



::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

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/176 /RAJ/2017	मूल आदेश सं / O.I.O. No. DC/JAM/R-439/2016-17	दिनांक / Date 14-02-2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-129-2018-19

आदेश का दिनांक / Date of Order:	19.06.2018	जारी करने की तारीख / Date of issue:	27.06.2018
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Passed by **Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar**

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 चन्द्रकान्त वलवी, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, भावनगर को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय 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 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar 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. Magnus Enterrpise, J/16-1673, Ranjit Nagar, Jamnagar, ,

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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" 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 होगा।

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 मामले 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 an 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 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 तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेट्री कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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 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. Magnus Enterprise, J/16-1673, Ranjit Nagar, Jamnagar (hereinafter referred to as '**the appellant** ') registered as service providers and holding Service Tax registration No. AAJFM4203GSD001 filed a present appeal against the Order in Original No. DC/JAM/R-439/2016-17, dated 14.02.2017 (hereinafter referred to as '**the impugned order**') passed by the Deputy Commissioner, Central Excise Division, Jamnagar (hereinafter referred to as '**the Lower Adjudicating Authority**').

2. The facts of the case are that the appellant filed a refund claim of **Rs. 4,32,741/-** of Service Tax on account of retrospective exemptions granted to the Service Provided to the Government Department and local Authorities as provided in the Section 102 Finance Act, 1994 as amended vide Section 159 of the Finance Act, 2016. On scrutiny of the refund claim, it was found by the lower adjudicating that the appellant was required to submit following documents/ information and they have not submitted the same.

- i. The copies of relevant contract of relevant contracts/ agreements with terms & conditions duly stamp duty paid, since the refund is to be granted only in respect of contracts entered prior to 01.03.2015 which is mandatory requirement.
- ii. Evidence of Service Tax payment in respect of Service provided to the Government organization for which refund claim filed.
- iii. Invoice/ Bill raised by them to the Government authority. It is not forthcoming the date on which the tax was required to be paid and correlation thereof with Service Tax paid.
- iv. Detailed calculation sheet detailing contract-wise / Bill wise payments received and service tax thereon payable. The appellant has not submitted any details regarding their total gross income and actual service tax payable thereon and further they have not specified gross income on which they had made the excess payment of service tax then of actual required to be made and merely on submission of Service Tax payment Challans , the claim has been filed. The appellant has not submitted any evidence / calculation sheet to that effect that the refund claimed is part of the Service Tax returns filed by them.
- v. Nothing is forthcoming from the records , whether the appellant has reversed CENVAT credit amount towards the services so exempted retrospectively.
- vi. The appellant has not mentioned specific service category under which they have provided service to the Government and now claimed as Refund.
- vii. Application Form-R in duplicate
- viii. All final bills and RA bills raised by the Government authority.

3. The above observation culminated into issuance of Show Cause Notice No. V.44(18) 65 /Refund/2016-17 dated 22.12.2016 for rejection of refund claim. The

said show cause notices was adjudicated by the proper adjudicating authority vide the impugned order, under which the Refund claim of Service Tax, amounting to **Rs. 4,32,741/-** was rejected.

4. Being aggrieved by the impugned order, the appellant filed the present appeals, *inter alia*, on the following grounds:

As per submission made with appeal memorandum filed on 13.04.2017

4.1 Appellant submitted that their firm is doing construction work on contract basis and the firm is Approved Civil Contractor in various Government Organization like Military Engineer Service, etc. During the Financial Year 2015-16, their firm has carried out construction contract & sub contract of Military Engineers Service.

4.2 Appellant submitted that there was no Service Tax liability for Construction Services provided to Government contract upto 28/02/2015. However in Finance Act, 2015 and Vide Notification No. 06 of 2015, Hon'ble Finance Minister withdraws the exemption *in respect of services provided to the government, a local authority or a government authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration.*

4.3 Appellant submitted that they have paid Service Tax in Financial Year 2015-16 on construction service provided to Military Engineers Service. They referred the Section 102 of the Finance Act, 1994. In context to Section 102 of Finance Act, 2016, they have filled refund claim vide application dated 10/11/2016 which was rejected by the lower adjudicating authority vide impugned order.

4.4 Appellant submitted that they have submitted the copy of Extract of IAFW – 2249, Condition 2-A & 3 of IAFW – 2249 (General Condition of Contract) apply to all the contractors. As per these conditions, they are not in position to provide classified documents without prior approval of Engineer-in-charge of Military Engineering Service.

In addition to above, the appellant also requested concerned Military Engineering Service authority to provide agreement / contract document to submit to service tax department. However concerned Military Engineer Service authority replied that they also asked their higher authority and reply will follow. However as stated above due to secrecy clause, they are unable to produce agreement / contract. But still waiting from Military Engineering Service's higher authority to give permission to provide agreement / contract copy. Appellant submitted that they provide Running Bills issued by Military Service Engineer & bills for the same Running Bills in which, they did not charge Service Tax. Letter from Garrison Engineer indicating that the Stamp Duty not apply to Military Engineering Service



Appellant further submitted that they have paid Rs.58,870/- vide challan No. 62785 dated 31/03/2016 for their bill dated 17/02/2016. Service tax previously apply till 28/02/2016 and on that ground they paid the same and now apply for refund.

4.5 Appellant submitted that they have already provided one Form R before the lower adjudicating authority, which was supported by their bills, service tax calculation sheet and Running bills. Service tax calculation sheet was clearly indicate following columns:


- i) Gross amount received / charged as per our bill
- ii) Service Tax payable & percentage of Service Tax.
- iii) Amount of Interest paid
- iv) All payable amount paid by challan (Specific details of challan like Bank Name, BSR Code, Date, Amount of Service Tax etc.)

4.6 As regard, gross value and abated value after claiming abatement of 70 % on the total value, appellant submitted that they did not claim any abatement in respect of service tax , but they have taken valuation as per Determination of Valuation Rule 2A. As per determination of Valuation Rule 2A service tax should be paid on 70% of value of work contract for repairing & maintenance work. They also paid service tax on 70% value of contract.

4.7 As regard findings of the lower adjudicating authority, the appellant have paid Rs. 3,32,220/- under the category "Repair & Maintenance Service" & Rs.11,11,060/- under the category of "Works Contract Service", appellant submitted that their work for repair & maintenance of construction work. Their service was covered under "Works Contract Service".

4.8 Appellant submitted that their service categories covered under Section 102 of the Finance Act, 1994 and appellant also referred definition of works contract service referring section 65(105)(zzzza). Appellant further submitted that *their service of work Contract falls under section 102(1)(a) a civil or any other original work meant predominantly for use other than for commerce, industry or any other business or profession.* This was also properly mentioned in their Bills and also in Running Bills which was provided with Form – R .

4.9 Appellant submitted that they haven't claimed any abatement but have taken valuation as per determination of Valuation Rule 2A. They provided calculation sheet which clearly indicate the valuation and service tax. They have claimed for service tax refund for four bills only hence the same may not co-relate directly in ST-3, but the same is Part of ST-3 return.



4.10 Appellant submitted that Section 102 of Finance Act, 1994 provides the Special provision for exemption in certain cases relating to the construction of government buildings with retrospective effect from 01/04/2015, wherein it was provided that the period from 01/04/2015 to 29/02/2016 (both days inclusive) relates to such services, is to be refunded to the service provider. As the special provision grants exemption retrospectively from 01/04/2015 means they have no liability to pay Service Tax in certain cases as mentioned in Section 102 of Finance Act, 1994. When there was no tax liability there was no liability of interest also.

4.11 As per the lower adjudicating authority, the Service Tax Amount claimed as refund are not shown as "Receivable". In this regard, appellant submitted that they have taken Service Tax Expenses under the head Indirect Expenses in Profit & Loss Account, which clearly indicate that they have not passed the burden of Service Tax to other person. They have taken the Service tax as expenses out and when they would receive the same, they would take the refund as Income by applying Income Tax Act, 1961. They also provided all bills and Running bills duly signed by Military Engineering Service authority with Form – R. They were not charging any Service Tax with bill. They also provided service tax calculation sheet. In calculation sheet, they calculated service tax on Gross amount received from Military Engineering Service and paid the same. Appellant submitted that this clearly shows that they did not charged service tax from customers. In section 11B nowhere mentioned that the amount of Refund claim was not to be expenses out. The section only check the unjust enrichment about the burden of duty which had not passed on to any other person. Appellant submitted that in their case, they just expenses out the amount of Service Tax and they will reverse the same as and when they get the refund and will show as Income, under Income Tax Act, 1961.

As per additional submission filed on 23.01.2018 during the course of personal hearing.

4.12 Appellant has submitted that they have produced Running bills which was passes by MES and on the basis of which contract payment release by Account Department of MES. Running bill contains all the information like Contract No, Contract Date, Nature of Service, Amount of service etc.

4.13 Appellant has submitted that the Section 102 of the Finance Act, nowhere speak about the necessity to produce agreement only, for claiming refund, but if agreement was not available as mentioned in the Appeal filed for the reason, then other documents which were provided, as per section 102 have also not considered by lower adjudicating authority.

4.14 Appellant has submitted that out of refund claim of Rs.4,32,741/-, they have paid Rs.58,870/- vide challan No. 62785 dated 31/03/2016 under the category of 'Works Contract Service' was for the RAR and Invoice dated 30/01/2016 and amount received

on 17/02/2015 i.e. before 29/02/2015 and liable for Service Tax. The same was indicated in refund chart provided with service tax refund application. Chart showing refund claim submitted with the submission .

4.15 Appellant has submitted that in respect of proper quantification of refund amount claimed, they have provided chart (Chart submitted with the submission) with the following columns:

- 1) Contract Number and Name of Work
- 2) Name of authority paying and type of work
- 3) Gross amount of bill including TDS
- 4) Percentage of service tax,
- 5) Service tax amount,
- 6) Additional amount (Interest, Cess, etc)
- 7) Total amount of challan paid,
- 8) Date of payment received from MES department,
- 9) Challan no and date of challan,
- 10) BSR code and bank name,
- 11) Remarks, if any. Etc.

Appellant submitted that these columns are sufficient for quantification of refund amount with all the relevant details and they have not claimed abatement and therefore there is no need to mention the Notification number of abatement. However they have taken 70% of gross amount for works contract service on the basis of Valuation Rule 2A.

Appellant further submitted that they have just received RAR from MES authority, i.e. Government authority and also attached reconciliation of 26AS with Bank Statement, wherein name of Government authority who paid them after deducting TDS and Bank statement matches that amount with their Bill. These may clear that the amount was actually received from Government authority for services provided to Government authority.

4.16 Appellant has submitted that as per definition of Works contract service includes the nature of service which was there in section 102 of the finance act. Lower adjudicating authority failed to see the nature of service and not any specific name / category of service and simply write that refund claim is not admissible in light of the enabling provision.

4.17 Appellant has submitted that ;

- (a) In ST-3 for Apr-15 to Sept-15, they have not taken any abatement for 'Works Contract Service' so there was no question of declaration of Notification, however lower adjudicating authority did not ask the same in either show cause or during personal hearing.



(Handwritten signature)

- (b) In ST-3 for Oct-16 to Mar-16, they have not taken any abatement for 'Repair & Maintenance Service' so there was no question of declaration of Notification, however lower adjudicating authority did not ask the same in either show cause or during personal hearing.
- (c) In ST-3 for Oct-15 to Mar-16, they have not taken any abatement for 'Works Contract Service' so there was no question of declaration of Notification, however lower adjudicating authority did not ask the same in either show cause or during personal hearing.
- (d) They have provide both half yearly ST-3 return of Apr-15 to Sept-15 and Oct-15 to Mar-16 indicating quarterly details of service category wise taxable value, tax rate, service tax payable, service tax paid by which challan etc. They also produce a chart for which , they claim refund and in the chart they give full details of contract and taxable value on which service tax paid and also mentioned the challan by which such service tax was paid for which they claim refund. It was very clear to correlate and reconcile the service tax challan paid with the amount of refund. However lower adjudicating authority did not ask the same either in Show Cause Notice or during personal hearing.

4.18 Appellant has submitted that they have paid interest on delay payment of service after due date of payment. However the service tax liability was cease to exist due to restoration of exemption and therefore no interest liability exist and the refund of the same should be granted under Section 102.

4.19 Appellant has also submitted that with the refund application, they have submitted Form 'R' with RAR of MES and Invoice raised by them. In RAR and Invoice raised they have not charged any Service tax from MES. As all the contract for which refund was claimed was passed before 01/03/2015, and before that date all contract comes under exemption Notification No. 25/2012-ST Sr. No. 12, hence exempt. It was clear from bills that they have not charged the service tax from MES i.e. they have not passed the burden of service tax on customers.

They attached certificate given by MES authority, in which they declared that No refund of Service Tax was made for following contract for which , they claim refund amount of Rs.4,32,741/-

Sr. No.	Contract No.
1	GE(AF)/J/34 of 2013-14
2	CWE(AF) BHUJ/Jam/60 of 2014-15
3	GE(AF)/J/65 of 2013-14
4	GE(AF)JAM/58 of 2013-14

Appellant further submitted that they have paid service tax and write off as expenses, as service tax refund was not ascertained. When they receive Service Tax

Refund, they claim the same Income in their books of accounts. It was very much clear from the above that the burden of service tax paid was not passed on to customers.

4.20 Appellant has submitted a copy of refund order issued by Assistance Commissioner of Service Tax Division-I Ahmedabad in the case of M/s. Vijay Construction Company, Ahmedabad, and stated that the same is having identical issue.

5. The Central Board of Excise and Customs vide Notification No: 26/2017-Cx(NT) dated 17.10.2017 read with Order No: 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as Appellate Authority under Section 35 of the Central Excise Act, 1944 or Section 85 of the Finance Act, 1994, as the case may be, for the purpose of passing orders in this appeal.

Personal hearing :

Personal hearing in the matter was granted on 23.01.2018 which was attended by Shri Umesh Ravani, Chartered Accountant, on behalf of the appellant. He reiterated the submission made with the appeal and filed additional written submission on 23.01.2018.

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order and the submissions of the appellant in the memorandum of appeals and additional submission. I further find that since the present appeal is against rejection of refund, there is no need for compliance to provisions of Section 35F(i) of Central Excise Act, 1944 made applicable in Service Tax matters vide Section 83 of the Finance Act, 1994. The limited issue to be decided in the present appeal is whether the appellant is entitled to the refund of Service Tax of **Rs. 4,32,741/-** claimed to have been paid towards the Service tax liabilities during the period from 01.04.2015 to 29.02.2016 in respect of Service provided to the Government, which is claimed to have been exempted under Section 102 of the Finance Act, 1994, as amended vide Section 159 of the Finance Act, 2016.

7. I find that refund has been rejected by the Lower Adjudicating Authority vide his impugned order on the grounds, *inter alia*, as detailed under Para 2 above.

8. I find that, appellant has submitted various documents alongwith their written submission during the course of personal hearing (viz. chart showing refund amount claim, reconciliation of refund claim with ST-3 returns, 26-AS and reconciliation of 26-AS with Bank Statements, Certificate issued by MES Authority, Copy of Refund Order passed by AC, Service Tax Division-I , Ahmedabad, Bank Statements etc.) in



support their contentions.

9. On going through Para number 12 of the impugned order, it is noticed that the lower adjudicating authority has stated that the refund claim filed by the appellant on 10-11-2016 is within the time limit as specified under Section 102 of the Finance Act, 1994. Whereas, on going through the various documents submitted by the Appellant alongwith written submission, I noticed that the Appellant has submitted the various copies of respective documents. Further, on going through the impugned order dated 14-02-2017 passed by the lower adjudicating authority, I noticed that the lower adjudicating authority at Para number 4 of the impugned order has directly demonstrated the discrepancies observed by them, which has also been mentioned at point (i) to (viii) below at Para 2 above. I find that at Para 18 of the impugned order, the lower adjudicating authority concluded as under:-

“the claim suffers from several deficiencies, errors and omissions and also lacks of crucial information and documents required for deciding eligibility of the refund claim. It is necessary to verify and to be satisfied that all relevant documents are proper and fulfills all the required aspects before sanction of any refund claim. In absence of the above stated documents, it is not possible for this office to verify and sanction the refund claim. The claimant has failed to furnish necessary documents and information as discussed supra....”

10. Thus, it is a fact that the Appellant failed to produce the relevant documents required by the lower adjudicating authority during the process of the refund claim. Now, alongwith Appeal and written submissions, the Appellant has submitted various documents, which was ought to be submitted by them before the lower adjudicating authority during the process of the Adjudication which they failed to do so. With regard to discrepancies on the basis of which, the refund claim was rejected by the lower adjudicating authority vide the impugned order, the appellant has now submitted the various documents at the time of filing appeal as also mentioned in their grounds of appeals. The documents submitted by the appellant are voluminous which require proper scrutiny. The Appellate Authority is not in a position to verify all the invoices, work-sheet, reversal of Cenvat Credit, eligibility of refund claim on the basis of available impugned order. Hence, I am left with no option but to remand the order to the lower adjudicating authority, who shall verify the refund claim afresh. Thus, I am of the view that it will be proper to remand the cases back to the lower adjudicating authority for scrutiny of the documents and passing of speaking and reasoned order.

11. The Commissioner (Appeals) has power to remand the case back as has been decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del). I also rely upon decision of the **Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd.** reported in 2013 (287) ELT 353 (Tri-Del) wherein the similar views have been expressed in respect of inherent power of Commissioner (Appeals) to remand a case under the



4

provisions of Section 35A of the Act. The **Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd.** has also held that even after the amendment in Section 35A (3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner (Appeals) would retain the power to remand.

12. In view of above, I am of the opinion that this is fit case to allow the appeal by way of remand to the lower adjudicating authority to decide the matter a fresh after scrutinizing all the relevant documents relating to the refund claim after giving fair and reasonable opportunities to the appellant. Since, the documentary evidences submitted by the appellant to this Appellate Authority might or might not have been placed before the lower adjudicating authority and thereby the lower adjudicating authority may have not appreciated the same. Therefore, the appellant is hereby also directed to submit all the copies of all the relevant documents, which they wish to rely in the matter to the lower adjudicating authority, within 30 days of the receipt of this Order, which they had submitted to this appellate authority by way of Appeal Memorandum and written submissions.

13. The lower adjudicating authority is also directed to call for all relevant information and documents required for deciding the eligibility of refund claim from the Appellant, if not submitted by the appellant, within prescribed time limit. The lower adjudicating authority is also directed to decide the case afresh on merits and pass speaking and reasoned orders on the documents and submissions of the appellant, by following principles of natural justice. The impugned order rejecting refund is set aside and appeal filed by the appellant is allowed by way of remand.

१३.१. अपीलकर्ताओ द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

131. The appeal filed by the appellant stand disposed off in above terms.

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[Handwritten signature]
(चंद्रकान्त वलवी)
आयुक्त 12/6/18

By Speed Post

To, M/s Magnus Enterprise, J/16-1673, Ranjit Nagar, Jamnagar	To, M/s मेग्नस एंटरप्राइस, J / 16 -1673, रणजीत नगर, जामनगर
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Copy to:

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & C.Ex, Rajkot Commissionerate, Rajkot.
4. The Deputy Commissioner, GST & Central Excise Division, Jamnagar-I / II.
5. The Jurisdictional Range Superintendent (Through CGST Division Jamnagar) .
6. Guard File.