रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-I) का कार्यालय केन्द्रीय उत्पाद शुल्क :
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद– 380015.

क फ़ाइल संख्या : File No : **V2(RIP)6,7/STC-III/2016-17/Appeal-I** /620-624
V2(RIP)25/STC-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-245 to 247-16-17**
दिनाँक Date **23.02.2017** जारी करने की तारीख Date of Issue _____

श्री उमाशंकर , आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by **Shri Uma Shankar** Commissioner (Appeals-I) Central Excise Ahmedabad

ग _____ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं _____
_____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No **AS PER ORDER** dated **AS PER ORDER** Issued by: Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The **Appellants**/Respondents

M/s. C-Metric Solution Pvt. Ltd.

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:–
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:–
Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद–380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad – 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी– 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी।

(ii) 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 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.

(iii) वित्तीय अधिनियम,1994 की धारा 86 की उप–धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 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 Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/– पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. 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.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) **धारा 11 डी के अंतर्गत निर्धारित रकम**

(ii) **सेनवैट जमा की ली गई गलत राशि**

(iii) **सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम**

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

4. For an appeal to be filed before the CESTAT, it is mandatory tc pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(4)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(4)(i) In view of above, 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."

ORDER IN APPEAL

Following three appeals have been filed by M/s C-Metric Solution Pvt Ltd., 302, I.T.Tower-II, Infocity Complex, Near Indroda Circle, Gandhinagar, Gujarat (hereinafter referred to as "the appellant") against Orders-in-Original (hereinafter referred to as" the impugned order") passed by the Deputy Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as ("the adjudicating authority).

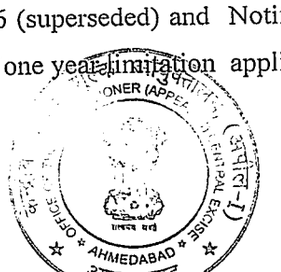
S No	Appeal No	OIO No. & date	Period involved	Amount involved
1	6/STC-III/16-17	187 to 188/Ref/ST/DC/15-16 dated 21.03.2016	Sept-2011	53,832/-
2	7/STC-III/16-17	-do-	April-2012	58,171
3	25/STC-III/16-17	12/Ref/ST/DC/2016-17 dated 20.4.2016	April-14 to June-14	2,04,485/-

2. Briefly stated, the facts of the cases are that the appellant had filed three refund claims in respect of unutilized Cenvat Credit of duty paid input service credit before the jurisdictional Central Excise office; that the claim mentioned at Sr. No.1 and 2 above filed in terms of Rule 5 of Cenvat Credit Rules, 2004 (CCR) read with notification No.5/2006-CE (NT) dated 14.03.2006 on 13.05.2013 and the claim mentioned at Sr.No.3 filed in terms of Rule 5 ibid read with notification No.27/2012-CE (NT) dated 18.06.2012 on 08.07.2015. The said claims were rejected by the adjudicating authority as time barred, as it hits limitation of time bar under the provisions of Section 11 B of the Central Excise Act, 1944 (CEA).

3. Being aggrieved, the appellant has filed the instant appeals on the grounds that the notification issued under Rule 5 of CCR provides that the claim is to be filed within the limitation period prescribed under Section 11 B of CEA i.e one year, however, relevant date from which the limitation period to be counted is not defined for such refund under the said Rule 5; that the starting point/relevant date for such cases would be from the date which the accumulated credit cannot be adjusted for payment of duty on domestic clearances for any other reasons. The appellant has cited various case laws in support of their argument that the time limit stipulated under Section 11B is not applicable in the case of refund under Rule 5 of CER and if so, the relevant date is from the date of payment of export service.

4. A personal hearing in the matter was held on 17.01.2017. Ms Rachnana M Khandhar, Chartered Accountant appeared for the same on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case, submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The core issue to be decided in the instant case is relating to admissibility of refund claim filed under Rule 5 of CER read with notification No.5/2006-CE(NT) dated 14.03.2006 (superseded) and Notification No.27/102-CE (NT) dated 18.06.2012 and the relevant period of one year limitation applicable to such cases.



6. At the outset, I observe that the appellant had filed three refund claims under Rule 5 *ibid* i.e two in terms of Notification No.05/2006-CE (NT) dated 14.03.2006 for the period pertains to September 2011 and April 2012 and one in terms of superseded Notification No.27/2012-CE (NT) dated 18.06.2012 for the period from April 2014 to June 2014.

7. The contention of the adjudicating authority is that the appellant has not filed the refund claim in question within the period of prescribed time limit of one year, in terms of Rule 5 of CER read with notification No.05/2006-CE (NT) dated 14.03.2006 and No.27/2012-CE (NT) dated 18.06.201, under the provisions of Section 11 B of CEA; that since the refund claims are pertaining to their export service, relevant date for determining period of limitation is date of export of service or date when the invoices were issued, hence the claims hits by limitation of time bar as prescribed under Section 11 B of CEA. The appellant contended that the period of limitation prescribed under Section 11 B of CEA is not applicable to the refund claim filed under Rule 5 of CER and it is to be ascertained from the date of payment of export service/remittance. The appellant has further relied on decisions in the case of M/s Celebrity Designs India Pvt Ltd. The appellant has further relied on the decision of *Clearpoint Learning System (I) Pvt Ltd [2015 (37) STR 149-Tri.Mumbai]*, wherein it has been held that the relevant date, if any for the purpose of Section 11B for refund of Cenvat Credit in case of export of service will be one year from the date of receipt of remittance for the services rendered to the recipient of service outside India.

8. Rule 5 of CCR stipulates that when any input are used in the final products which are cleared for export , the Cenvat credit of input or input service so used shall be allowed to be utilized by the manufacture towards payment of duty of excise of any final product cleared for home consumption or for export of payment of duty and for any reason the such credit is not possible to utilize , the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification. The notification No.05/2006-CE (NT) dated 14.03.2006 is governing the condition and limitation for filing the refund claim under the said Rule. With effect from 17.03.2012, the said Rule has been amended and stipulates that the manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the formula prescribed subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification. The notification No.27/2012-CE (NT) dated 18.06.2012 is governing the condition and limitation for filing the refund claim under the amended Rule 5.

9. The appellant has filed the refund claims as per following details.

SR No	Period involved	Date of filing	Amt. involved	Filed under notification No.
1	Sept-2011	13.05.2013	53,832/-	05/2006-CE(NT)
2	April 2012	13.05.2013	58,171	-do-
3	April-2014 to June 2014	18.07.2015	2,04,485/-	27/2012-CE (NT)

From the above, I observe that the refund claim filed in respect of Sr.No.1 governs under erstwhile Rule 5 of CCR with notification No.05/2006-CE (NT); the refund claim at Sr.No.2 governs under amended Rule 5 with notification No.05/2006-CE (NT); and the refund claim at Sr.No. 3 govern under amended Rule 5 with notification No.27/2012-CE (NT).

10. I observe that both the notifications i.e notification No.5/2006-CE (N) dated 14.03.2006 and 27/2012-CE (NT) dated 18.06.2012 prescribes certain conditions and limitation for claiming such refund claims. Since the issue relating to the instant case is with regard to time limit for filing refund claim, the related conditions and limitation set out in the Appendix to the said notifications are as under:

Notification No.5/2006-CE (NT) dated 14.03.2006

1. .....
2. The claims for such refund are submitted not more than once for any quarter in a calendar year.
3. ..

6. The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original are filed with the Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in Section 11B of the Central Excise Act, 1944.

Notification No.27/2012-CE (NT) dated 18.06.2012.

2.0 Safeguards, conditions and limitation

(a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter:

provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.
(b) .....

3. 0 Procedure for filing refund claim
(a) .....
(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944.

As per conditions of both the notifications, the manufacturer or output service provider shall not submit more than one claim of refund for every quarter. However, the notification No.27/2012-CE (NT) further provides that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services

every quarter. Both the notifications, however, prescribes that such refund is required to be filed with the jurisdictional officer in the prescribed form along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed, before the expiry of the period specified in section 11B of Central Excise Act, 1944.

11. Provisions of Section 11 B of CEA stipulates that the refunds claim is to be filed within one year from the relevant date; that as per Explanation B(a)(1) of Section 11B, the relevant date for filing of such claim means :-

> *"(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -*
>
> *(i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or"*
>
> *(b) .....*

However, in case of service exported out of India, there is no definition for 'relevant date' under the provisions of Section 11 B. Further, the provisions of Rule 3(2) and Rule 5 of erstwhile Export Service Rules, 2005 which stipulates as follows:

> ***3. Export of Taxable Service***
>
> *(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-*
> *(a)[* * *]*
> *(b) payment for such service is received by the service provider in convertible foreign exchange.*
>
> ***5. Rebate of service tax.:** Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.*

12. The Export Rules, 2005 has been superseded with "Place of Provisions of Service Rules, 2012 w.e.f 01.07.2012 (vide notification No.28/2012 dated 20.06.2012). However, the above referred provisions prescribed under Export Rules, 2005 have not been specified in the new Rules.

13. In view of above discussed statute, it appears that till supersession of Export Rules, 2005, the relevant date to be considered from the date of payment received by the service provider, subject to condition or limitation specified in the notification. Since the notification issued under Rules prescribes for the limitation of period as specified in Section 11 B of CEA, the refund claims in question are required to be filed within the specified period in Section 11 B of CEA read with the provisions specified in the Export Rules, i. e within one year as specified in Section 11 B of CEA from the date of payment received towards export service specified in Export Rules, 2005. However, I observe that in the superseded "Place of Provisions of Service Rules,

2012 w.e.f 01.07.2012, there is no reference/condition specified for considering export service as specified in the Export Rules, 2005.

14. The claim pertaining to the period of September 2011 mentioned at Sr.No.1 above (as per condition of notification, it appears of quarter ending July to September), as stated above, the said claim was filed by the appellant under notification 05/2006-CE (NT) on 13.05.2013. Therefore, the claim governs under erstwhile Rule 5 read with notification No.05/2006-CE (NT) and read with Export Rules, 2005. As such, the relevant date is required to be ascertained from the date of payment received by the service provider. However, it is to mention here that the amended Rule 5 of CCR, vide clause (2) prescribes the time limit for filing refund claim. as existing, prior to it amendment. The said clause stipulates that " the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (third Amendment)Rules, 2012, within a period of one year from such commencement." In other words, the claim pertains to the period prior to 01.04.2012 (date of commencement of amended Rule 5 of CCR) has to be filed on or before 31.03.2013. In the circumstances, I am of the considered view that in any situation, the refund claim pending prior to 01.04.2012 has to be filed on or before 31.03.2013. In the instant case, the appellant has filed the claim mentioned at Sr. No.1 i.e for the period of September 2011 on 13.05.2013. Therefore, the refund claim hit by limitation of time bar and accordingly, the same is not admissible.

15. In respect of refund claim mentioned at Sr.No.2 above, I observe that the appellant has filed the claim of April 2012 (pertains to the period of quarter April-June 2012) on 13.05.2013. The said claim governs under amended Rule 5 of CCR read with notification No.05/2006-CE (NT) and read with Export Rules, 2005. Therefore, as discussed above, the date of one year is to be ascertained from the date of payment of export service received. However, I observe that neither the adjudicating authority nor the appellant has discussed such date of payment of export service received in respect of the said claim. Therefore, I am of the considered view that the matter requires re-examination to ascertain the date of payment received by the service provider in respect of the claim in question and accordingly consider the eligibility of the claim. If it is found in order, the appellant is eligible for the refund claim in question.

16. Finally, the refund claim mentioned at Sr.No.3 above. The said claim pertains to the quarter of April 2014 to June 2014 and filed on 18.07.2015. Therefore, as discussed above, the claim governs under amended Rule 5 of CCR read with notification No.27/2012-CE (NT) and read with Place of Provisions of Service Rules, 2012. Since the Export Rules, 2005 itself superseded by "Place of Provisions of Service Rules, 2012" with effect from 01.07.2012, the stipulation of Export Rules 2005 that "*the provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the payment for such service is received by the service provider in convertible foreign exchange*" has no relevancy to this claim. Further, there is no stipulation, substituting the above provision in the amended "Place of Provisions of Rule

2012". However, the notification No.27/2012-CE (NT) issued under Rule 5 *ibid* stipulates that the refund claim shall be filed before the expiry of the period specified in Section 11B of CEA. The condition of the said notification is that one single claim for each quarter is required to be filed. Since the superseded Rules does not mentioned any provision for treating export service, as it appeared in Export Service Rules, 2005, it appears that the relevant date for computing one year shall be as per condition prescribed in the relevant notification; that since the notification allows an assessee to file refund claim once in a quarter, such refund claims only can file after the completion of that quarter. In the circumstances, the relevant date only comes from the last date of the quarter in which the refund claim relates.

18. In the instant case, I observe that the appellant has filed the claim pertains to the quarter of April 2014 to June 2014 on 18.07.2015. In the circumstances, the limitation for filing the said claim enumerate from the conditions of the notification No.27/2012-CE, the appellant should have filed the claim on or before 30.06.2015; hence the claim hits by limitation of time bar. The appellant argued that no time limit is applicable in respect of refund claim under Rule 5 of CCR as held by Hon'ble Tribunal in the case of M/s GTN Engineering [2010 (258) ELT 625-Tri,Chennai]. I observe that the decision was challenged by the Department before Hon'ble High Court of Madras and the Court has pronounced a judgment and set aside the said decision of Tribunal [2012 (28) STR 426]. The Hon'ble High Court held that for the provisions of Rule 5 read with Notification, assessee could not have filed the application for refund, he has to satisfy the limitation clause as providing under Section 11 B of the Act.

19. The appellant further relied on decision Hon'ble Tribunal, Mumbai in the case of M/s Clearpoint Learning System (I) Pvt Ltd [2015 (37) STR 149-Tri.Mumbai], wherein it has been held that the relevant date, if any for the purpose of Section 11B for refund of Cenvat Credit in case of export of service will be one year from the date of receipt of remittance for the services rendered to the recipient of service outside India. With great respect to the said decision of the Hon'ble Tribunal, I put back my considered view that the since the notification No.27/2012-CE *supra* allows the appellant to file refund claim once in a quarter, relevant date for filing claim in respect of export of goods or service is within one year from the last date of such quarter for the refund claim pertains. In this regard, reliance of Hon'ble Supreme Court of India's decision is placed here. In the case of Dharmendra Textile Processors [2008 (231) ELT 3], the Apex Court has held that "It is a well-settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements." Further, in another case viz. Parameshwaran Subramani [2009 (242) ELT 162], it has been held that intention of legislation has to be interpreted by the plain reading of the language of the provision and that Court cannot re-write the legislation by adding words to a statute or read words into it which are not existing therein.

18. In view of above discussion, I hold that the refund claim for the period of September 2011 (Sr.No.1 and 3 of table mentioned above) hits by limitation of time bar, hence rejected. The April 2012 (Sr. No.2 of table mentioned above) is remanded to the adjudicating authority for considering afresh as discussed in para 15.

19. All the three appeals mentioned at para 1 above stand disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date: 23/02/2017

Attested

(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad
By R.P.A.D.

To
M/s C-Metric Solution Pvt Ltd.,
302, I.T.Tower-II, Infocity Complex,
Near Indroda Circle, Gandhinagar, Gujarat
Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, ST Division- Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.