs.19,41,411/- and hence, the appellant was required to follow the mandatory provisions of Rule-6 of the Cenvat Credit Rules,2004 which provided of reversal of cenvat credit by various ways i.e by maintaining separate accounts, reversal of notional percentage of exempted service, proportionate reversal etc.; that apart from the services on which service tax became exempted retrospectively, they had declared exempted service to the tune of Rs.64,81,31,816/- in the ST-3 Returns for the year 2015-16 and thus, being a undisputed facts of providing of exempted as well as taxable services and also availment of cenvat credit without complying the provisions of said Rule -6 ibid, the Adjudicating Authority also rejected the contention of the appellant that they have to refund /return the service tax to their sub-contractors, as the services provided by the sub-contractors to the government contractors have not been exempted under Section 102 ibid; that even otherwise, their transactions with the sub-contractors do not affect their liability under Rule 6 ibid.

10.1 The appellant contended that- **(i)** Rule 6 of CCR, 2004 provides following options to be adopted to avail the credit on input and input services used by manufacture of dutiable & exempt goods or provider of taxable and exempt service:

(a)	**Option to maintain separate accounts [Rule 6(2)]**	**(b)**	**Option not to maintain separate accounts:** **(1)** : Adhoc reversal **[Rule 6(3)(i)** **(2)** : Formula Based (proportionate) reversal for input and input service **[Rule 6(3A)** **(3)** : Separate accounts for the input and formula based reversal for input services **[Rule 6(3)(iii)]**

The appellant on this issue thus vehemently contended that during the period under consideration, the appellant has taken the CENVAT Credit of input service received for which they have maintained separate accounts as per the above Rule and hence, it is not required to reverse the CENVAT credit. **(ii)** it is not the duty of the Adjudicating Authority to find out any defect in the working of the service tax already paid. As per Section 102 of the Act, while grating of the refund of the service tax under the said section, the Adjudicating Authority has to consider only that whatever the service tax paid by the appellant and claimed as refund, would not have been so paid, if the sub-section (1) to Section 102 of the Act had been in force at the time of provision of service.**(iii)** There is one to one correlation between the Input Service Bills and the Taxable Output Service Bills. The appellant has utilized the CENVAT of only those Input Services which directly related in providing the Taxable Output Services (Government Work for MES undertaken) for which Refund is claimed.**(iv)** Out of the total amount of the service tax pertaining to the government work claimed as refund amounting to Rs. 15,65,873/-, they have paid the service tax of Rs. 1,43,922/-through challans and Rs. 14,21,951/- has been paid through claiming the CENVAT of Input Service Credit pertaining to the work of the sub contractors. The above stated amount of CENVAT has been taken as credit complying the Rule 6 of the CENVAT credit Rules, 2004. **(v)** At the time of payment of service tax and filing of return of service tax (ST-3) for FY 2015-16, the services provided to the concerned government organizations was taxable and hence, the service tax had been paid to the sub-contractors pertaining to this work was claimed as CENVAT. Now, introduction of section 102 to the Finance Act, 1994 through the Finance Act, 2016, the appellant have to claim the refund of service tax in respect of the government contract entered into before 01.03.2015. Accordingly, the appellant has also allowed the refund of the service tax paid to their sub-contractors. Therefore, whatever CENVAT has been utilized at the time of payment of service tax, is also to be refunded accordingly and not to be reversed. Thus, the refund of the service tax to the appellant will be as good as reversal of CENVAT. **(vi)** As per Entry No. 29(h) to Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012, service tax is exempted in case of sub- contractor providing services by way of work contract to another contractor providing works contract services which are exempted. Hence, if the service tax on works contract is exempted in case of main contractor, it is exempted in the hands of sub contractor also. Although, there is no direct exemption has been provided to sub contractor however, there is indirect exemption available to sub contractor. Therefore, whatever CENVAT has been utilized at the time of payment of service tax, is also to be refunded accordingly and not to be reversed. Thus, the refund of the service tax to the appellant will be as good as reversal of CENVAT. **(vii)** However, for any technical reason if the Refund pertaining to the CENVAT credit claimed in respect of Input Services can not be entertained to pay in

Cash as Refund, pleaded to order to restore to this CENVAT in the appellant's account.

10.2 I find that there is no dispute that during the relevant period, the appellant had provided exempted as well as taxable services and availed CENVAT credit. Further, from the ST-3 Returns, I also find that during the period 2015-16, the appellant had availed and utilised total cenvat credit of Rs.19,41,411/- which is including cenvat credit of Rs. 14,21,951/- (Rs.7,71,154/- invoice No.8 dated 07.08.2015 and Rs.6,50,797/- invoice no.22 dated 23.09.2015 of Sub-contractor M/s Shree Ramlaxman Sthapatya & Co.) in respect of service tax paid on input services provided by the said sub-contractor. This clearly indicates that the appellant had availed and utilised cenvat credit over and above the cenvat credit in respect of the said invoices of the sub-contractor. And hence, the appellant was required to follow the mandatory provisions of Rule-6 of the Cenvat Credit Rules,2004 which provided of reversal of cenvat credit by various ways i.e by maintain separate accounts, reversal of notional percentage of exempted service, proportionate reversal etc. Further, I also find that apart from the services on which service tax became exempted retrospectively under Section 102 ibid, the appellant had declared exempted service to the tune of Rs.64,81,31,816/- in the ST-3 Returns for the year 2015-16 and thus, being a undisputed facts of providing of exempted as well as taxable services and also availment of cenvat credit without complying the provisions of said Rule -6 ibid. Thus, appellant's contention that since there is one to one correlation between the Input Service Bills and the Taxable Output Service Bills and utilization of the CENVAT of only those Input Services which directly related in providing the Taxable Output Services (Government Work for MES undertaken) for which Refund is claimed as Out of the total amount of the service tax pertaining to the government work claimed as refund amounting to Rs. 15,65,873/-, they have paid Rs. 14,21,951/- through the claiming the CENVAT of Input Service Credit pertaining to the work of the sub contractors, is of no help to them.

10.2.1 Further, the contention of the appellant that if the service tax on works contract is exempted in case of main contractor, it is exempted in the hands of sub contractor also, although, there is no direct exemption has been provided to sub contractor however, there is indirect exemption available to sub contractor, is not sustainable in the eyes of law as the refund mechanism introduced under Section 102 ibid do not include the services provided by the sub-contractor to the contractor. In view of this facts, I do not find force in the contention advanced by the appellant that they have to refund /return the service tax to their sub-contractors, as the services provided by the sub-contractors to the government contractors have not been exempted under Section 102 ibid. Even otherwise, their transactions with the sub-contractors do not affect their liability under Rule 6 ibid. Thus, appellant's contention that with introduction of Section 102 to the Finance Act, 1994 through the Finance Act, 2016, the appellant have to claim the refund of service tax in respect of

the government contract entered into before 01.03.2015 and accordingly, the appellant has also allowed the refund of the service tax paid to their sub-contractors and therefore, whatever CENVAT has been utilized at the time of payment of service tax, is also to be refunded accordingly and not to be reversed, is not tenable in the eyes of law.

10.3 Thus, I uphold the impugned order rejecting the refund on this ground also.

11. Apart from merits, the refund claimed under the impugned order is also rejected on the doctrine of unjust enrichment by the Adjudicating Authority. I find that the Adjudicating Authority at Para `22 to 24 of the impugned order observed as under :

(i) the Scrutiny of the Balance Sheet for the F.Y.2015-16 revels that an amount of Rs.4,89,87,461/- is outstanding in the balance sheet under the head "Sundry Debtor"- Schedule-7. Further, under Schedule-7, an amount of Rs. 14,62,160/- is receivable from Garrisson Engineer (Airforce) . Further, an amount of Rs. 16,18,63,391/- is out standing under the head "loans, Advances, deposits & other current assets- Schedule-8". In schedule-8, "Service Tax refundable"Rs.1,03,713/- has been shown. Thus, as per the balance sheet , major part of the refund amount has already been charged to the customers or expensed out and burden of service tax has been passed on.

(ii) agreement/tender with MES specifically provides for reimbursement of the new levies and the amount of refund is not lying as 'service tax receivable' in the balance sheet. Therefore, it can be concluded that the service tax amount has already been recovered from MES.

(iii) Further, In respect of the contract with Okha Nagarpalika, it seems that the rates were inclusive of all the taxes. Thus, the Service Tax Component stands recovered from the customer by way of including the same in the rates quoted, or by way of reimbursement from the customer by way of including the same in the rates quoted, or by way of reimbursement from the Government Organization.

(iv) in the certificate dated 28.01.2017 of Chartered Accountant , it is not certified that the amount of service tax has not been charged to the customers or has not been expensed out.

Thus, finally concluded that the claimant failed to prove that the incidence of duty has not been passed on to any other person as required under section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

11.1 The appellant interalia contended that -

(i) in case of construction of security wall and associated works for Military Engineering Service (Air Force), there is contract clause in the tender document for

reimbursement for new levy of tax. MES gave the instruction to all their contractors to get the refund of the service tax payment from the service tax department itself after the introduction of the Section 102 of the Finance Act, 1994. Hence, according to their instructions, the appellant filed Application for the service tax refund. Moreover, the Adjudicating Authority has not proved with the evidences and facts that the appellant has received the service tax from Military Organizations and assumed only on the basis of one clause in the agreement/Tender of Military Engineering Services and the amount of Rs. 14,62,160/- showing as receivable from Garrison Engineer (Airforce) in the Balance Sheet of the appellant. Thus, the contention made by the Adjudicating Authority is totally on their own surmises and conjecture which is not tenable in the eyes of law. Further, the appellant contended that when the refund application has been filed duly supported by a Chartered Accountant's Certificate, the applicant is entitled to the refund. Reliance is placed on various decisions of the higher judicial forum in support of their contention.

(ii) In respect to the construction of New School for Nagar Palika, Okha under Suvarnam Jayanti Mukhya Mantri Saheri Vikayas Yojna (SJMMSVY), the appellant after reproducing as under the English Translation of Sr. No. 3 to the Agreement with Okha Nagarpalika, which also stated in Para 23.2 to the OIO,

> *"3. Government tax on goods or any other charge payable will have to be paid by the contractor M/s. Standard Buildcon, Jamnagar"*

contended that the above clause of agreement, very categorically provides that Service Tax is to be paid out of the pocket of the appellant only and not to be passed on by the appellant to the service recipient. However, the Adjudicating Authority stated that in case of Okha Nagarpalika, the rates were inclusive of all the taxes. Thus, the Service Tax Component stands recovered from by way of including the same in the rates quoted, or by way of reimbursement from the Government Organization. The Adjudicating Authority has also not considered the 'service tax refund receivable' of Rs. 1,03,713/- shown in the Balance Sheet of the appellant.

11.2 I find that with regard to the issue of refund in the case of contract with MES, agreement/tender with MES specifically provides for reimbursement of the new levies by MES to the appellant. Further, the Scrutiny of the Balance Sheet for the F.Y.2015-16 revels that an amount of Rs.4,89,87,461/- is outstanding in the balance sheet under the head "sundry Debtor"- Schedule-7 and under the said schedule, an amount of Rs. 14,62,160/- is shown as receivable from Garrisson Engineer (Airforce). There is no dispute on it, apart from clear admission on it by the appellant. Thus, combined reading of the term of the agreement/tender and the entries in the balance sheet as stated above, it clearly transpires that said service tax amount of Rs. 14,62,160/- for which refund is claimed has already been charged to or expensed out and burden of service tax has

been passed on to Military Engineering Services (MES).

11.2.1 Further, the appellant's contention that MES gave the instruction to all their contractors to get the refund of the service tax payment from the service tax department itself after the introduction of the Section 102 of the Finance Act, 1994 and accordingly, they filed Application for the service tax refund, is of no help to them in view of the above facts as well as in absence of any documentary proof in support of their above contention. Besides, in their books of account, after so claimed instruction from MES, no adjustment has been found to be made by the appellant as no such proof to that effect has been produced before me in support of their above claim.

11.2.2 Further, with regard to a Chartered Accountant's Certificate, I find that the said certificate dated 25.12.2017 issued by M/s Oza & Thakrar, C.A. states that " We have verified the Service Tax Return filed ..... and the relevant documents for the period of 01.04.2015 to 31.03.2016 .... We hereby certify that M/s ...has paid service tax (including Cess) aggregating to Rs. 15,65,873/- along with interest amounting to Rs.5143/- in respect of construction work carried out for various governmental departments and the said amount has been paid through challan. The total amount of service tax alongwith interest has been borne by our client and it has been neither been collected nor passed on to any other party...."

From the above Certificate it transpires that the same is issued on the basis of verification of ST-3 Returns and relevant documents (Not specified) instead of on the basis of Financial records/Books of Account especially the Balance Sheet, which shows different picture as discussed herein above. Further, the certificate does indicate the payment of said service tax through challans whereas major portion of the refund claimed is in respect of payment through utilisation of cenvat credit. Thus, apart from the observation of the Adjudicating Authority as mentioned at para-22 of the impugned order, I find that this Chartered Accountant's Certificate dated 25.12.2017 relied upon by the appellant, on the above facts also, is of no help to them. In view of these facts, reliance placed on various decisions of the higher judicial forum in support of their above contention, is also of no help to them.

11.2.3 In view of the facts and discussion herein above, I uphold the impugned order rejecting the refund claim of service tax paid in respect of MES on the grounds of unjust enrichment.

11.3 I find that with regard to the issue of refund in the case of contract with Nagar Palika, Okha, the appellant has vehemently contended as interalia mentioned at para-11.1(ii) above. I find force in it. I find that the Adjudicating Authority has observed that in schedule-8, "Service Tax refundable "Rs.1,03,713/- has been shown and finally observed that as per the balance sheet, major part of the refund amount has already

been charged to the customers or expensed out. From this observation, It transpires that said amount of service tax of Rs. 1,03,713/- in respect of Nagar Palika , Okha has not charged to or expensed out and burden of service tax has been passed on to Nagar Palika , Okha.

11.3.1 Further, the observation of the Adjudicating Authority at Para-23.3 of the impugned order that "As regards another contract with Okha Nagarpalika, the rates were inclusive of all taxes, as discussed supra. Thus, service tax component stands recovered from the customers by way of including the same in the rates quoted or by way of reimbursement from the government organization" From this , it transpires that since the agreement quoted the rates inclusive of all taxes, the Adjudicating Authority had concluded against the appellant. I do not find any justification on this observation of the Adjudicating Authority.

11.3.2 Further, I find that at the time of entering into the above stated contract before 01.03.2015, the service tax was exempted on such services, therefore, it cannot be said to be included in rate/price, merely on the basis of the wording mentioned in the contract/agreement. Further in all most all the contracts of the Government, this 'inclusion of all taxes' is a standard clause for tax and rate purpose. If that would be the interpretation of this clause as made by the Adjudicating Authority, than no one could be eligible for refund under the government contract and the provision made in Section 102 of the Act would be redundant. Thus, at the time of entering into agreement, estimated price decided would not include the service tax since at that time this work was exempted vide entry no. 12(a) and (c) of the Mega Exemption Notification 25/2012 – ST. Hence, there is no question to include the service tax portion in the contract price.

11.3.3 In view of the facts and discussion herein above, I set aside the impugned order rejecting the refund claim of service tax paid of Rs.1,03,713/- in respect of Nagar Palika, Okha, on the grounds of unjust enrichment.

12. Further, with regards to interest, I find that the Adjudicating Authority at Para-18 of the impugned order held that as there is no specific provision under the Section 102 or Notification No. 9/2016-ST for refund of interest paid on delayed payment of service tax, refund of interest is not admissible. The appellant contended that Section 11B of Central Excise Act, which is in respect of refund, has been made applicable to service tax vide Section 83 of Finance Act, 1944, very specifically provides that "Any person claiming refund of any duty of excise **and interest, if any, paid on such duty** may **make an application for refund of such duty and interest, if any, paid** on such duty...." Further, contended that when the service tax in the present case itself is liable for the refund as per section 102 of the Finance Act, 1994

then it is very much obvious that the interest paid on such service tax is also liable to refund.

12.1 However, from the facts and discussion herein above, I find that refund of Service Tax itself in the present case is not admissible hence, the question of granting of refund of interest does not arise. Hence, I reject the appeal on this issue of interest being not sustainable in the eyes of law.

13. In view of the facts and discussion herein foregoing paras, I uphold the impugned order in above terms and disposed off the appeal filed by the appellant accordingly.

(Gopi Nath)
Commissioner (Appeals)/
Additional Director General (Audit)

सत्यापित,
प्रवीण पोपट
अधीक्षक (अपील)

BY R.P.A.D.

To,
M/s Standard Buildcon,
"Standard House", Indira Marg,
Opp. Celebration Hotel,
Jamnagar.

Copy to:-
1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST, Rajkot.
3. The Commissioner (Appeals) Rajkot.
4. The Deputy Commissioner, CGST, Jamnagar.
5. The Assistant Commissioner (Systems), CGST, Rajkot.
6. Guard File.
7. P.A. File.