



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date .
	V2/109 to 112, 118 to 120/RAJ/2017	12-18/ST/Ref/2017	16.01.2017
	V2/207/RAJ/2017	60/ST/REF/2017	22.02.2017
	V2/208,209/RAJ/2017	56,57/ST/REF/2017	20.02.2017
	V2/210,211/RAJ/2017	59,58/ST/REF/2017	21.02.2017

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

RAJ-EXCUS-000-APP-089-TO-100-2018-19

आदेश का दिनांक /
Date of Order: **18.05.2018**

जारी करने की तारीख /
Date of issue: **22.05.2018**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**

M/s. Shanti Structure P. Ltd., 205, Sanskar, Opp : K.K.V. Hall 150 Feet Ring Road Kalawad Road ,Rajkot -360 005

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।।

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।।

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 3८००१६ 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 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 नियमावली, 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 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 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 अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो कि 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

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

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय स्थगन अर्ज़ी 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 :

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

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

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत अवरोधित, 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, जहाँ 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 छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

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

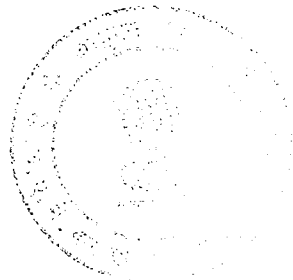
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs.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

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-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-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमवाली, 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.

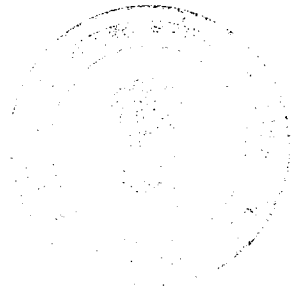
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER-IN-APPEAL ::

M/s. Shanti Structure Pvt. Ltd., 205, Sanskar, Opp. KKV Hall, 150 Feet Ring Road, Kalawad Road, Rajkot – 360 005 (hereinafter referred to as “appellant”) has filed below mentioned appeals against Orders-in-Original No. (hereinafter referred to as ‘impugned order’) 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.	OIO No.	Description of service provided	Government Authority/ Local Authority	Amount of Service Tax claimed for refund (Rs.)	Amount of interest claimed for refund (Rs.)
1	2	3	4	5	6	7
1	V2/109/RAJ/2017	18/ST/REF/2017 dated 16.01.17	Construction of new library building at SVNIT, Surat	NBCC (India) Ltd.	65,04,389	1,63,410
2	V2/110/RAJ/2017	13/ST/REF/2017 dated 16.01.17	Providing Stainless Steel Space Frame Structure for SVNIT, Surat	Prasar Bharti, All India Radio	24,29,832	1,21,726
3	V2/111/RAJ/2017	12/ST/REF/2017 dated 16.01.17	Construction of class rooms at Primary Schools in various village of Junagadh District	Gujarat Council of Elementary Education	2,88,572	5,018
4	V2/112/RAJ/2017	14/ST/REF/2017 dated 16.01.17	Conversion of Garbage Transfer Station into semi-closed Garbage Transfer Station	Rajkot Municipal Corporation	3,00,972	3,493
5	V2/118/RAJ/2017	16/ST/REF/2017 dated 16.01.17	Construction of Transit Hostel Facility at Diu	CPWD, Diu	21,014	891
6	V2/119/RAJ/2017	15/ST/REF/2017 dated 16.01.17	Construction of Hospital at Diu	Omnibus Industrial Development Corporation	---	1,80,476
7	V2/120/RAJ/2017	17/ST/REF/2017 dated 16.01.17	Construction of Balance Perimeter Road (Phase-III) at Surat	Airport Authority of India	---	8,106
8	V2/207/RAJ/2017	60/ST/REF/2017 dated 22.02.17	Construction of sub-centre building at Lakhtar, District Surendranagar	Project Implementation Unit, Gandhinagar	48,720	1,270
9	V2/208/RAJ/2017	56/ST/REF/2017 dated 20.02.17	Construction of Modal School Building at Patdi, District – Surendranagar	Executive Engineer, R & B Division, Surendranagar	2,70,041	158
10	V2/209/RAJ/2017	57/ST/REF/2017 dated 20.02.17	Construction of Govt. Higher Secondary School at Patdi, Surendranagar	Executive Engineer, R & B Division, Surendranagar	4,00,004	--
11	V2/210/RAJ/2017	59/ST/REF/2017 dated 21.02.17	Construction of Model School Building at Lakhtar, District –	Executive Engineer, R & B	6,16,092	--



			Surendranagar	Division, Surendranagar		
12	V2/211/RAJ/2017	58/ST/REF/2017 dated 21.02.17	Construction of Govt. Higher Secondary School at Madhada, Bhavnagar	Executive Engineer, R & B Division, Bhavnagar	16,238	250

2. The brief facts of the case are that appellant, a service provider of construction services and works contract services to Government, Government authorities and to 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. 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 particular 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 etc.;

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

(iv) Appellant did not produce supporting documents regarding status of service receivers, therefore, it cannot be proved that appellant has provided services to the Government authority or local government authority;

(v) Appellant did not file refund claims of Rs. 49,990, Rs. 2,70,199, Rs. 4,00,004, Rs. 6,16,092 and Rs. 16,238 within time limit prescribed under Section 102 of the Act;

(vi) 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. Being aggrieved with the impugned order, the appellant has filed appeal, *inter-alia*, on the ground that the impugned orders are non-speaking orders inasmuch as the same failed to deal with the submissions made by appellant in reply to SCNs as well as written submissions; that Section 102 inserted in the Act by Finance Bill, 2016 is a self-contained code and there is no pre-condition of non-avilment 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 it is evident from ST-3 returns for the months from October, 2015 to March, 2016 that appellant reversed balance cenvat credit of service tax of Rs. 5,27,905/- and balance cenvat credit of Education Cess of Rs. 4,416/- after utilizing cenvat credit of service tax of Rs. 3,41,441/- towards payment of service tax on construction service under reference; 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 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 services provided to various Government authorities and local government authorities and that the appellant has not recovered any amount towards service tax paid on the said construction service; 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 taken cenvat credit of service tax paid on common input services like Telephone services, etc.; he also submitted that they have not collected any amount of service tax paid by them from service recipients; that this amount has been shown by them as sum receivable from the department under current assets in their Balance Sheet; that cenvat credit taken has been/being reversed by them appropriately and all relevant documents will be submitted as additional submissions though submitted to adjudicating authority.

4.1 Appellant in their additional submissions, submitted Certificate dated 28.03.2018 issued by S.C. Makhecha & Associates, Chartered Accounts certifying that out of total cenvat credit of Rs. 12,05,748/- availed during April, 2015 to September, 2015, cenvat credit of Rs. 6,69,201/- was utilized in the same period and refund to the extent is not claimed, Balance Sheet for FY 2015-16 showing Rs. 1,43,57,971/- as service tax receivable from the department vide Note No. 13 – Current Assets – Deposits of their

Balance Sheet and copy of ST-3 returns for half year ending 30.09.2015 and 31.03.2016 and relied upon decision of Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. reported as 1996 (81) ELT 3 (SC) and submitted that credit reversed would amount to not taking the credit; that for remaining 09 projects, they have not taken any cenvat credit as also certified by Chartered Accountant; that they have not received service tax from service receivers or from any other person and service tax has been shown as deposit receivable from the department in their Balance Sheet for FY 2015-16.

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. The lower adjudicating authority has rejected refund claims on the ground of non-submission of the relevant documents. I find that the appellant had submitted copy of agreement/letter of award establishing that the services were provided to the Government, Government authorities and local government authorities, copy of relevant R.A. Bills issued during 01.04.2015 to 29.02.2016, copy of GAR-7 challans evidencing payment of service tax, Work-sheet establishing correlation of payment particulars of service tax for the work undertaken by 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 service undertaken, payment of service tax made by the appellant during FY 2015-16, etc. Hence, I find that appellant has submitted the required and relevant documents along with their refund claims.

7. The lower adjudicating authority has observed 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 appellant has submitted ST-3 returns for half-year ending September, 2015 and March, 2016 and Certificate dated 28.03.2018 issued by S.C. Makhecha & Associates, Chartered Accountants certifying that the appellant has taken cenvat credit of Rs. 2,82,810/- in respect of service tax paid on input services which were used towards providing works contract/construction service for one project only out of ten projects for which refunds have been claimed; that appellant vide their reply to SCN vide letter dated 17.01.2017 had submitted that they had utilized cenvat credit of Rs. 3,41,441/- towards payment of service tax liability of works contract/construction service provided to NBCC (India)



Limited and hence, they have restricted their refund claim to the extent of service tax paid in cash and they have not claimed refund of service tax paid through cenvat credit. The said certificate also certifies that appellant has totally taken cenvat credit of Rs. 12,05,748/- during the impugned period which were used in providing various taxable services, out of which cenvat credit of Rs. 6,69,201/- was utilized towards payment of service tax liability and Rs. 5,32,321/- lying in balance was reversed by them as shown in ST-3 return of October, 2015 to March, 2016. Hence, I find that the appellant has claimed refund of service tax of that amount only, which was paid by them in cash and they had reversed balance of cenvat credit of service tax availed on input services used for providing this output service. The appellant has also submitted that they have not availed cenvat credit on common inputs and common input services which were used to provide taxable and exempted output services. Hence, I find that appellant has sufficiently complied with the provisions of Cenvat Credit Rules, 2004 and therefore, the refund claims of service tax paid by the appellant filed under Section 102 of the Act cannot be denied to them on ground of cenvat credit.

8. The lower adjudicating authority has denied refund claims filed under Section 102 of the Act also on the ground that appellant has not produced any supporting documents regarding status of service receivers and therefore, it cannot be proved that appellant has provided services to Government, Government authority or local government authority. I find that rejection of refund claim on this ground is not tenable at all since the appellant has claimed refund of service tax paid for the services provided under works contract/construction service to Prasar Bharti, All India Radio, CPWD, NBCC (India) Limited, R & B Division of Government of Gujarat, Project Implementation Unit of Government of Gujarat, Rajkot Municipal Corporation. I find that Prasar Bharti and All India Radio are Government department working under Ministry of Information & Broadcasting, Government of India and CPWD is Government department working under Ministry of Housing and Urban Development of Government of India, that Road & Building Division is working under Ministry of Roads and Buildings, Government of Gujarat; that Gujarat Council of Elementary Education is a state level society established by the Government of Gujarat to carry out implementation of projects in the education sector in the state of Gujarat; that Project implementation unit, Gandhinagar is a state level authority established by the Government of Gujarat to carry out implementation of projects in the health sector in the state of Gujarat; that NBCC (India) Limited is a Government undertaking/authority under Government of India to carry out implementation of Government projects. These all are Government or Government authority whereas Rajkot Municipal Corporation is a local government authority. Hence, rejection of refund claims on this count is not sustainable at all.

9. I find that lower adjudicating authority has also rejected refund claims filed by appellant on the ground of time bar in terms of Section 102(3) of the Act vide Orders-in-



Original No. 56/ST/REF/2017 to 60/ST/REF/2017 dated 20.02.2017 to 20.02.2017. The appellant contended 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, they could not have complied with the same before expiry of six months and 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. I find that impugned refund claims were initially filed by the appellant on 09.11.2016 and this is well within time limit of six month stipulated under Section 102(3) of the Act and therefore, refund claims cannot be held time barred as per settled legal position. Hence, I set aside the impugned orders rejecting refund claims on the ground of time bar.

10. I also 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 service 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' and also submitted copy of letters issued by service receivers such as NBCC (India) Limited, Prasar Bharti, etc. clarifying that they have not made any reimbursement of service tax to the appellant substantiating their claim that incidence of service tax has been borne by them and has not been passed on to service receivers or to any other person. I find that service tax was exempted when contracts/letter of award for providing construction/works contract service provided to the Government, Government authority or local government authority had been entered into. The contract price was not revised/amended when exemption from payment of service tax was withdrawn. I also find that the appellant has not charged amount representing service tax in their R.A. Bills issued to such Government, Government authority or a local 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 service recipient or to any other person. Thus, I find that the refund claims are not hit by bar of unjust enrichment.

11. It is observed that appellant has claimed refund of interest paid by them towards late payment of service tax. I find that the interest amount paid by them was 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. 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 and not interest paid on such tax. Hence, I hold that the appellant is not entitled for refund of interest paid by them.

12. In view of above, I allow appeals for refund of service tax claimed by the appellant with consequential relief and set aside the impugned order in this regard. However, I hold that the appellant is not entitled for refund of interest paid by them and therefore, I reject appeals to this extent.

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.

(Handwritten Signature)
18/11/2018
(कुमार संतोष)
आयुक्त (अपील्स)

(Handwritten Signature)
R215112

By Regd. Post AD
To,

M/s. Shanti Structure Pvt. Ltd.,
205, Sanskar, Opp. KKV Hall,
150 Feet Ring Road, Kalawad Road,
Rajkot - 360 005

मे. शांति स्ट्रक्चर प्रा. लिमिटेड,
२०५, संस्कार, केकेवी हॉल के सामने,
१५० फीट रिंग रोड, कालावाड रोड,
राजकोट - ३६० ००५

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise Commissionerate, Rajkot
- 3) The Assistant Commissioner, CGST & Central Excise, Division-I, Rajkot.
- 4) Guard file.

