



::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 / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/14/EA2/GDM/2017	ST/151/2017-18	21/04/2017

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

**KCH-EXCUS-000-APP-124-2018-19**

आदेश का दिनांक / Date of Order:	<b>06.09.2018</b>	जारी करने की तारीख / Date of issue:	<b>07.09.2018</b>
------------------------------------	-------------------	--	-------------------

**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 Appellant & Respondent :-  
M/s Varsani & Company, Navavas, Madhapar,Bhuj, Kutch-370020**

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) 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 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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति 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  
(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 अर्ज़ी 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, केन्द्रीय 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 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 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /  
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (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) 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](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 ::**

The Commissioner, CGST and Central Excise, Kutch, Gandhidham (*hereinafter referred to as "the department"*) filed present appeal against Order-in-Original No. ST/151/17-18 dated 21.04.2017 (*hereinafter referred to as "the impugned order"*), passed by the Assistant Commissioner, Service Tax Division, Gandhidham (*hereinafter referred to as "the lower adjudicating authority"*) in the matter of M/s. Varsani & Company, Navavas Madhapar, Bhuj (Kutch) - 370020 (*hereinafter referred to as "the respondent".*)

2. The brief facts of the case are that the respondent, a service provider of works contract service by way of construction, erection, commissioning, installation, completion, fitting out, repair & maintenance, renovation or alteration of civil structures or residential complexes provided services to M/s. Garrison Engineer (AF), Naliya, a Government Authority, filed application claiming refund of service tax of Rs. 2,59,509/- on 26.10.2016 in terms of Notification No. 9/2016-ST dated 01.03.2016 read with Section 102 of the Finance Act, 1994 (*hereinafter referred to as "the Act"*) inserted vide Finance Act, 2016, in respect of the above services provided by them during the period from 01.04.2015 to 29.02.2016. The query letters dated 10.11.2016; dated 02.01.2017 and dated 08.02.2017 were issued to the respondent to submit required documents as narrated therein. The lower adjudicating authority vide impugned order sanctioned refund claim of Rs. 2,59,279/- in terms of Section 102 of the Act and rejected refund claim of Rs. 230/- paid as interest.

3. Being aggrieved with the impugned order, the department filed appeal, *inter-alia*, on the following grounds:

(i) The lower adjudicating authority has not properly verified the conditions in terms of Section 102 of the Act; that the conditions relating to unjust enrichment have not been checked properly before sanction of refund.

(ii) No copy of invoice or contracts were found in file, which were essential documents to determine the amount of refund; the respondent did not submit copy of ST-3 Return from the period from April, 2015 to September, 2015. Accordingly, amount shown in refund claim was not substantiated by any reasonable evidences and Refund sectioned in absence of such evidences is not

proper.

(iii) The lower adjudicating authority did not obtain all documents, as called for vide letter dated 10.11.2016, from the respondent and sanctioned refund claim without crucial documents. The respondent did not provide income tax return for F. Y. 2015-16; supporting work sheet, audited balance sheet and profit & loss account for F. Y. 2015-16; the lower adjudicating authority placed reliance on unaudited balance sheet and profit & loss account for sanctioning of refund claim, which is not proper.

(iv) The respondent provided taxable as well as exempted services but the lower adjudicating authority has not verified the particulars of rest of the exempted services and thus, quantification of refund amount has not been done properly.

(v) The lower adjudicating authority did not verify aspect of non-availment of cenvat credit on common inputs by the respondent, which may otherwise be a case of non-compliance with condition in terms of Rule 6(2) of the CCR, 2004. In absence of such verification of unjust enrichment may not be considered as complete.

(vi) The respondent provided CA certificate dated 24.10.2016 for full F. Y. 2015-16. However, Section 102 of the Act provides for refund of Service Tax for the period from 01.04.2015 to 29.02.2016 only and the lower adjudicating authority did not verify service tax in respect of the said services rendered during March, 2016. The refund file revealed that the refund claim was scrutinized for F. Y. 2015-16 having documents contradicting each other. The required verification related to reversal of cenvat credit was undertaken for the limited period of financial year 2015-16 only and not before. Thus, the incomplete exercise rendered the refund as erroneously granted.

4. The respondent has submitted Memorandum of Cross Objections, *interalia*, contending as under:

(i) The lower adjudicating authority has correctly passed the impugned order after considering all the documents and properly discussed in the impugned order; the respondent has not passed on the burden of service tax to the service recipients and has submitted CA certificate for unjust enrichment, which

was properly discussed by the lower adjudicating authority in the impugned order.

(ii) The respondent has submitted all relevant documents before the lower adjudicating authority and this fact has been mentioned in the impugned order by narrating that they verified all relevant documents including copy of contracts and copy of invoices; that the department cannot overrule this fact that the documents verified at the time of adjudication process and thus, such ground has no legal validity.

(iii) The respondent provided services from October, 2015 to March, 2016 and hence, submitted ST-3 Return for that period only during adjudication however, the respondent has submitted ST-3 Return to the department for the period from April, 2015 to September, 2015.

(iv) The department pleaded that the respondent has not submitted six contracts for Rs. 26,25,467/-, whereas the respondent submitted that the department considered two contracts as six different contracts, which is a mistake on their part. The respondent had bifurcated challan wise payment of service tax for only two contracts and only 2 contracts were involved in this refund claim.

(v) The department argued that the value of service was Rs. 26,25,467/- declared in ST-3 Returns whereas Rs. 28,43,568/- was shown in the balance sheet/profit & loss account and ST-3 Return did not match with Form 26AS. The respondent submitted that they claimed refund for service value of Rs. 26,25,467/- only which is less than Rs. 28,43,568/- shown in the balance sheet/profit & loss account/Form 26AS. Thus, the respondent did not claim refund on balance services and hence, it cannot be said that the accounts and refund claim are without base; that the amount reflected in Form 26AS are considered under different parameters under the Income Tax Act and it cannot be applied to service tax as income other than services are not to be reported under ST-3 Returns. The respondent submitted that other income does not bar them for getting refund on the taxable services of Rs. 26,25,467/-.

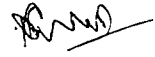
(vi) The respondent was not required to get their books of account audited under any Act prevailing at that time and hence, they submitted unaudited

accounts for F. Y. 2015-16. The respondent submitted copy of Income Tax Return for the financial year 2015-16.

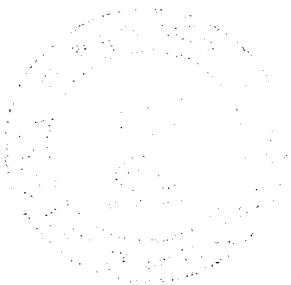
(vii) The department's plea that reliance cannot be placed on unaudited balance sheet/profit & loss account as income of interest and TDS thereon not shown in the balance sheet as well as profit & loss account is not relevant as income from interest and TDS thereon are required to be shown in balance sheet but not in ST-3 Returns and they can't claim refund on that. The respondent considered TDS receivable in full with head 'TDS DDEDUCTION' in balance sheet.

(viii) The respondent submitted bifurcation of taxable services and exempted services and also all details of services on which refund of service tax had been filed.

(ix) The department's plea that the lower adjudicating authority has not verified cenvat credit availment on common inputs is also not correct as they had submitted declaration during the course of adjudication that they had not availed any cenvat credit on input or input services for providing output services, which can be verified from ST-3 Returns for the financial year 2015-16.



5. Personal hearing in the matter was attended to by Shri Abhishek Doshi, Chartered Accountant, who reiterated the findings of the lower adjudicating authority and made written submissions against the grounds of appeal stating that they have not passed on incidence of service tax to any other person and had shown refunded amount as 'S. Tax receivable' in the balance sheet of F. Y. 2015-16, which was also duly certified by CA; that they had submitted all relevant documents as stated in Para 5 & 6 (at Page No. 3) of the impugned order; that ST-3 Return for the period from October, 2015 to March, 2016 had been submitted to the department and April, 2015 to September, 2015 had nil return was also submitted during adjudication and now in Appeal also; that there were only 2 contracts and not 6 as incorrectly contended by the department; that they had annual turnover of less than Rs. 1 Crore in F. Y. 2015-16 and hence, they were not required to get their balance sheet audited as threshold limit was Rs. 1 Crore at that time for audited balance sheet; that they had not availed any cenvat credit during 2015-16 or before; that the present appeal is required to be rejected on facts and also on law; that balance sheet of 2016-17 and 2017-18 would be submitted in next 7 days.



5.1 The respondent, vide letter dated 12.07.2018, further submitted written submissions, *interalia*, stating as under:

(i) The balance sheet, as on 31.03.2016, reflected disputed amount as service tax receivables. They also submitted balance sheets as on 31.03.2017 and as on 31.03.2018 along with ledger of service tax refund received in F. Y. 2017-18.

(ii) The copy of forwarding letter submitted with refund claim revealed that they had submitted copy of two contracts at the time of filing refund claim.

**Findings:-**

6. I have carefully gone through the facts of the case, the impugned order, Appeal Memorandum filed by the department, Memorandum of Cross Objections submitted by the respondent and written as well as oral submissions made by the respondent. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed sanctioning refund of Rs. 2,59,279/- under Section 102 of the Finance Act, 2016 is correct or not.

7. The department has contended that the lower adjudicating authority has not properly checked the conditions relating to unjust enrichment before sanctioning refund claim as the lower adjudicating authority passed the impugned order without scrutiny/verification of (i) contracts (ii) ST-3 Return for the period from April, 2015 to September, 2015 (iii) audited balance sheet and profit & loss account for F. Y. 2015-16 (iv) verification of non-availment of cenvat credit on common inputs and (v) CA Certificate, whereas facts can be ascertained through scrutiny/verification of the contracts, ST-3 Return for the period from April, 2015 to September, 2015, audited balance sheet and profit & loss account for F. Y. 2015-16, verification of non-availment of cenvat credit on common inputs and CA certificate dated 24.10.2016 submitted by the respondent in respect of service tax paid on the services provided by them. I find that lower adjudicating authority has found that the incidence of service tax paid by the respondent has not been passed on to the service receiver or to any other person after verification of the facts available in invoices, ST-3 Returns, the balance sheet duly certified by CA and profit & loss account for F. Y. 2015-16. The respondent had submitted copy of contracts, copy of invoices and copy of Balance Sheet for F. Y. 2015-16 duly certified by the Chartered Accountant

clearly showing the amount as 'Service Tax Receivable' as Current Assets under heading Assets and the same has been carried forward in audited Balance Sheet for F.Y. 2016-17. Since the refund has been sanctioned and received on 24.4.2017, the said service tax has correctly been not reflected as 'service tax receivable' in the Balance Sheet of F. Y. 2017-18. The lower adjudicating authority has specifically stated that the respondent declared that they did not pass on the burden of this amount of service tax to any other person. I also find that the respondent has not charged service tax from service receiver in the invoices raised by them for rendering of the services. Therefore, I am of the considered view that the impugned order correctly held that the respondent had not passed on the incidence of this amount of service tax to the service recipient or to any other person.

7.1 It is a fact that the respondent submitted unaudited balance sheet and profit & loss account for F. Y. 2015-16 but duly certified by CA along with refund claim as the respondent was not required to get the balance sheet of F. Y. 2015-16 audited because total turnover of the respondent was below Rs. 1 Crore in F. Y. 2015-16 and hence, there was no requirement for getting their books of account audited under Income Tax Act for F. Y. 2015-16 and hence, the department can't find fault with unaudited Balance Sheet for F. Y. 2015-16 even when it was only certified by CA.

8. It is a fact on record that the respondent had provided construction, erection, commissioning, repair and maintenance services to M/s. Garrison Engineer (AF), Naliya, a Government Authority, during the period from 01.04.2015 to 29.02.2016 against two contracts executed on 02.02.2015 and on 20.02.2015 whereas service tax was exempted vide Notification No. 25/2012-ST dated 20.06.2012 on the construction services provided to the Government authorities. I find that the contract price was not amended or modified by the respondent or the Government authority when the exemption of service tax was withdrawn by the Central Government establishing that element of service tax was not inbuilt in the contract price. I also find that the respondent had submitted Certificate dated 24.10.2015 of Chartered Accountant certifying that the respondent provided repairs and maintenance services to the Government authority during financial year 2015-16 and paid service tax of Rs. 2,57,296/-; SBC of Rs. 1,983/- and interest thereon Rs. 230/- and the respondent did not avail any cenvat credit.



9. The department contended that copy of invoices and all contracts were not found in the concerned divisional file and ST-3 Return for the period from April, 2015 to September, 2015 was not submitted by the respondent and without such documents, correct amount of refund cannot be ascertained. I do not find force in this argument of the department as it is on record that the respondent vide letters dated 24.10.2016 and dated 22.03.2017 had submitted copy of contracts/work orders and other relevant records and the lower adjudicating authority has also stated that the respondent had submitted the relevant documents vide letter dated 22.03.2017. I find that the refund claim pertained to the period from October, 2015 to February, 2016 and the respondent had submitted ST-3 Return for the period from October, 2015 to March, 2016. The respondent has also submitted copy of ST-3 Return for the period from April, 2015 to September, 2015 during this appeal proceedings and this is NIL return.

9.1 Regarding bifurcation of taxable and exempted services, I find that the respondent filed the refund claim for taxable services provided by them amounting to Rs. 26,25,467/- during the period from October, 2015 to February, 2016, which was reflected in ST-3 Return for the period from October, 2015 to March, 2016. I find that the respondent did not provide any services during the period from April, 2015 to September, 2015 as per ST-3 Return for the period from April, 2015 to September, 2015 submitted by them. Thus, the respondent had provided taxable services valued at Rs. 26,25,647/- during F. Y. 2015-16.

9.2 The department's argument of non-verification of cenvat credit taken on common inputs is found imaginary as the lower adjudicating authority has clearly mentioned in his findings that 'on going through the ST-3 for the period of 2015-16(Oct-Mar) submitted by the claimant, it is found that they have not taken CENVAT credit.' The Chartered Accountant has also certified that the respondent has not taken any CENVAT credit and the department has not contradicted this fact by providing any instance of cenvat credit taken by the respondent in F. Y. 2015-16 or before. In view of no evidence produced by the department, I have no option but to hold this argument of the department as imaginary.

9.3 The department has submitted that the lower adjudicating authority has not carried out checks of duty incidence for the month of March, 2016 i.e. period from 01.03.2016 to 31.03.2016 as CA certificate dated 24.10.2016 was issued for full F. Y. 2015-16. On verification of the invoices submitted by the respondent, I

find that the respondent had provided the services valued at Rs. 24,79,000/- during the period from 01.04.2015 to 29.02.2016, the period covered under Section 102 of the Act. The respondent had provided services valued at Rs. 1,46,467/- during March, 2016 for which the respondent is not eligible for refund under Section 102 of the Act and hence, refund of service tax is required to be restricted to Rs. 2,44,412/- i.e. service tax paid on taxable services rendered from 01.04.2015 to 29.02.2016 in terms of Section 102 of the Act.

10. In view of above, I modify the impugned order and partly allow the departmental appeal by restricting refund to Rs. 2,44,412/- only. The respondent is directed to pay the excess refund of Rs. 14,867/- along with applicable interest from the date of receipt of the refund till date of payment of Rs. 14,867/-.

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

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

आयुक्त,  
केंद्रीय वस्तु एवं सेवा कर एवं केंद्रीय उत्पाद शुल्क,  
कच्छ, गांधीधाम

(कुमार संतोष)  
आयुक्त (अपील्स)

By Regd. Post AD

To,

(i)	The Commissioner, CGST & Central Excise, Kutch, Gandhidham	(i)	आयुक्त, केंद्रीय वस्तु एवं सेवा कर एवं केंद्रीय उत्पाद शुल्क, कच्छ, गांधीधाम
(ii)	M/s. Varsani & Company, Navavas Madhapar, Bhuj (Kutch) - 370020	(ii)	मे. वरसानी & कंपनी, नवावास, मधापर, भुज (कच्छ) - ३७००२०

**Copy to:**

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, CGST & Central Excise, Kutch Commissionerate, Gandhidham for necessary action.
- 3) The Assistant Commissioner, CGST & Central Excise, Division-Rural, Gandhidham for further necessary action in the matter.
- 4) Guard File.