



::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 / 2<sup>nd</sup> 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. V2/153 /RAJ/2017	मूल आदेश सं / O.I.O. No. DC/JAM/R-418/2016-17	दिनांक / Date 06-02-2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-131-2018-19**

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 :-

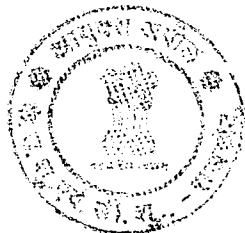
1. M/s. Patel Builders, Shiv Akash Apartment, G-1, Street No. 64, Digvijay Plot, Jamnagar - 361 005,

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 अपीलों 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, 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) 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 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 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 हैं

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

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

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

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of 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 समयाविधि 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.

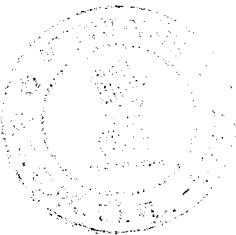
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of 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 पट्टी 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, 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](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 Patel Builders**, Shiv Akash Apartment, G-1, Street No. 64, Digvijay Plot, Jamnagar -361 005 (hereinafter referred to as '**the appellant** ') registered as service providers and holding Service Tax registration No. AACFP5012HSD002 filed a present appeal against the Order in Original No. DC/JAM/R-418/2016-17 dated 06.02.2017 (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. 26,69,455/-** 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. The lower adjudicating authority has observed from the refund application that the claim pertains to Refund of Service Tax filed under Section 102 of the Finance Act, 1994 (as enacted vide Section 159 of the Finance Act, 2016). From the documents submitted by the appellant, the lower Adjudicating authority has held that the appellant was required to submit following documents / information, which they have not submitted alongwith refund claim.

- i. The copies 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 was 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. They have not submitted details regarding gross income and actual service payable and merely on submission of Service Tax payment Challans, the claim has been filed. They have also 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 or not.
- vi. The appellant has not mentioned specific service category under which they have provided the services to the Government and now claimed as Refund.
- vii. Copy of ST-3 Returns for the period 2015-16.
- viii. Final Bills raised by the Govt. authority.

3. The above observation culminated into issuance of Show Cause Notice No. V.44(18) 46 /Refund/2016-17 dated 22.12.2016 for rejection of refund claim. The



said show cause notice was adjudicated by the proper adjudicating authority vide the impugned order, under which the Refund claim of Service Tax amounting to Rs. 26,69,455/- was rejected.

4. Being aggrieved by the impugned order, the appellant filed the present appeals on the following grounds and further written submission filed on 23-01-2018, wherein they *interalia* contended that;

4.1 The refund claim made on account of Service Tax and interest due thereon paid by the appellant on services which were considered as exempted services. As per Finance Act, 2016, Section 102 inserted w.e.f 14<sup>th</sup> May 2016 provided special provision for exemption in certain cases relating to Construction of Government Buildings during the period from 1<sup>st</sup> April 2015 upto 29<sup>th</sup> February 2016 and submitted that Deputy Commissioner, Central Excise, Jamnagar ought to have passed the refund claim in view of Section 102 of the Finance Act, 2016.

4.2 The Works Contracts entered into by the appellant with Government Departments, the appellant has to sign only the tender documents and no formal agreement is prepared or signed. Therefore, the issuance of the Work Order, on acceptance of tender, is as good as agreement. Hence No stamp duty were required to be paid on such civil construction contracts. Copy of few of such illustrative documents has been submitted with the appeal.

4.3 The provision of Section 102 of Finance Act, 1994 requires payment of appropriate stamp duty, where applicable, in respect of contract entered into before 1st day of March, 2015. In view of above provision, payment of stamp duty is not a mandatory requirement for admissibility of refund claim.

4.4 The Appellant is a Government Contractor providing services in relation to construction of various Government buildings. As prior to 01-03-2015 there was no liability of service tax on services provided for Civil Construction work Contracts carried out for Government Organization as per Entry No. 12 of Notification No. 25/2012-ST dtd. 20/06/2012. Hence all Government Contracts entered prior to 01-03-2015 was without collection of Service Tax on providing such services.

4.5. The contracts awarded by various Government Departments are inclusive of material and labour portion which is commonly known as Works Contract.

Works Contract is interpreted under Section 65B(54) of The Finance Act, 1994 as under :

"Works contracts" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or of carrying out any other similar activity or a part thereof in relation to such property.

4.6 Appellant submitted that when a person is not able to quantify the material portion involved in the execution of works contract, they have an option to follow Service Tax (Determination of Value) Rules, 2006. The Service Tax (Determination of Value) Rules, 2006, rule 2A (ii) provides that where the value is not determined under sub clause (i) of Rule 2A, the service tax payable is to be determined, in case of original works service tax shall be payable on 40% of total amount charged for the works contract and in other case of works contract, tax is payable on 70% of total amount charged for the works contract. As the value of taxable service is determined in accordance with Service Tax (Determination of Value) Rules, 2006, it cannot be said that the appellant has claimed any abatement.

4.7. Appellant submitted that Section 102 of the Finance Act, 1994, nowhere specifies the category of Services as mentioned in impugned order. The section specifies the nature of work for eligibility of Refund claim and not the category under which tax is to be paid. Therefore the lower adjudicating authority has not given proper justification in rejecting the refund claim on this ground.

4.8 In respect of justification whether the amount was paid towards the services provided to the Government during the period 01.04.2015 to 29.02.2016 in respect of contracts entered prior to 01.03.2015, appellant submitted that they provided detailed sheet alongwith calculation of tax and challan paid invoice wise and had also submitted copy of invoices raised to various Government departments during the above said period and that fact is also reiterated at point no. 16 of the impugned order "Particular of gross income" that contract were prior to 01.03.2015 and at point no. 17 that the amount was paid towards the services provided to the Government during the period 01.04.2015 to 29.02.2016. Copies of the same have also been submitted by them alongwith their submission.

4.9 The Appellant is providing services of construction of government buildings. As per the provisions of Section 102 of Finance Act, 1994, a person is entitled to refund of tax only in respect of a contract entered into before 01.03.2015. The claimant has entered into contracts which are before 01.03.2015 and also after 01.03.2015 for which refund is not admissible. The figures shown in ST-3 for the period from April-15 to September-15 and October-15 to March-16 included both the figures i.e. value of contracts entered into before 01.03.2015 and after 01.03.2015. However the refund is claimed only for the amount paid in respect of contracts entered into before 01.03.2015 wherein Service Tax was not chargeable.

4.10 For the purpose of correlation and reconciliation detailed working sheet was provided bill wise showing the amount of invoice, taxable value, amount of service tax and interest and challan numbers. Copies of the same have also been submitted by them alongwith their submission.

4.11 In respect of non submission of bills / invoices, the appellant submitted copy of bills raised to concerned government department (Recipient), however, in respect of all the government works, Govt. Depts. Consider only the Running Bill (RA Bill) prepared by them (i.e. Govt. Dept.) after taking the measurement of work done in relation to the construction work carried out by the claimant during that bill period. On the basis of the measurement taken, bills are prepared by the official of the concerned departments, this bill is called RA Bill. This RA Bill includes the total work done till this bill and the aggregate amount upto the previous RA Bill. Therefore, on subtracting of the aggregate amount upto Previous RA Bills out of the total amount of the bill for relevant period, balance amount is considered as current bill for that particular period. This working also contains the deductions made from the bill like with held money, TDS, WCT, Security Deposit etc. and then net amount to be paid to the contractor. On the basis of the same, payment, pertaining to the bill, is released by the concerned Dept. Thus, RA Bill issued by Dept. is at par with the Invoice. Copies of such RA Bills were already submitted along with Refund Claim.

4.12. As regards dates of bills/invoices are in different months and payment of service tax was made on 15.12.2015 & 16.12.2015, service tax was paid late and therefore interest was also paid along with tax. The tax paid vide various challans, for which refund was claimed, was also reflected in ST-3.

4.13 . Appellant has submitted that the Departmental Audit has already been completed for the period covered in the refund claim and there is no any adverse observations in the audit in respect of Figures shown in the Service Tax Returns and related documents verified by the audit team. Therefore the lower Adjudicating Authority has erred in stating that the refund claim fails in reconciliation with relevant details of ST-3 returns and invoices.

4.14 The Appellant had entered into contracts which were tendered/ executed prior to 01.03.2015 and also after 01.03.2015 for which refund is not admissible. As per the impugned order, in ST-3 return for the period October-15 to March-16 (for Quarter January to March) Cenvat credit availed and utilized pertains to contracts entered into after 01.03.2015.



4.6 Appellant submitted that when a person is not able to quantify the material portion involved in the execution of works contract, they have an option to follow Service Tax (Determination of Value) Rules, 2006. The Service Tax (Determination of Value) Rules, 2006, rule 2A (ii) provides that where the value is not determined under sub clause (i) of Rule 2A, the service tax payable is to be determined, in case of original works service tax shall be payable on 40% of total amount charged for the works contract and in other case of works contract, tax is payable on 70% of total amount charged for the works contract. As the value of taxable service is determined in accordance with Service Tax (Determination of Value) Rules, 2006, it cannot be said that the appellant has claimed any abatement.

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4.15 The amount of refund claimed is covered in first half year period i.e. April-15 to September-15 during which no Cenvat Credit was availed and utilized and that is forthcoming from ST-3 return filed for that period. Detailed sheet submitted along with refund claim provided the details of Challans paid which were reflected in the ST-3 return for H.Y. April-15 to September-15.

4.16 As there was no Cenvat Credit availed and utilized in respect of amount of refund claimed, there was no question of reversal under rule 6(3) of CENVAT Credit rules, 2004.

4.17 The Adjudicating Authority ought to have considered the facts that the appellant had paid interest for delayed payment of service tax as per then prevailing Service Tax Law.

4.18 In subsequent period when service tax exemption is given w.e.f prior period i.e. onwards 01-03-2015, the question of payment of service tax does not arise on rendering services which were covered under exemption.

4.19 When there is no authority to collect and retain service tax by the Revenue Authority, any sum paid by the appellant in whatever name i.e. tax, interest, penalty etc., is required to be refunded. Revenue Authority cannot be benefitted by 'Unjust Enrichment' by simply mentioning that there is no provision in the act to refund of excess amount paid on account of interest payment for delayed payment of service tax, when service tax itself was not leviable at all.

4.20 Erroneous conclusion by adjudicating authority that out of total claim of Rs.26,69,455/- a sum of Rs. 12,72,572/- is reflected as Service Tax Receivable on 31-03-2016 resulting balance amount of Rs. 13,96,883/- as either recovered from the customers or expensed out in the Profit & Loss Account .Erroneous observation by citing tendered rates clause of all contracts on Para No. 24 and observing in Para 24.1 that the tendered were inclusive of Service Tax. Alleged ground that the appellant has passed on incidence of duty to any other person or expensed out and claimed refund of duty resulting in unjust enrichment – Vide Para No. 25 to 27 of the impugned order. The appellant has neither collected amount of service tax nor made any claim of refund of service tax from the Government Organizations. Figure of Service Tax Receivable of Rs. 12,72,572/- was in respect of Service Tax paid but receivable from Contracts entered after 01-03-2015, wherein Service Tax was collected and payable by them. The said figures has no any nexus of Services provided for contracts entered prior to 01-03-2015 for which Service Tax was paid by the appellant from its own pocket.

4.21 The terms of contracts cited by the lower adjudicating authority as per Para 24, were tendered prior to 01-03-2015 and there was no applicability of Service Tax on services provided for Civil Construction to Government Organizations.

4.22 All the contracts entered / executed prior to 01-03-2015, when service tax was not leviable at that time, cannot be said that any taxes leviable in future is also included in the tendered rates.

4.23 The exemption granted under Notification No. 25/2012-ST dated 20.06.2012 was withdrawn vide Notification No. 06/2015-ST dated 01.03.2015. Since payment of Service Tax on these contracts was not agreed upon in the terms & conditions, the appellants had no option to pay Service Tax from their pocket and treat it as expenditure. Now, to bail out the government contractors from this situation, the exemption was retrospectively granted by virtue of Section 102 of the Finance Act, 1994. If expensing out is treated as passing of the burden, then all such claims are hit by the bar of unjust enrichment and make the very provision of Section 102 of the Finance Act, 1994 redundant and otiose. It is well settled canon of interpretation that statute should be interpreted in such a manner that no part of it becomes redundant. Thus, findings of the learned adjudicating authority that the Service Tax amount has been expensed out and passed on to the customers is bad in law and erroneous and stratagem to defeat the rights of the appellants to get refund. Also it is against the legislative intent.

4.24 Appellant submitted that when Service Tax was not leviable at the time of entering contract, the same cannot be treated as included in the contract. Reliance is placed on the following judicial pronouncements:

a. **CIMMCO Ltd Vs CCE [1999 (107) ELT 246 (CEGAT)]**, wherein Hon'ble CESTAT has held that "*Condition in work order that rates inclusive of all duties, taxes.....' does not mean that excise duty is covered by it especially when appellant taking a stand from the beginning as to non-excisability of goods - Duty burden not passed by appellants to their customers - Refund admissible to appellants in cash or credit to their Personal Ledger Account - Section 11B of Central Excise Act, 1944.*"

b. **Panihati Rubber Ltd. Vs CCE [2001 (127) ELT 742 (Tri.Cal.)**. In this case, classification in respect of hose pipe for railways was in dispute. On the matter being finalized in favour of the assessee, consequent refund was found to hit by the bar of unjust enrichment as the contract was inclusive of duties. Hon'ble CESTAT, while following the CIMMCO case supra, held that Price fixed by Railways under the contract did not provide for an element towards the Central Excise duty.

c. **CC Bangalore Vs Larsen & Toubro Ltd. [2006 (200) ELT 132 (CESTAT)]** wherein Hon'ble CESTAT held that "Price at which equipment supplied to U.P. Government, no doubt, includes duty payable - However, goods being exempted from customs duty and

being sold at specified price under specific purchase order, no question of passing of duty burden to buyer arises - Bar of unjust enrichment not applicable - Refund admissible".

4.25 The appellant has not recovered Service Tax from the Government Organizations and it had to bear the service tax from its own pocket as can be evidenced from Bills raised by the appellant which were as per tendered rates and not showing service tax figure, moreover, at the time of Entering the tender contracts service tax was not leviable, hence, the appellant was not entitled for claim of service tax from the Government Organizations. Even the audited accounts were also showing Service Tax payment on such contracts as expenses in accordance with the accounting principle. Appellant submitted that one of his service recipient i.e. Central Public Works Department had reimbursed an amount of Rs. 4,95,759/- to them towards the said Service Tax. Consequent upon the retrospective exemption, they have recovered the same from appellant's running account and thereby reversed the reimbursement of Service Tax. Thus, they have borne the entire liability of Service Tax from their own account. Copy of Correspondence submitted with the appeal.

4.26 Reliance is also placed upon the decision of Hon'ble Apex Court in the case of **M/s Sunrays Engineers Pvt. Ltd Vs CCE, Jaipur [2015 (318) E.L.T. 583 (S.C.)]** wherein Hon'ble Apex Court has held as under:

Refund -Unjust enrichment- On reduction of rate of duty with retrospective effect, credit of excess amount given to buyers of goods – As burden of excess duty was not passed on to customers, there was no unjust enrichment in allowing assessee the refund of excess amount - Section 11B of Central Excise Act, 1944. [para 3]

4.27 As far as expensed out of Service Tax Payment is concerned, appellant submitted that they had borne the Service Tax and paid the same with interest payment for delayed payment. As per Normal accounting principle, service tax amount paid has been claimed as expenditure in the Profit & Loss for the F. Y. 2015-16 considering the fact that the expenditure of that period as well as the amount and the year of its refund from Government is not certain. However, the refund amount of service tax shall be treated as income and the amount shall be credited to the Profit & Loss Account in the year in which the refund claim is passed and on receipt thereof to the appellant.

4.28 The appellant, further, relies on the order for the identical issue passed by The Assistant Commissioner of Central Excise and Service Tax Division, Ahmedabad – III vide OIO Ref. No. 182/Ref/ST/AC/2016-17 dtd. 07-03-2017 in the case of M/s. Anand Associates, Gandhinagar. Copy of the Order is submitted with the submission.

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.

Accordingly, personal hearing in the matter was held on 23.01.2018 which was attended by Shri Ankur Doshi, Chartered Accountant, authorized representative, on behalf of the appellant and submitted a written submission on 23.01.2018 .

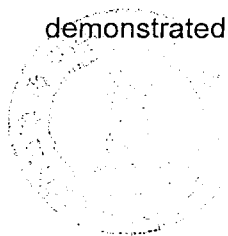
**FINDINGS:**

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and further written submission made by the appellant. I find that since the present appeal is against rejection of refund therefore 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. 26,69,455/-** 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 Government Department and local Authorities as provided in the Section 102 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. Detail sheet for exempted contract, Copies of Service Tax Returns, reconciliation of figures shown in Refund claim, statement showing details of refund claim with a copy of supporting documents like R.A.Bill, Invoices, copy of acceptance of work order from the Government Department, copy of a letter from Government Department (CPWD) addressed to AC, Central Excise Division, Jamnagar, Balance sheet audited by the Chartered Accountant., CD containing all works orders executed prior to 01.03.2015), in support his 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 08-11-2016 and also held that the refund claim 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 copy of the Refund Claim having refund application date thereon as 6th September 2016. Further, on going through the impugned order dated 06-02-2017 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 Para 2 above. I find that at Para 20 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 the duty of revenue officer to seek, 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....”*

Thus, it is 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 were ought to have been submitted by them before the lower adjudicating authority during the process of the Adjudication which they failed to do so. In response to discrepancies on which the refund claims were rejected by the lower adjudicating authority vide the impugned order, the appellant had 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 position to verify all the invoices, contracts, 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 case back to the lower adjudicating authority for scrutiny of the documents and passing of speaking and reasoned order.

The Commissioner (Appeals) has power to remand 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 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.

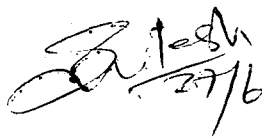
In view of above, I am of the opinion that this is fit case to allow the appeal by way of remand to the lower adjudicating authority to decide the matter afresh after scrutinizing all the relevant documents relating to the refund claim and after giving fair and reasonable opportunities to the appellant. 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. I also noticed that the appellant has contended that the amount of refund claimed has been covered under the first half year period i.e. April-15 to September-15 during which, no Cenvat Credit was availed and utilized by them as forthcoming from ST-3 return filed by them. In this regard, I held that mere on the basis of the ST-3 return, it could not be concluded that the Appellant has availed and utilized the Cenvat Credit or otherwise. The Appellant has to produce the Cenvat Credit Register before the lower adjudicating authority on the basis of the which the lower adjudicating authority can ascertain the fact as to whether the Appellant has availed and utilized the Cenvat Credit or otherwise. Thus, I direct the Appellant to produce the self attested copy of Cenvat Credit Register for the period under reference within stipulated time of 30 days.

The lower adjudicating authority is 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.

- 9.1. अपीलकर्ताओ द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
9.1. The appeal filed by the appellant stand disposed off in above terms.



  
(चंद्रकान्त वलवी)  
आयुक्त 19/6/18

**By Speed Post**

To, M/s Patel Builders, Shiv Akash Apartment, G-1, Street No. 64, Digvijay Plot, Jamnagar - 361 005	To, M/s , पटेल बिल्डर्स, शिव आकाश एपार्टमेंट, G-1, गली नंबर 64, दिग्विजय प्लॉट, जामनगर -361005
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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 D.C, CGST Divn. Jamnagar)
6. Guard File.

