NATION ::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,					
्राम् IAA MARKET द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan,					
4	N WAN GO ED VISO D		रोड, / Race Course Ring Road,	सत्यमेव जयते	
	Tele Fax	<u>राजको</u> No. 0281 – 2477952/2	<u> マイス Rajkot – 360 001</u>	@amail.com	
1,1 ^{2,1} 1,1 ^{2,1}			441142 Email: cexappealsrajkot	@gman.com	
<u>रजिस्टर्ड डाक ए. डी. दवारा</u> :-					
क	अपील / फाइल संख्या / Appeal / File No.		मूल आदेश सं / O.I.O. No.	दिनांक /	
	V2/160/RAJ/2017		DC/JAM/R-416/2016-17	Date 06-02-2017	
ख	अपील आदेश संख्या	(Order-In-Appeal No)·		
ख अपील आदेश संख्या (Order-In-Appeal No.): <u>RAJ-EXCUS-000-APP-082-2018-19</u>					
	्र आदेश का दिनांक/ Date of Order:	14.05.2018	जारी करने की तारीख/ Date of issue:	15.05.2018	
		पुक्त (अपील्स), राजव Kumar Santosh,	कोट द्वारा पारित / Commissioner (Appeals), F	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,				
घ	_{Rajkot} / Jamnagar / Gar अपीलकर्ता & प्रतिव 1. Shri Vijay	ndhidham : ादी का नाम एवं पता ,	Name&Address of the Appell , Flat No. 401, Vraj Apartment,	ants & Respondent :-	
(A)	Any person aggrieved by	/ this Order-in-Appeal may	5 में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अभी file an appeal to the appropriate authority यायाधिकरण के प्रति अभील, केन्द्रीय उत्पाद शुल्क त निम्नलिखि+त जगह की जा सकती है ।/	in the following way.	
		cise & Service Tax Appella	ate Tribunal under Section 35B of CEA,		
(i)	वर्गीकरण मूल्यांकन से सम्ब 2, आर. के. पुरम, नई दिल्ल	न्धत सभी मामले सीमा शुल्क, व 1, को की जानी चाहिए 1/	केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्याया	धिकरण की विशेष पीठ, वेस्ट ब्लॉक नं	
	The special bench of C matters relating to class		Fax Appellate Tribunal of West Block No.	2, R.K. Puram, New Delhi in all	
(ii)	(सिस्टेट) की पश्चिम क्षेत्रीय	पीठिका, , द्वितीय तल, बहुमाली	ोष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्व भवन असार्वा अहमदाबाद- ३८००१६ को की जानी	चाहिए ।/	
			Service Tax Appellate Tribunal (CESTAT) er than as mentioned in para- 1(a) above	at, 2 nd Floor, Bhaumali Bhawan,	
(iii)	गये प्रपत्र EA-3 को चार प्रां और लगाया गया जुर्माना, रु रुपये, 5,000/- रुपये अथव ल्यायाधिकरण की शाखा के संबंधित ड्राफ्ट का भगतान, व	तेयों में दर्ज किया जाना चाहिए पए 5 लाख या उससे कम, 5 ल 1 10,000/- रुपये का निर्धारित सहायक रजिस्टार के नाम से कि	ग केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, । इनमें से कम से कम एक प्रति के साथ, जहां ाख रुपए या 50 लाख रुपए तक अथवा 50 लाख जमा शुल्क की प्रति संलग्न करें। निर्धारित सी भी सावजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित ए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा 1 ता करना होगा।/	उत्पाद शुल्क की मॉग ,ब्याज की मॉग रुपए से अधिक है तो क्रमश: 1,000/- शुल्क का भुगतान, संबंधित अपीलीय 1 बेंक ड्राफ्ट द्वारा किया जाना चाहिए ।	
	Excise (Appeal) Rules, 1,000/- Rs.5000/-, Rs.1 above 50 Lac respectiv sector bank of the place	2001 and shall be accomp 0,000/- where amount of o ely in the form of crossed e where the bench of any	d in quadruplicate in form EA-3 / as pre anied against one which at least should l duty demand/interest/penalty/refund is upto bank draft in favour of Asst. Registrar of nominated public sector bank of the place be accompanied by a fee of Rs. 500/	be accompanied by a fee of Rs. 5 5 Lac., 5 Lac to 50 Lac and f branch of any nominated public	
(B)	निर्धारित प्रपत्र S.T5 में च (उनमें से एक प्रति प्रमाणिर जुर्माना, रुपए 5 लाख या 3 रुपये अथवा 10,000/- रुपये महायक रजिस्टार के नाम रे	गर प्रतियों में की जा सकेशी एव होनी चाहिए) और इनमें से व तससे कम, 5 लाख रुपए या 50 का निर्धारित जमा शुल्क की प्रा 1 किसी भी सार्वजिनक क्षेत्र के बे चाहिए जहां संबंधित अपीतीय न	1994 की धारा 86(1) के अंतर्गत सेवाकर लियम र उसके साथ जिस आदेश के विरुद्ध अपील की ग जम से कम एक प्रति के साथ, जहां सेवाकर की लाख रुपए तक अथवा 50 लाख रुपए से अधिक ते संलग्न करें। निर्धारित शुल्क का मुगतान, संबंधि क द्वारा जारी रेखांकित बैंक झफ्ट द्वारा किया जा यायाधिकरण की शाखा स्थित है । स्थगन आदेश	यी हो, उसकी प्रति साथ में संलग्न करें मॉग, ड्याज की मॉग और लगाया गया 5 है तो क्रमश: 1,000/- रुपये, 5,000/- देत अपीलीय न्यायाधिकरण की शाखा के ता चाहिए । संबंधित इाफ्ट का भृगतान,	
	quadruplicate in Form s copy of the order appe	S.T.5 as prescribed under I ealed against (one of which	6 of the Finance Act, 1994, to the App Rule 9(1) of the Service Tax Rules, 1994, 1 shall be certified copy) and should be 2 demanded & penalty levied of Rs. 5 Lat	and Shall be accompanied by a a companied by a companied by a fees of Rs.	

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The appear under sub section (i) of section as on the mance Act, 1994, to the Appendic Theorem Companies of the accompanies 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 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 five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fity 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/-.

- वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के ज़ियम 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 सलग्न 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
- 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। (ii)
 - केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है धारा 11 डी के अंतर्गत रकम (i)

to file the appeal before the Appellate Tribunal.

- सेनवेट जमा की ली गई गलत राशि (ii)
- (iii)

(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 : amount determined under Section 11 D; (i)
- amount of erroneous Cenvat Credit taken; (ii)
- (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.

भारत सरकार को पुनरीक्षण आवेदन : (C)

(i)

109 of the Finance (No.2) Act, 1998.

Revision application to Government of India: इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर राचिव, 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:

- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगभन 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 (i)
- 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. (ii)
- 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. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इय्टी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गईं है और ऐसे आदेश जा 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।/ (iv) 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.
- 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 प्रतिया 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। / (v) 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.
- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए । जहाँ संतग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संतग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए । (vi) 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.
- यदि इस आदेश में कई मूल आदेशों का समावेश हैं 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. (D)
- यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-। 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. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सन्मिलित 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. (F)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए. अपीलार्थी विभागीय वेबसाइट (G) 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

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<u>:: ORDER-IN-APPEAL ::</u>

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M/s. Vijay Infra Projects Pvt. Ltd., Varaj Apartment, Flat No. 401, Saru Section Road, Opp. Police Quarter, Jamnagar (hereinafter referred to as "appellant") filed appeal against Order-in-Original No. DC/JAM/R-416/2016-17 dated 06.02.2017 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central Excise, Jamnagar (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the appellant, a service provider of construction services and works contract services to the Government authorities including Military Engineer Service (hereinafter referred to as "MES"), filed refund claim of Rs. 2,72,54,126/- in terms of Section 102 of the Finance Act, 1994 (hereinafter referred to as "the Act"), inserted vide Finance Act, 2016, in respect of service tax paid by them during the period from 01.04.2015 to 29.02.2016. SCN was issued to the appellant proposing rejection of refund claim on the grounds narrated in the SCN. The lower adjudicating authority, inter-alia, rejected refund claim on the following grounds:

(i) Entry No. 12A of Notification No. 9/2016-ST dated 01.03.2016 stipulates that the amendment shall come in to effect from 01.03.2016 and not retrospectively from 01.04.2015 to 29.02.2016 and hence, no refund claim arises at all;

(ii) Appellant did not provide the required documents such as agreements, all final bills and other relevant documents to establish that the service tax was paid in respect of services provided to the Government authority and to decide eligibility of the refund claim;

(iii) The appellant failed to provide proper quantification of the refund claimed and also failed to justify that the said amount was paid towards the services provided to the Government authority;

(iv) The appellant did not provide any evidence regarding service tax paid was in respect to contract made prior to 01.03.2015;

(v) The appellant provided taxable service and paid service tax under the category of works contract service, which is not falling within ambit of Section 102 of the Act;

(vi) The appellant has taken and utilized cenvat credit but no reversal under Rule 6(3) of Cenvat Credit Rules, 2004 has been made by them and they have also not produced any separate calculation/work-sheet for the cenvat credit;

(vii) Appellant charged service tax from the service receivers and thus it is not established that they have not passed on the incidence of service tax to the

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service receiver or to any other person and thus, refund claim was hit by the bar of unjust enrichment.

3. Being aggrieved with the impugned order, the appellant has filed appeal, inter-alia, on the ground that the impugned order has travelled beyond the scope of SCN; that Section 102 inserted in the Act by Finance Bill, 2016 is a selfcontained code and there is no pre-condition of non-availment of cenvat credit or reversal of cenvat credit to claim refund; that appellant had taken cenvat credit and utilized for payment of service tax when the project was taxable; that denial of refund on this ground is unlawful, being outside the scheme of Section 102 of the Act and is also against the judgement of the Hon'ble Supreme Court in the case of Ashok Iron & Steel Fabricators reported as 2003 (156) ELT A212 (SC) upholding the decision of Larger Bench of the Hon'ble CESTAT, New Delhi; that refund filed under Section 102 of the Act cannot be denied on this ground; that the lower adjudicating authority has noted at Para 7(iii) of the impugned order that the appellant had duly produced computation sheet giving complete information about contact, value of contract, amount of service tax paid etc. and hence, denial of refund on the ground of non-submission of such documents is not justified.

4. Personal hearing in the matter was attended to by Shri Vikas Mehta, Consultant, who reiterated the Grounds of Appeal and submitted that though the incidence of service tax has been passed on but department has no authority to retain the amount; hence, the case should be remanded for further adjudication by the lower adjudicating authority; that documents should be produced to show that the service tax has been returned to the service provider

Findings:

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the appellant. The issue to be decided is as to whether in the facts and circumstances of the case, the impugned order passed by the lower adjudicating authority rejecting refund claim filed by the appellant under Section 102 of the Finance Act, 2016 is correct or not.

6. The lower adjudicating authority has rejected refund claims on the ground of non-submission of the relevant documents, namely, copies of agreements/contracts, invoices, R.A. Bills, Final Bills etc. stating that the appellant submitted tender acceptance letters instead of relevant agreements/work contracts

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Appeal No. V2/160/RAJ/2017

awarded to them. I find that copies of agreements/contracts made between service provider and service receiver are important and vital document to decide refund claim as Section 102(1) grants retrospective exemption from payment of service tax on the services provided to the Government, Government authority or local government authority only if the contract was entered into on or before 01.03.2015. It is true that without the required documents, nature of work, category of services provided, date of agreement, whether value was/is inclusive or exclusive of service tax etc. cannot be ascertained and eligibility or otherwise of refund claim can not be decided. The lower adjudicating authority stated that the appellant failed to provide proper quantification of refund claimed and also failed to justify that the said amount was paid towards the services provided to the Government authority. I find that the appellant has not produced any evidence even in Appeal Memorandum establishing quantification of refund amount and justifying that the claimed amount was paid by them towards the services provided by them to the Government authority.

7. The lower adjudicating authority on the basis of ST-3 returns filed by the appellant, has stated that the appellant had taken and utilized cenvat credit towards payment of service tax but no reversal under Rule 6(3) of Cenvat Credit Rules, 2004 has been made by them. I find that appellant has not submitted copy of ST-3 returns with their appeal memorandum but contended that they were eligible for cenvat credit of input services as the cenvat credit had been taken and utilized by them when the output services were taxable and there is no need for reversal of cenvat credit in view of the decision of the Hon'ble CESTAT in the case of Ashok Iron & Steel Fabricators reported as 2002 (140) ELT 277 (Tri.-LB) duly affirmed by the Hon'ble Supreme Court reported as 2003 (156) ELT A 212 (SC). However, the facts of the present case are not similar to the facts of the case relied upon by the appellant. I am of the considered view that when the appellant has availed cenvat credit on the input services would enrich the appellant in unjust manner.

8. I find that the lower adjudicating authority has held in the impughed order that the appellant has passed on the incidence of service tax to the service receiver i.e. MES and therefore, refund claim is hit by the bar of unjust enrichment. The appellant during appeal proceedings has also admitted that they have passed on the incidence of service tax to the service receiver and received full amount of service tax paid from MES. In such circumstances, I find that the appellant is not entitled for refund of service tax paid by the appellant on works

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Appeal No. V2/160/RAJ/2017 terms of Section 11B(2)(e) of the

contract/construction service provided to MES in terms of Section 11B(2)(e) of the Central Excise Act, 1944, made applicable to the service tax matters under Section 83 of the Act.

9. I am, therefore, of the considered view that the appellant has failed to prove that the incidence of duty has not been passed on to any other person, which is essentially required for sanction of refund under Section 11B, read with Section 12B of the Central Excise Act, 1944 and made applicable to the service tax matters. Therefore, I find that the appeal filed by the appellant fails on doctrine of unjust enrichment also.

10. In view of above, I upheld the impugned order and reject the appeal filed by the appellant.

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

11. The appeal filed by the appellant is disposed off as above.

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(कुमार संतोष) आयुक्त (अपील्स)

By Regd. Post AD

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M/s. Vijay Infra Projects Pvt. Ltd.,	मे. विजय इन्फ्रा प्रोजेक्ट्स प्रा. ली.,			
Varaj Apartment, Flat No. 401,	वरज अपार्टमेंट, फ्लॅट नं. ४०१, सरु सेक्शन रोड,			
Saru Section Road,	पुलिस कवाटर के सामने,			
Opp. Police Quarter,	जामनगर			
Jamnagar.				

Copy for information and necessary action to:

1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.

2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot

3) The Assistant Commissioner, CGST & Central Excise Division, Jamnagar.

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