



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

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

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/195 /GDM/2017	03/DC/Anjar-Bhachau/2017-18	30.08.2017

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

KCH-EXCUS-000-APP-165-2018-19

आदेश का दिनांक / Date of Order:	15.10.2018	जारी करने की तारीख / Date of issue:	15.10.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

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

Arising out of above mentioned OIO issued by Additional/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. Industrial Electronics Control System, Gayatrinagar Society, Plot No. 47/48, Revenue Survey No. 191, Meghpar-Borichi, Anjar-370110

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 असावा अहमदाबाद- 380016 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(e) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपए 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 नियमवली, 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपए 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 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 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 36 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 "नांग 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 होंगे। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 OIC 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। / जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh / fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क 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 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 दस्तावेज, 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. Industrial Electronics Control System, Gayatri nagar, Society, Plot No. 47/48, Revenue Survey No.191, Meghpar-Borichi, Anjar-370110 (herein after referred to as "Appellant") filed present appeal against Order-in-Original No. 3/DC/Anjar-Bhachau/ 2017-18 dated 30.08.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST (Anjar-Bhachau) Division, Gandhidham, (hereinafter referred to as 'the lower adjudicating authority'),

2. The brief facts of the case are that the appellant was service tax assessee registered under the category of "Maintenance or Repair Service"; that the appellant had short paid the service tax on services of 'Maintenance or Repair Service' provided by them by claiming abatement of 50% classifying wrongly under "Works Contract Service"; that appellant had wrongly availed exemption under Notification No. 40/2012-ST dated 20.6.2012 and Notification No. 12/2013-ST dated 1.7.2013 (hereinafter referred to as "exemption notifications") in respect of supply of services to SEZ units inasmuch as the appellant had not fulfilled the stipulated conditions under exemption notifications and also failed to produce declarations in Form A-1 and A-2 as prescribed under said exemption notifications. It is also alleged that the appellant filed ST-3 returns beyond the prescribed due dates during the F.Y. 2012-13 to 2014-15. Show Cause Notice dated 28.6.2016 was issued to Appellant demanding service tax of Rs.4,39,609/- under Section 73 of the Finance Act,1994 (hereinafter referred to as "Act"), interest under Section 75 of the Act, proposing penalty under Section 76, Section 77 and Section 78 of the Act and also late fee under Section 70 of the Act. The lower adjudicating authority vide the impugned order confirmed demand of Rs.4,39,609/- under Section 73 of the Act, interest under Section 75 of the Act, imposed penalty of Rs.10,000/- under Section 77 of the Act, penalty of Rs.4,39,609/- under Section 78 of the Act, late fee of Rs.48,000/- under Section 70 of the Act and also appropriated late fee of Rs.20,000/- already paid by the Appellant.

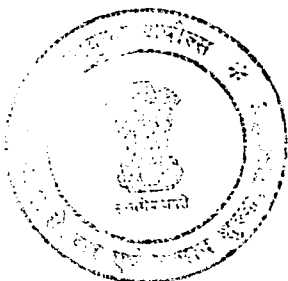
3. Being aggrieved with the impugned order, the Appellants preferred present appeals stating that confirmation of demand and imposition of late fee and penalty by the lower adjudicating authority is not justified and no ground of



appeal was advanced.

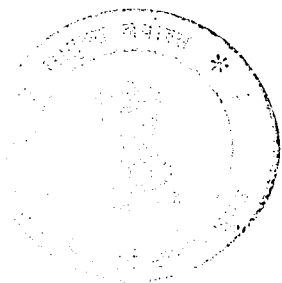
4. Personal Hearing in the matter was attended by Shri Abhishek Doshi, Chartered Accountant, who reiterated the grounds of appeals and made written submission dated 20.09.2018 to say that demand is on two grounds (i) Supply to SEZ without obtaining Form A-2 for Rs.1,06,409/- (ii) Service provided to other than SEZ units after availing 50% abatement involving demand of service tax of Rs.3,33,200/-; that they would be depositing Form A-2 in next 7 working days; that they have already submitted for 2 parties and to submit in respect of 10 parties; that confirmation of 50% discharge of service tax liability under RCM has been submitted in respect of 2 parties i.e. M/s. Welspun Corporation Ltd, Anjar and M/s. Indian Steel Corporation Ltd, Bhimasar who handled about 40% of Service tax involved; that all remaining Form A2 and confirmation shall be submitted in next seven working days.

4.1. The appellant in written submission dated 31.7.2018, interalia, submitted that appellant (a proprietary) concern engaged in providing services relating to maintenance or repair activity along with supply of Electronics and Electrical items at Anjar and providing services to SEZ units including non SEZ units; that as regards demand of service tax of Rs.1,06,409/- on supply to SEZ units without obtaining form A-2, appellant has submitted certain form A-2 during the personal hearing before the lower adjudicating authority during course of the personal hearing; that certain service recipients mentioned as SEZ in Show Cause Notice are not SEZ units and the appellant has not claimed any benefit of SEZ exemption in respect of (i)M/s. Indox Ltd, (ii) M/s. HANSH Ispat (iii)Sanghi Polyfill (iv)M/s. (v)M/s. Mono Steel (vi) M/s. Essar Steel (vii) M/s. Shndong Tiejun El. Power Eng Ltd (viii) M/s. Adani wilmar (ix) M/s. Gail India (x) M/s. Gail India (xi) M/s. Wlspun Copr ltd (xii) M/s. Indian Steels; that appellant submitted Form A-2 in respect of M/s. Timbmet Door Solutions P Ltd (Taxable Value of Rs.6,200/-); that Form A-2 in respect of M/s. Capital Foods Ltd (Taxable Value of Rs.1,82,800/-) has already been submitted before the lower adjudicating authority; that Form A-2 in respect of other 10 service recipient will be submitted within 15 days time; that SEZ Act has overriding effect over the Finance Act, 1994 and hence no service tax is to be paid by appellant in case of the services provided to SEZ units.



4.2 As regards demand of service tax of Rs.3,33,200/- on account of abatement of 50% claimed by the appellant, they submitted that the services of "Maintenance or Repair Service" were mainly provided to private limited and public limited companies; that the appellant was engaged in repairs and maintenance activity along with supply of consumables and accordingly, the services fall within the meaning of works contract services as per the definition under Section 65B(54) of the Act; that supply of consumables is integral part of maintenance and repair contract; that it is wrongly mentioned in the show cause notice that abatement was availed for 3 years; that the recipient of services being private limited or limited companies, are required to pay 50% of service tax on reverse charge basis; that copy of confirmation from 2 service recipient is enclosed ; that appellant is in process of collecting confirmation from other recipients and will be submitted within 15 days ; that even if it is presumed that services provided do not classify under works contract services, the entire service tax liability has been discharged (50% by provider and 50% by recipient) and there is no loss of revenue to the government.

4.3 Appellant has been regular in payment of service tax and filing of service tax returns; that all details and facts has been declared by them and has not suppressed the facts; that books of accounts of the assessee are regularly submitted to various authorities and appellant has disclosed all the relevant facts at various public forums; that even if a mistake in calculation of service tax, it would be just because of complexity of the provisions relating to payment of service tax and it is bonafide mistake on their part and cannot be held as suppression of facts; that a appellant being regular tax paying assessee would not evade the payment of service tax deliberately; that the show cause notice or impugned order did not speak any evidence to show that appellant has suppressed any information with an intention to evade payment of service tax; appellant has correctly stated the value of the services in their ST-3 returns; that they rely upon the Hon'ble Supreme Court's judgment in the case of M/s. Amco Batteries Ltd reported as 2003-TIOL-50-SC-CX, M/s. Sotex reported as 2006TIOL-170-SC-CX, M/s. Padmini Products reported as 2002-TIOL-289-SC-CX and in the case of M/s. Jaiprakash Industries Ltd reported as 2002-TIOL-633-SC-CX.



4.4 Appellant submitted that since there was no short payment of service tax by them no interest was payable by them; that any demand confirmed would be on account of interpretation of provisions of law and not account of fraud or willful misstatement with intent to evade payment of taxes; that non payment of service tax is due to their bonafide interpretation of law and hence benefit of provisions of Section 80 of the Act may be extended to them; that that appellant has not been granted benefit of reduced penalty of 50% available under Section 78 of the Act as details relating to Transactions are recorded in their books of accounts; that Appellant rely upon the Hon'ble Supreme Court's judgment in the case of M/s. Hindustan Steel Ltd reported as 2002-TIOL-148-SC-CT-LB, the Hon'ble Karnataka High Court's judgment in the case of M/s. Motorworld and others reported as 2012-TIOL-418-HC-KAR-ST.

Findings:

5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions of the appellant. The issue to be decided in this appeal is as to (i) whether benefit of exemption for providing services to the SEZ units by the appellant denied to them is correct or not and (ii) whether appellant has correctly claimed the abatement of 50% in value considering the services provided by them as "works contract service" or not?

6. I find that the appellant filed this appeal beyond period of 60 days but within further period of 30 days stating that concerned employee of the appellant was leave and this unit is situated at Anjar leading to further delay in delivery of papers. Since the appeal has been filed within further time limit of 30 days prescribed, I condone the delay in filing of this appeal and proceed to decide the appeal on merit.

7. I find that It is the appellant's submission that the SEZ Act,2005 gives overriding effect over the provisions of Finance Act,1994 and hence exemption from service tax under the SEZ Act,2005 prevails over Notifications issued under Finance Act,1994 making them eligible for refund. I find this argument of appellant not tenable as such a position makes issuance of Notifications redundant, which is not the intention of the legislation. Exemption under SEZ Act,2005 has been implemented through issuance of various Notifications and



assesseees are required to follow the conditions of the notifications. The wordings of para 3(h) of Notification 40/2012-ST dated 20.6.2012 and para 3(I) & 3(II) of Notification No. 12/2013-ST dated 01.07.2013 stipulates that the SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for their authorized operations. It implies that the approval of the services as specified services is required to be obtained by any SEZ unit for the purpose of exemption. The appellant has not challenged the findings of the lower adjudicating authority that they did not provide requisite Form A1/A2 to avail *abinitio* exemption. Appellant produced Form A2 dated 1.6.2016 issued by the Assistant Commissioner in respect of M/s. Timbet Door Solutions Pvt Ltd which I find not relevant in the present case as the demand is in relation to services provided during 2012-13 to 2014-15. Therefore, appellant failed to fulfil the obligation and conditions of the notification to claim the exemption from service tax as provided under the said Notification. I, therefore, uphold the impugned order rejecting exemption of Rs.1,06,409/- and reject appeal to this extent.


8. The next issue is that appellant paid 50% of total service tax payable claiming that the services provided by them were in relation to execution of "Works Contract" and hence they have paid @50% of total service tax payable under Notification 30/2012-ST dated 20.6.2012. I find that 'work contract' as defined at Clause 54 of Section 65B of the Act, reads as under:-

(54) "works contract" 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 for carrying out any other similar activity or a part thereof in relation to such property;

8.1 The definition of "Work Contract" stipulates transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods. It is appellant's contention that supply of consumables is integral part of maintenance and repair contract and hence services provided by them within meaning of works contract services. In support of their claim appellant submitted copies of 4 work orders of M/s. PSL Ltd (Work Order dated 11.5.2013), M/s. Ratnamani Metals & Tubes Ltd (W.O. dated 9.1.2012 and dated 25.2.2012) and M/s. Welspun Corp Ltd (P.O. Dated 15.4.2013). Copies of

this work orders are reproduced as under:-

Work Order No. PSL/SVPM/WO/09 dtd. 11.5.2013 of M/s. PSL Ltd

	PSL LIMITED (PIPE MILL DIVISION)	Issue No. 3 QR/PU/04 Revision No. 2				
Survey NO. 38/1&2,39,40 & 42, Bhachau Bhimasar Road, Village: Varsana Taluka: Anjar, Kutch, Gujarat - 370240 Tel. (02836) 306100 / 128 / 129 / 130 Fax: (02836) 306200 C.S.T. No. 24011000497 dtd. 05.9.05, C.S.T. No. - 24511000497 dtd. 05.9.05, ECC No. - AAACP2734KXM011						
WORK ORDER NO: PSL/SVPM/WO/ 09		DATE: 11.5.2013				
Industrial Electronic Control Systems Shop No. 103, Manall Towers, Plot No. 110, Behind Oslo Cinema Gandhidham - 370201 (M) 9879278330	Our Corporate Office: PSL Towers, Plot No. - 615 Makwana Road, Marol Andheri (E) Mumbai - 400059 Tel : (022) 66447777 / 66447788 Fax : (022) 66447711					
Our Ref: Email dtd. 08.4.2013		RT No. 230 dtd. 18.3.2013				
S. No	Description	Qty.	Rate	Unit	Disc %	Amount
1	Repairing of ABB Make AC Drive ACS 550 37 KW (Replacement of Control Card main IC, Power Card Capacitor, Relay, Trng & Divice etc.)	1	12000.00	No.		12000.00
Total Rs.						12000.00
1	Payment Terms	:	Within 30 days after submission of Invoice			
2	Excise Duty	:	Not applicable			
3	Packing & Forwarding	:	Not applicable			
4	CST / VAT	:	Not applicable			
5	Service Tax	:	ST @ 12.36 % extra			
6	Freight	:	To be borne by us			
7	Despatch Instruction	:	To Our Varsana Factory No.-2 address			
8	Delivery Schedule	:	Within one week			
9	Guarantee / Warrantee	:	3 Months warranty			
10	Inspection / Certificate	:	Inspection at our Varsana Factory			
11	Transit Insurance Schedule	:	Not applicable			
12	Special Terms & Conditions	:	You will do the work at your own risk & Cost TDS shall be deducted as per Govt. rules on Labour Charges PSL reserve the right to increase, decrease or delete the scope of work			
Important Instruction:		For PSL Limited				
1	This W.O. is subject to the jurisdiction of where material is supplied and also to our standard terms & conditions of purchase.	Hand Dutt (SP. Exp.) Checked & Verified by				
2	Invoice mentioning this W.O. No. must be sent in duplicate directly to the location where material has been despatched.					
		D. K. Saxena (Addl. VP) Authorised by				
Regd. Office :- Kachigram, P.B. 25, Daman (U.T.) 396210, Ph. No. (0260) 2242989, 2244496, 2244497, Fax No. (0260) 2241932						
Distribution: 1. Supplier, 2. Pur (Dom), 3. Pur (Pty), 4. A/cs (Pty), 5. Store						

[Handwritten Signature]

Work Order No 3009002658 dated 15.4.2013 of M/s. Welspun Corp Ltd

Bin No - 14
WORK ORDER

WCLPUR/HRD REV.01
 Page 1 OF 3

P.O. No.: 3009002658
Date : 15.04.2013

WELSPUN
 Corp Ltd

Reply To :
 Welspun Corp Ltd.
 Plate & Coil Mills Division)
 Plot No. 659, Village- Versamedi
 Anjar Dis. Kutch
 Gujarat - 370110 (India)
 Phone: 2836 662222 Fax: +91 2836 664141

INDUSTRIAL ELECTRONIC CONTROL SYSTEMS

PLATE TOWERS SEC-8
 Plot No-110, OFFICE NO 103, KUTCH,
 MORIDHAM GUJARAT - 370201
 Phone: 283662659

Ref: - Our Ref: NB
 Attn: - DEEPAK

INSTRUCTIONS:
 1. Acceptance of the order must be sent promptly.
 2. Delivery is the essence of the order.
 3. Service to be billed to WELSPUN CORP LTD. (Plate & Coil Mills Division) Anjar.
 4. In case of manpower supply, the copy of W.C.PF Challan & Insurance must be sent to our HR Dept before start the work.
 5. One set of despatch documents (bearing ref. order no.) must be sent to us.

Sir,
 We are pleased to place order for the materials mentioned in this order subject to terms, conditions and instructions specified here .


Description	QTY	UOM	Rate(INR)	Value(INR)
repairing of power supply of PA system POWER SUPPLY OF PA SYSTEM PSU-LDK-100 PSU. Input-250v ac,50Hz, 0.2A 120 watts Output-30v /3.0 A SN:-504KCVU025887 +5V/4A, +5V/0.5A, +30V/3A Model: LG ARIA, Digital key service unit-NI.	1.000	AU	1750.00	1750.00
The above items covers the following services: repairing of power supply of PA system	1.000	NOS	1750.00	1750.00
Total Item Value				1750.00
			Basic Order Value	1,750.00
			Total Sales Tax/VAT	93.65
			Total Service Tax	216.30

Service Tax: 12.36% Extra
 Payment: 100% after completion of work & approved by user
 Warranty & Performance Guarantee. Free replacement against any Manufacturing defect, workmanship & failure of components for a period of
 12 Months from the date of dispatch.

[Handwritten Signature]

Purchase Order No. KCS/6111002106 dated 25.2.2012 of M/s. Ratnamani Metals & Tubes Ltd

Purchase Order



PO No KCS/6111002106
PO Date 25.02.2012

INDUSTRIAL ELECTRONIC CONTROL SYSTEMS TOWER, NO: 103, SEC:8, NO 110, GANDHIDHAM +91-9879662659 Fax: Email: deepak.mara@gmail.com Code: DI00076 MR. DEEPAK MARAJ	Communication Address: SURVEY NO. 474, VILLAGE-BHIMASAR, ANJAR BHACHAU ROAD TA-ANJAR, DIST.-KUTCH (BHUV) GANDHIDHAM, GUJARAT (INDIA) . Pin-370240 Phone: +91-02836-285538 Fax : +91-02836-285540 Email : INFO.KUTCH@RATNAMANI.COM Buyer Info Buyer: LEELARAM PURHIT Phone: +91-9009006346 E-Mail: leelaram@ratnamani.com
Excise & Tax Details ITC No : CST No : N.A. ECC No : N.A. Tax No. : AWOPM7481RSD002 Pan No. : AWOPM7481R	Our Pan Details Pan No. : AABCR1742E

Subject : Purchase Order for Supply of following material / services
 Reference: 1) . EMAIL QTN. DATED:26.01.2012


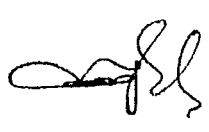
Sir,
 We are pleased to Issue this Purchase Order for supply of goods / providing services based on your above Offer and further discussions we had with you.

SCHEDULE OF QUANTITIES AND PRICES

Sl. No.	Material Code	Description	UOM	Quantity	Unit Rate	Amount
1		REPAIRING OF HOLIDAY MACHINE	Activ.unlt			1.00
Item covers the following service						
20	3001137	REPAIRING OF HOLIDAY DETECTOR 10-35 KV,MODEL NO-135,MAKE-SPY	EA	2	13,200.00	26,400.00
PR No.: 3011001625 Line Item : 00001 Plant : COATING Delivery Date : 29.02.2012						
					Unit Rate	Amount
					Service Price Rate	26,400.00
					IN Service Tax Setof	10.00 %
					ECS - Service Tax	2.00 %
					HI-ECE-Service Tax	1.00 %
					Net Item Total	29,119.00
Sub Total :						29,119.00
Total Amount						29,119.00
					Service Price Rate	26,400.00
					IN Service Tax Setof	2,640.00
					ECS - Service Tax	53.00
					HI-ECE-Service Tax	28.00
					Total PO Value:	29,119.00

Total Purchase Order Value in Words : TWENTY NINE THOUSAND ONE HUNDRED NINETEEN Rupees


Special Terms & Conditions
 Packing Instruction : STRONG ROAD TRANSPORT WORTHY.
 Packing & Forwarding : N.A.

Head Office : 17, Rejmugal Society, Naranpura Char Raats, Ankur Road, Naranpura, Ahmedabad-380 013, Phone : +91-79-27415501/2/3/4, Fax :
 Email : info@ratnamani.com



Purchase Order No. KCS/6111001775 dated 9.1.2012



Purchase Order

<p>INDUSTRIAL ELECTRONIC CONTROL SYSTEMS ANALI TOWER, OFFICE NO : 103, SEC: D, PLOT NO 110, 38201 GANDHIDHAM Phone : +91-9079662659 Fax : Email : doepak.mara @hotmail.com Pin Code : D100076 Attn: MR. DEEPAK MARAJ</p>	<p>PO No KCS/6111001775 PO Date 09.01.2012</p>
<p>Our Excise & Tax Details IT/ TIR No : CST No : N.A. Service ECC No : N.A. Service Tax No : AWOPM7401RSD002 Pan No. : AWOPM7401R</p>	<p>Communication Address: SURVEY NO. 474, VILLAGE-BHIMASAR, ANJAR BHACHAU ROAD TA-ANJAR, DIST.-KUTCH (BHUI) GANDHIDHAM, GUJARAT (INDIA) . Pin-370240 Phone: +91-02836-285538 Fax : +91-02836-285540 Email : INFO.KUTCH@RATNAMANI.COM</p> <p>Buyer Info Buyer: BINDIYA Phone: +91-9909005602 E-Mail: bindiya@ratnamani.com</p> <p>Our Pan Details Pan No. : AABCR1742E</p>

Subject : Purchase Order for Supply of following material / services
 Reference: 1) . OUT DATED.19.01.2012.

Dear Sir,
 We are pleased to issue this Purchase Order for supply of goods / providing services based on your above Offer and further discussions we had with you.

SCHEDULE OF QUANTITIES AND PRICES

Item No.	Material Code	Description	Qty.	UOM	Gross	Crcy.	Net Value	Quantity	
1		REPAIRING WORK OF AC DRIVE, MODEL: N2 SERI						1.00	
Item covers the following service									
20	3000381	REPAIRS OF AC DRIVES	1	EA	5,600.00	INR	5,600.00		
20	3000381	REPAIRS OF AC DRIVES	1	EA	7,200.00	INR	7,200.00		
AC DRIVERS REPAIRING CHARGE 3.7 KW T VETER Rs. 4000/- COMPONENT CHARGE & Rs. 1600/- SERVICE CHARGE TOTAL Rs. 5600/- Rs. 5200/- COMPONENT CHARGE & Rs. 2000/- SERVICE CHARGE. TOTAL Rs. 7200/-									
PR No.: 3211000517 Line Item : 00001 Plant : CS-KUTCH Delivery Date : 23.02.2012							Unit Rate	Amount	
Service Price Rate							12,800.00	12,800.00	
IN Service Tax Setol							10.00 %	1,260.00	
ECS - Service Tax							2.00 %	26.00	
HI-ECE-Service Tax							1.00 %	13.00	
Net Item Total							INR	14,119.00	
Sub Total :								14,119.00	
Total Amount								12,800.00	
Service Price Rate								1,280.00	
IN Service Tax Setol								26.00	
ECS - Service Tax								13.00	
HI-ECE-Service Tax								14,119.00	
Total PO Value:								INR	

Total Purchase Order Value In Words : FOURTEEN THOUSAND ONE HUNDRED NINETEEN Rupees

Special Terms & Conditions

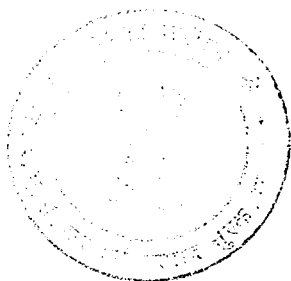
Office :- 17, Rajnugat Society, Naranpura Char Rastu, Ankur Road, Naranpura, Ahmedabad-380 013, Phone : +91-79-27415501/2/3/4, Fax : 79-27480999, Email : info@ratnamani.com

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8.2 I find that appellant had not produced any contracts/ work order except four mentioned hereinabove. I find that above work orders do not stipulate any condition for 50% payment under RCM. Appellant has produced copy of Email exchanges made by them with M/s. Welspun Corporation Ltd to submit that 50% payment of service tax was made by the recipient. I find that the said emails are very general in nature and not in any manner certifying payment of service tax with reference to specific transactions between the appellant and service recipients without referring type of services provided by the appellant, terms of contracts, payment particulars etc. I also hold that emails can not be made as valid and legal documents in absence of and in lieu of any Contracts, Bills and other accounting documents establishing transactions as contended by the appellant. I find that the lower adjudicating authority, at para 22 of the impugned order has recorded his findings on the basis of work orders and invoices/ bills raised by the appellant. I find that work orders of M/s. PSL Limited (dated 11.5.2013 for Rs.12,000/-) and of M/s. Ratnamani Metals Ltd (25.2.2012 for Rs.29119/-) are not showing supply of any goods by the appellant where property of goods are transferred and Service Tax @12.36% has been charged. In case of work order of M/s. Welspun Corp Ltd (dated 15.4.2013 for Rs.1,750/-), Service Tax @12.36% is charged on full value and it refers repairing of Power Supply of PA system. I find that in case of Work Order of M/s. Ratnamani Metals Ltd dated 9.1.2012(Rs.14,119/-) though the work order has bifurcation of Component Charges, service tax has been considered on full value of work order and do not stipulates payment under Reverse Charge Mechanism by the service Recipient. I find that appellant has produced four work orders representing service tax of Rs.17,257/- out of total demand of Rs.3,33,200/-. I find that appellant failed to advance any plausible evidence to justify that services provided are in the nature of execution of work contracts and service recipient has made payment of service tax @50% under Notification 30/2012-ST dated 20.6.2012. As the appellant had not furnished documentary evidence in support of their claim, I find that the appellant is the only person liable to pay service tax and service tax liability of service recipient under Notification 30/2012-ST dated 20.6.2012 is not established.



9. I also find that the dispute is classification of the service provided by the appellant to various service recipients, therefore, it would be pertinent to



reproduce below Section 65A of the Finance Act, 1994 for better understanding of the facts:

"SECTION 65A. Classification of taxable services. –

(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (ICS) of section 65;

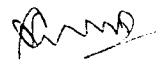
(2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-

- (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;*
- (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;*
- (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration."*

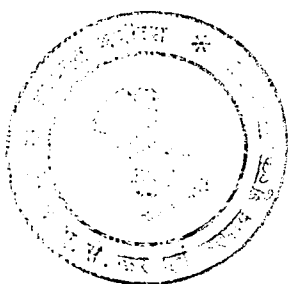
9.1 I find that legislature recognized and envisaged the possibility of an overlap between two different services and thus provided a remedy in the form of Section 65A to resolve such an overlap. As per these provisions, if a sub-clause provides specific description, it has to be considered and in case of composite services, the essential character of the service has to be taken for the purpose of classification. I find that once contract or agreement is for maintenance and repair services, the main work assigned to the appellant was of repairing of items without agreeing for payment of 50% of service tax by service recipients and also, contracts awarded to the appellant did not refer "work contract services" and payment of service tax under Notification 30/2012-ST dated 20.6.2012. Since the essential character of the contract was of repairs by the appellant, I am of the considered view that the appellant was rendering the "Management, Maintenance & Repair" service to the service recipients. Further, as discussed above, the appellant had failed to produce any documentary evidence in respect of materials supplied by them during the course of the service before the lower adjudicating authority and no new facts have been brought before me, and therefore I do not find any infirmity in the impugned order and the reject the appeal filed by the appellant on this count.

10. The appellant contended that the demand was time barred as there was no suppression, no malafied intention to fraud or to evade service tax. The appellant also contended that they have not paid service tax on account of their bonafide belief that services provided are in respect of execution of "Works Contracts" and service tax liability is restricted to 50% of total service tax

payable. I find that appellant is claiming that 50% of tax liability to be borne by the service recipient without any supporting documents. Appellant being executor of the contract failed to justify their bonafide as to how was it contract service ? Appellant short paid service tax on presumption basis which does not justify their bona fide at all. Similarly, conditions under exemption notifications are well documented and appellant continued providing services in spite of having non complied with the said notifications. Therefore, short payment of service tax in this case is attributable only with intent to evade payment of service tax especially when the appellant is undertaking number of work orders translating into well established business entity for long period of time. In an era of self-assessment, the onus on the assessee for compliance with laws has increased. In that context, the meaning of 'positive act of suppression' also changes. The scheme of levy based on voluntary compliance cannot be reduced to voluntary payment of tax by arguing that there is no positive act of suppression involved. The appellant is established service provider and had provided the services Management or repairs, however, evaded the payment of the service tax thereon, by putting ahead the shelter of their belief that the service recipient would pay under Reverse Charge Mechanism. The appellant had suppressed the vital fact of correct category of taxable services with intent to evade payment of service tax. Short payment of service tax came to the knowledge of the department only when Audit was undertaken by the department. Therefore, substance of suppression of facts prevails and hence invocation of extended period under Section 73(1) is justified and I find no merit in appellant's sole plea that it was their bonafide. I therefore, upheld the imposition of penalty under Section 77 and Section 78 of the Act under the impugned order.



11. Regarding waiver from penalties and the benefit under section 80 of the Act, I find that section 80 can be invoked only when the appellant is able to prove that there was reasonable cause for their failure. In the present case as discussed in forgoing para, the appellant had not provided any adequate reason for their failure in making payment of service tax. Therefore, in absence of any reasonable cause and bonafide belief, I hold that the benefit of Section 80 of the Finance Act, 1994 is not extendable to them. I, therefore, uphold the penalties imposed under Section 77 and 78 of the Finance Act, 1994. I rely on the Order passed by the Hon'ble CESTAT, Chennai, in the case of TVS Motor



Co. Ltd. reported in 2012 (28) S.T.R. 127 (Tri. - Chennai), held as under:

"13. So far as ground of no penalty advanced by learned counsel is concerned there is nothing on record to show that the appellant avoided its liability bona fide when it is an established business concern with vast experience in application of provisions of Finance Act, 1994. Its returns did not disclose bona fide omission. Rather facts suggest that knowable breach of law made the appellant to suffer adjudication. Accordingly, no immunity from penalty is possible to be granted on the plea of tax compliances made which was found to be a case no payment of tax on the impugned services provided during the relevant period."

11.1 I further hold that the present case otherwise also does not merit invocation of the provisions of Section 80 of the Act. I, therefore, reject the request of the appellant as devoid of merits.

12. In view of foregoing discussions, I uphold the impugned order and reject the appeal.

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

12.1 The appeal filed by the Appellant is disposed off in above terms.

(कुमार संतोष) 15/10/2018
आयुक्त (अपील्स)

By RPAD

To

M/s. Industrial Electronics Control System, Gayatrinagar Society, Plot No. 47/48, Revenue Survey No.191, Meghpar-Borichi, Anjar-370110	मेसर्स इंडस्ट्रियल एलेक्ट्रॉनिक्स कंट्रोल सिस्टम, गायत्री नगर सोसाइटी, प्लॉट नं ४७ /४८, रेवन्यू सर्वे नं १९१, मेघपर-बोरिची, अंजार-३७०११०
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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 Anjar-Bhachau Division, Gandhidham for further necessary action..
- 4) Guard File.

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