

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

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/201 to 205/RAJ/2017	62 to 66/ST/Ref/2017	23.02.2017

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

**RAJ-EXCUS-000-APP-084-TO-088-2018-19**

आदेश का दिनांक / Date of Order:	<b>18.05.2018</b>	जारी करने की तारीख / Date of issue:	<b>22.05.2018</b>
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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/Join/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**  
**M/s. Shree Gurukurpa Construction Co., 209, Sambhav Complex 2nd Floor Near Satyam Party Plot Nana Mava Main 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 मूल्योंकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद 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 बनाए 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- 380016 को की जानी चाहिए। /

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

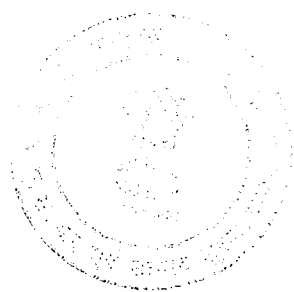
(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक हैं 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/-.

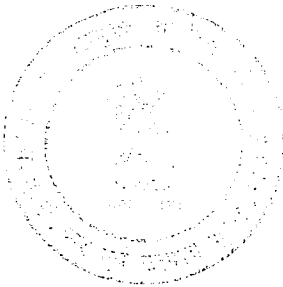
(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज 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 हैं 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 of 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 अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 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
- धारा 11 डी के अंतर्गत रकम
  - सेनवेट जमा की ली गई गलत राशि
  - 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 अर्जी एवं अपील को लागू नहीं होंगे। /
- 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;
  - amount of erroneous Cenvat Credit taken;
  - 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 परंतक 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:
- 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
  - 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.
  - 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.
  - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 तरीख अथवा समयावधि 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.
  - 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.
  - 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.
  - 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 नयाधिकरण 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, 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.
  - यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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-1 in terms of the Court Fee Act, 1975, as amended.
  - 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 ओर 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.
  - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)



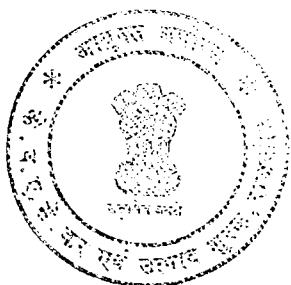
**:: ORDER-IN-APPEAL ::**

M/s. Shree Gurukrupa Construction Co., 209, 2<sup>nd</sup> Floor, Sambhaav Complex, Near Satyam Party Plot, Above SBI Bank, Nana Mava Main Road, Rajkot (hereinafter referred to as "appellant") has filed below mentioned appeals against Orders-in-Original (hereinafter referred to as 'impugned orders') shown against each appeal, passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Appeal No.	Description of service provided	Govt. Authority	Amount of Service Tax claimed to be refund (Rs.)
1	2	3	4	5
1	V2/205/RAJ/2017	Construction of 6 Work Shops & 12 Theory Rooms at ITI, Dashrath, Vadodara	EE, City R&B Div., Vadodara	3,94,177/-
2	V2/202/RAJ/2017	Construction of Electrical Department Building for AVPTI, Rajkot	EE, R&B Div, Rajkot	8,19,708/-
3	V2/204/RAJ/2017	Construction of Computer Centre for AVPTI, Rajkot	EE, R&B Div, Rajkot	5,51,346/-
4	V2/203/RAJ/2017	Construction of Mamlatdar Office Building, Sayla	EE, R&B Div., Surendranagar	1,48,989/-
5	V2/201/RAJ/2017	Construction of Taluka Court Building at Radhanpur	EE, R&B Div., Patan	5,74,320/-

2. The brief facts of the case are that the appellant, a service provider of construction services and works contract services to the Government, Government authorities and local government authorities, filed various refund claims 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. However, SCNs were issued to the appellant proposing rejection of refund claim on the grounds narrated in the SCNs. The lower adjudicating authority has, vide impugned orders rejected refund claims on the following grounds:

- (i) 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;
- (ii) Appellant has not provided the required documents such as payment



particulars of service tax and interest, copy of invoices issued under Rule 4A, copy of GAR-7 challans indicating date of payment of service tax for particular work, work completion certificate etc.;

(iii) RA Bills submitted by them were not signed by the service provider and the service receivers;

(iv) Appellant did not file refund claims of Rs. 5,74,320/-, Rs. 8,19,708/-, Rs. 1,48,989/-, Rs. 5,51,346/-, and Rs. 3,94,177/- within time limit prescribed under Section 102 of the Act;

(v) Appellant has 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 service receiver or to any other person.

3. The appellant, feeling aggrieved with the impugned orders, filed above five appeals, *inter-alia*, on the grounds that the impugned orders are non-speaking orders inasmuch as the same failed to deal with the submissions made by appellant; that Section 102 inserted in the Act by Finance Bill, 2016 is a self-contained code and there is no pre-condition of non-availment of cenvat credit or reversal of cenvat credit to claim refund; that the 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 appellant had produced copy of invoices issued under Rule 4A of Service Tax Rules, 1994, Challans under which service tax was paid, also ST-3 returns showing payment of service tax during the relevant period and had also explained the details of calculation, however, refund was denied by the lower adjudicating authority without giving due consideration to any of the submissions made by the appellant and refund was denied on trivial and inconsequential grounds; that the lower adjudicating authority has not disputed the fact of service tax paid by the appellant on construction service provided to various Government authorities and the appellant has not recovered any amount of service tax paid on the said construction service; that the lower adjudicating authority acknowledged that amount claimed as refund is shown as sum receivable in the balance sheets of the appellant; that the defect memos returning the claims and SCNs were issued after expiry of six months' time limit

prescribed under Section 102 of the Act and hence, appellant could not have complied with the same before expiry of six months; that appellant relied on decision in the case of Balmer Lawrie & Co. Ltd. reported as 2015 (315) ELT 100 (Tri. Kol.) wherein, it is held that claim re-filed after removal of defects cannot be rejected on the ground of time bar and original date when refund claim was filed for the first time must be reckoned as date of filing of refund.

4. Personal hearing in the matter was attended to by Shri Vikas Mehta, Consultant, who reiterated the Grounds of Appeal and submitted that they have not collected service tax from service recipients or any other person; that they will submit additional submissions including all certificates relevant for the case.

4.1 The appellant vide letter dated 02.05.2018 has, *inter-alia*, submitted additional submissions as under:

(i) The appellant had taken cenvat credit of Rs. 6,37,721/-; Rs. 25,442/- and Rs. 11,967/- on input services used for providing specified services in respect of projects as mentioned in impugned order No. (i) 62/ST/REF/2017 dated 23.02.2017; (ii) 65/ST/REF/2017 dated 23.02.2017 and (iii) 66/ST/REF/2017 dated 23.02.2017 respectively at the time when projects were taxable.

(ii) The appellant had already submitted certificates issued by the Chartered Accountant that they has not received any service tax from any other person for which refund has been claimed. The appellant also submitted certificates issued by the service recipients, which clearly stated that no service tax has been paid by the service recipients as under:

(a) Certificate dated 19.04.2018 issued by Executive Engineer, City (R&B) Division, Vadodara in respect of construction of 6 workshops and 12 theory rooms for ITI at Dashrath, Vadodara;

(b) Certificate No. AB Tender/1933 dated 10.04.2018 issued by Executive Engineer, Rajkot City (R&B) Division, Rajkot in respect of construction of computer centre for AVPTI, Rajkot;

(c) Certificate No. AB Tender/1934 dated 10.04.2018 issued by Executive Engineer, Rajkot City (R&B) Division, Rajkot in respect of construction of Electrical Department Building for AVPTI, Rajkot.

#### **FINDINGS: -**

5. I have carefully gone through the facts of the case, impugned order, appeal filed by the appellant and written as well as oral submissions made by the

appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned orders passed by the lower adjudicating authority rejecting refund claims filed by the appellant under Section 102 of the Finance Act, 2016 are correct or not.

6. I find that the lower adjudicating authority has rejected refund claims on the ground of non-submission of the relevant documents whereas the appellant had submitted copy of agreement/letter of award establishing that the services were provided to the Government authorities, copy of relevant R.A. Bills, copy of GAR-7 challans evidencing payment of service tax by the appellant, work-sheet establishing correlation of payment particulars of service tax for the work undertaken by the appellant, certificate of chartered accountant certifying that the incidence of service tax has not been passed on to the service receivers or to any other person, copy of audited balance sheet for FY 2015-16 showing amount as service tax 'receivable' in 'current assets', copy of ST-3 returns showing details of services provided and payment of service tax made during FY 2015-16, etc. Hence, I find that appellant had submitted the required and relevant documents along with their refund claims.

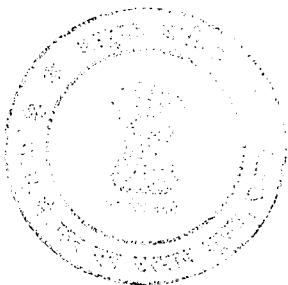
7. I find that lower adjudicating authority has rejected refund claims filed by appellant also on the ground of time bar in terms of Section 102(3) of the Act. The appellant contended that the refund claims were filed by them in time as per Section 102(3) of the Act, however, defect memos returning the claims and SCNs were issued after expiry of six months time limit prescribed under Section 102(3) of the Act and hence, they could not have complied with the same before expiry of six months and that claims re-filed after removal of defects cannot be rejected on the ground of time bar as original date when refund claim was filed for the first time is required be reckoned as date of filing of refund. I find that impugned refund claims were initially filed by the appellant on 10.11.2016 and this is well within time limit of six month stipulated under Section 102(3) of the Act and therefore, refund claims are not time barred. Hence, I set aside the impugned orders rejecting refund claims on the ground of time bar.

8. I find that appellant has submitted copy of project-wise Certificates issued by Chartered Accountant certifying that appellant has not received service tax paid by them towards works contract/construction services from Government, Government authority or local government authority or from any person. The

appellant has also submitted copy of Audited Balance Sheet for FY 2015-16 wherein service tax amount was accounted for in current assets as 'service tax receivable from revenue authorities'. This establishes that the incidence of service tax has not been passed on to any other person. The appellant has also submitted copy of Certificate dated 19.01.2018 issued by the Executive Engineer, City (R&B) Division, Vadodara (project: construction of 6 workshops and 12 theory rooms for ITI, Dashrath, Vadodara); Certificate dated 10.04.2018 issued by the Executive Engineer, Rajkot City (R&B) Division, Rajkot (project: construction of computer center with furniture for AVPTI, Rajkot) and Certificate dated 10.04.2018 issued by the Executive Engineer, Rajkot City (R&B) Division, Rajkot (project: construction of electrical department building for AVPTI, Rajkot) certifying that no service tax has been paid by them to the appellant, which prove their claim that incidence of service tax has been borne by the appellant and has not been passed on to the service receivers or to any other person.

8.1 I find that service tax was exempted when contracts/letter of award for providing construction/works contract services provided to the Government authority had been entered into. The contract price was not revised/amended when exemption from payment of service tax was withdrawn. It is a fact that the appellant has not charged service tax in R.A. Bills issued to such Government authority. Hence, in view of these documentary evidences produced by the appellant, I find that appellant has successfully proved that they have not passed on the incidence of service tax to the service recipients or to any other person. Thus, I find that the refund claims are not hit by bar of unjust enrichment.

9. The lower adjudicating authority has stated that the appellant has 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 whereas I find that ST-3 returns for half-year ending September, 2015 and March, 2016 indicate that they have taken cenvat credit of Rs. 6,37,721/- (project: construction of computer centre at AVPTI, Rajkot); Rs. 25,442/- (project: construction of Taluka Court Building, Radhanpur) and Rs. 11,976/- (project: construction of 6 workshops and 12 theory rooms at ITI, Dashrath, Vadodara) - total Rs. 6,75,139/- in respect of service tax paid on the input services which were utilised towards providing works contract/construction service for three projects only out of five projects for which refund had been claimed. Appellant relied on 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, wherein it has been held that when credit availed and utilised during the period when final products dutiable, credit was not required to be reversed when final product got exemption from duty subsequently. I find that issue in the referred case was whether credit availed and utilised under the Modvat Scheme during the period when the final products were dutiable was required to be reversed when subsequently the final product got exempted from duty. In the instant case, the service provided by the appellant to the Government was retrospectively exempted and hence appellant filed refund claim of service tax paid on service provided to the Government. Hence, ratio of the said judgment is not applicable directly in the instant case.

10. I find that the appellant has availed cenvat credit on input services and the same was not reversed by the appellant and hence, refund of service tax without adjusting cenvat credit from the claimed amount would enrich the appellant unjustly. Hence, I hold that refund claim of Rs. 24,21,912/- is required to be restricted by Rs. 6,75,139/- i.e. amount of cenvat credit availed on the input services.

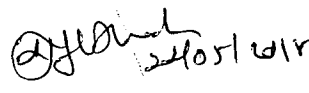
11. The appellant has claimed refund of interest paid by them towards late payment of service tax leviable at the material time. Section 102(1) of the Act grants retrospective exemption in respect of taxable services provided to the Government, Government authority or a local government authority and Section 102(2) of the Act very clearly states that refund shall be made of all such service tax which has been collected but which would not have been so collected had Section 102 (1) been in force at all material time. In the instant case, the appellant had not paid service tax on taxable services provided by them to various Government authorities within the time limit prescribed under Service Tax Rules, 1994 and therefore they were liable to pay interest amount. The statutory provisions exempt levy of service tax retrospectively for the service tax paid but not interest paid on such tax. Hence, I hold that the appellant is not entitled for refund of interest under Section 102 of the Act.

12. In view of above, I allow appeals for refund of service tax paid by the appellant with consequential relief restricting the refund by the amount of cenvat credit taken on input services but reject appeal for refund of interest paid due to

delayed payment of service tax having not been provided under Section 102 of the Act.

१२.१ अपीलकर्ता द्वारा दर्ज की गई उपरोक्त अपीलस का निपटारा उपरोक्त तरीके से किया जाता है।

12.1 The appeals filed by the appellant are disposed off as above.

 24/05/2018  
(कुमार सतोष)  
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s.Shree Gurukrupa Construction Co.,  
209, 2<sup>nd</sup> Floor, Sambhaav Complex,  
Near Satyam Party Plot,  
Above SBI Bank,  
Nana Mava Main Road, Rajkot

मे. श्री गुरुकृपा कन्स्ट्रक्शन कू.,  
२०९, दूसरी मंजिल, समभाव कॉम्प्लेक्स,  
सत्यम पार्टी प्लॉट के पास,  
एसबीआई बैंक के ऊपर,  
नाना मवा मेईन रोड, राजकोट.

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-I, Rajkot.
- (4) Guard file.

