



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN - 20210364SX000000B029

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/40/RAJ/2020	24/REF/2019-20	23.03.2020

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

RAJ-EXCUS-000-APP-007-2021

आदेश का दिनांक / Date of Order:	24.03.2021	जारी करने की तारीख / Date of issue:	25.03.2021
------------------------------------	-------------------	--	-------------------

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित/
Passed by Shri Akhilesh Kumar, Commissioner (Appeals),
Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपयुक्तलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/ Joint/ Deputy/ Assistant Commissioner, Central Excise/ ST / GST,
Rajkot / Jamnagar / Gandhidham :

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

M/s. SIFCO Engineering Pvt Ltd, Plot no.4, Survey no.163/1, SIDC Main Road, Veraval (Shapar), Rajkot.

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 बतलाए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठों, 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(a) 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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/- रुपये 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 demanded/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 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 सकती 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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/- रुपये 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 of 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) सेनबेट जमा की गयी गई गलत राशि
(iii) सेनबेट 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 अर्ज़ों 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी 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 समयावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ङग से किया जाना चाहिए। 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, 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 filed 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 स्वगन 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-1 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, अपीलाधीन 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 SIFCO Engineering Pvt Ltd, Rajkot (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/40/RAJ/2020 against Order-in-Original No. 24 /Ref/2019-20 dated 23.3.2020 (*hereinafter referred to as 'impugned order'*) passed by the Dy. Commissioner, CGST Division-II Rajkot, (*hereinafter referred to as "refund sanctioning authority"*).

2. The facts of the case, in brief, are that the Appellant was engaged in providing 'Manpower Supply Service', 'Erection, Commissioning and Installation Service' etc. and was registered with Service Tax Department having registration No. AAHCS1683HST001. During audit of the records of the Appellant undertaken by the Departmental Officers, it was observed that the Appellant had received 'Manpower Supply Service', 'Rent-a-Cab Service', 'Legal Service', 'GTA Service' and 'Security Service' during the period from April, 2013 to June, 2017 and they were liable to pay service tax amount of Rs. 10,50,357/- under reverse charge basis, in terms of Notification No. 30/2012-ST dated 20.06.2012, as amended. On being pointed out during audit, the Appellant paid service tax amount of Rs. 10,50,357/- along with interest of Rs. 6,50,664/- and penalty of Rs. 1,57,555/- on 25.3.2019.

2.1 Subsequently, the Appellant filed refund claim under Section 142(3) and Section 142(6)(a) of the CGST Act, 2017 on the ground that they had paid service tax on reverse charge basis on 25.3.2019 and they were eligible to avail Cenvat credit of service tax so paid but, after introduction of GST, the person paying service tax under reverse charge mechanism was unable to avail Cenvat credit as Cenvat Credit Rules, 2004 is not in force.

2.2 The Show Cause Notice No. V(18)-98/2019-Ref dated 27.11.2019 was issued to the Appellant calling them to show cause as to why their refund claim should not be rejected. The refund sanctioning authority rejected the refund claim of the Appellant vide the impugned order.

3. Being aggrieved, the Appellant has preferred the present appeal on various grounds, *inter alia*, as below :-

(i) They filed the particular application for refund on account of transition period from Central Excise/ Service Tax to GST and as such independent provisions of Central Excise or GST may not be applicable in such cases and have to be read jointly and interpreted to facilitate such refunds; that as on date of filing the refund, Cenvat Credit Rules, 2004



were not in existence but all proceedings including Credit or demand was to be done on the basis of transitional provisions as detailed in Section 142 of the CGST Act, 2017.

(ii) That going by the provisions contained in Section 142(6a) and Section 142(3) of the CGST Act, 2017, their case satisfies the conditions i.e. (a) The claim of refund was filed after the appointed day (b) The refund is of Cenvat credit and (c) It was paid under the existing law (paid as Service Tax and not as (CGST/SGST/IGST). When all the three criteria is being satisfied, then it has to be refunded in cash and there is an overriding effect given upon the provisions of Section 11B of the Central Excise Act, 1944.

(iii) That as per above provisions, claim of refund is to be processed as per the existing law, means the Central Excise Act/The Finance Act, 1994 and therefore this claim was filed; that in both Sections 142(3) and 142(6a), the only debarring clause for the refund of Cenvat credit is that balance of the said amount as on appointed day has not been carried forward under CGST Act, 2017; that as per Section 142(6a) every proceeding of appeal, review or reference relating to a claim for Cenvat credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash.

(iv) That the refund sanctioning authority failed to follow judicial discipline. In a similar case wherein service tax was paid after 01.07.2017 and Cenvat Credit was eligible in terms of Cenvat credit Rules, 2004 was refunded to the claimant as per Refund Order No. Ref/657/Ac.DIV-I/MKS/2018-19 dated 28.11.2018 of Assistant Commissioner, CGST & Central Excise, Division-I, Vadodara and the order has been accepted by the department; that this fact was brought to the notice of the refund sanctioning authority, but the same was ignored; that they rely upon following case laws, wherein it has been held that if any order is in favour of the appellant and has been accepted by the department, it attains finality.

- (a) Vega Auto Accessories Pvt. Ltd- 2018 (14) G.S.T.L. 7 (Del.)
- (b) Sainik Mining Allied Services Ltd - 2018 (12) GSTL 43
- (c) Rama Vision Ltd - 2018 (363) ELT 329
- (d) ICI India Ltd - 2017 (352) ELT 243
- (e) Rites Ltd - 2017 (350) ELT 83



du

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 12.2.2021. Shri R.C. Prasad, Consultant, appeared on behalf of the Appellant and reiterated submission of appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order and grounds of appeal submitted by the appellant in the memorandum of appeal and oral submission made at the time of personal hearing. The issue to be decided in the present case is whether the impugned order rejecting the refund claim of the Appellant is correct, legal and proper or not.

6. On going through the records, I find that the Appellant had availed certain services during the period from April, 2013 to June, 2017 on which they were liable to pay service tax under reverse charge basis in terms of Notification No. 30/2012-ST dated 20.06.2012, as amended. On being pointed out during Audit, the Appellant paid service tax along with interest. Subsequently, the Appellant filed refund claim on the ground they had paid service tax on reverse charge basis and they were eligible to avail Cenvat credit of service tax so paid, but after introduction of GST, the person paying service tax under reverse charge mechanism was unable to avail Cenvat credit as Cenvat Credit Rules, 2004 is not in force. The refund sanctioning authority rejected the refund claim on the ground that Cenvat credit of service tax paid on various services was not eligible for refund under Cenvat Credit Rules, 2004 and that there is no provision under Section 11B of the Central Excise Act, 1944 to grant refund of Cenvat credit of service tax in cash.

7. The appellant has canvassed their case for refund in the matter by relying upon the provisions of Section 142(3) and Section 142(6a) of the CGST Act, 2017, which are reproduced as under:

“Section 142(3): Every claim for refund filed by any person before ,on or after the appointed day, for refund of any amount of CENVAT Credit ,duty, tax, interest or any other amount paid under the existing law , shall be disposed of in accordance with the provision of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provision of existing law other than the provision of sub-section 2 of Section 11B of the Central Excise Act,1944.”



“Section 142(6)(a): Every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.”

7.1 As is evident from Section 142(3) reproduced above, any claim for refund of cenvat credit has to be decided in accordance with the provisions of existing law which in the instant case is Cenvat Credit Rules, 2004. For getting refund of Cenvat Credit under existing law i.e. under the CCR,2004 one has to avail the Cenvat Credit first under the said Rules. The provisions under Cenvat Credit Rules do not allow refund of Cenvat Credit in cash, unless it is availed. In the present case, the appellant has not availed cenvat credit of the amount of service tax paid for which the refund is claimed by them. It is their contention that the amount of service tax paid was available as cenvat credit to them under the erstwhile CCR,2004 and they could not avail the credit as the window for availment of Cenvat credit in TRAN-1 was closed prior to their payment of service tax. It is an undisputed fact that the CCR,2004 has been repealed with effect from 01.07.2017 and when the amount of service tax in the case was paid after the date of repeal of the CCR,2004, it cannot be claimed as cenvat credit available as no such credit was available to the appellant as on the date of repeal. What can be available would be only to extent available on date of repeal of the relevant law viz. Cenvat Credit Rules, 2004 which is 01.07.2017. It is pertinent to note in this context that the service tax amount in question in this case was in fact due for payment in the pre-GST period and had that liability been duly discharged at that material time, the appellant could have availed the Cenvat Credit of the same under the existing law before 01.07.2017. Now, having discharged their said liability after repeal of the relevant law viz. Cenvat Credit Rules, 2004 on being pointed out by the audit, the same cannot be admissible as cenvat credit. Therefore, the contention of the appellant in this regard does not have any legal back up. Without availing credit under the CCR, 2004, the amount of service tax paid in the present case does not take the colour of Cenvat credit as envisaged under the said Rules. Under the circumstances, provision of Section 142(3) of the CGST Act, 2017 is not applicable to the appellant's case.



7.2 Coming to the contention of the appellant regarding Section 142(6a) of the CGST Act, 2017, it is observed that the said provisions deal with situation where admissibility of Cenvat credit is under dispute in any appeal, review of reference proceedings and when such credit is found to be admissible to the claimant then in such cases such credit shall be refunded in cash notwithstanding anything to the contrary contained in existing law. In the present case, the Appellant had paid service tax on reverse charge basis in terms of Notification No. 30/2012-ST dated 20.06.2012, as amended and service tax so paid was eligible to be availed as Cenvat credit in their Cenvat credit account prior to 1.7.2017. So eligibility of Cenvat credit is not under dispute in the present case at all. Hence, provisions of Section 142(6a) of the CGST Act, 2017 would not be applicable in the present case.

8. Further, it is observed that the amount of service tax paid under reverse charge mechanism in the present case was actually due for payment by the appellant during pre-GST period. But they did not discharge their tax liability when it was actually due and the same was paid during the audit conducted by the department after implementation of GST with effect from 01.07.2017. Section 142(8)(a) of the CGST Act, 2017 is in fact relevant to the case in hand which provides that "where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act". In the instant case, the appellant had paid the amount in question with interest and penalty upon detection of the non-payment of their service tax liability by the audit. Since the said payment by the appellant was against their liability of pre-GST period, it is nothing but arrears of pending dues recovered in GST period under the above provisions of Section 142(8)(a) of the Act *ibid*. That being so, the amount so recovered cannot be admissible as input tax credit as per the above said provision of CGST Act, 2017.

9. The Appellant has contended that in a similar case wherein service tax was paid after 01.07.2017 and Cenvat Credit of service tax was refunded to the claimant as per Refund Order No. Ref/657/Ac.DIV-I/MKS/2018-19 dated 28.11.2018 passed by the Assistant Commissioner, CGST & Central Excise, Division-I, Vadodara and the order has been accepted by the department and that this fact was brought to the notice of the refund sanctioning authority, but



Handwritten signature

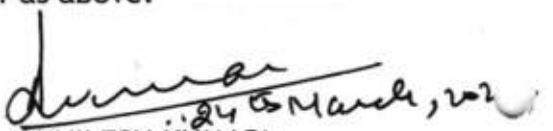
the same was ignored. They relied upon various case laws, wherein it has been held that if any order is in favour of the appellant and has been accepted by the department, it attains finality. I have examined said Refund Order dated 28.11.2018 as well as various case laws relied upon by the Appellant. If the Department has not filed appeal against said Refund Order dated 28.11.2018 as claimed by the Appellant, then proceedings in that particular case attains finality as has been held in relied upon case laws and there is no dispute about it. However, such order is not binding to other quasi judicial authority in some other proceedings. A quasi judicial authority is only bound to follow orders of higher appellate authority. Hence, the refund sanctioning authority has not violated judicial discipline by not taking cognizance of refund Order dated 28.11.2018 passed by the Assistant Commissioner, CGST & Central Excise, Division-I, Vadodara. I, therefore, discard this contention being devoid of merit.

10. In view of the above discussions, I am of the considered view that the refund claimed by the appellant in the present case in respect of service tax paid under reverse charge mechanism after the appointed day i.e. 01.07.2017 is not admissible to them and hence, the rejection of refund by the refund sanctioning authority in the case is legally correct and proper. Therefore, I do not find any reason to interfere with the decision taken by the refund sanctioning authority vide the impugned order.

11. Accordingly, I uphold the impugned order and reject the appeal.

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

12. The appeal filed by the Appellant is disposed off as above.


(AKHILESH KUMAR)
Commissioner (Appeals)

Attested



(V.T.SHAH)

Superintendent (Appeals)

By R.P.A.D.

To, M/s SIFCO Engineering Pvt Ltd Plot No. 4, Survey No. 163/1, SIDC Main Road, Veraval (Shapar), District Rajkot.	सेवा में, मे० सीफको इंजीनियरिंग प्राइवेट लिमिटेड, प्लॉट नं० 4, सर्वे नं० 163/1, एसआईडीसी मुख्य मार्ग, वेरावल (शापर), राजकोट।
---	--



प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-II मण्डल, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

