


 सत्यमेव जयते १०१	केंद्रीय कर आयुक्त (अपील) <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 079-26305065	 GST Building-7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079-26305136
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क फाइल संख्या : File No : **V2(ST)15/A-II/2017-18** / 1013 to 1017

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0139-17-18**  
 दिनांक Date : **24.10.2017** जारी करने की तारीख Date of Issue: 6-11-17  
श्री उमाशंकर आयुक्त (अपील) द्वारा पारित *G. file*

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **SD-02/Ref-272/VJP/16-17** दिनांक : **07.02.2017** से सृजित

Arising out of Order-in-Original: **SD-02/Ref-272/VJP/16-17**, Issued by: Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता  
 Name & Address of the **Appellant** & Respondent  
**M/s. Sardar Sarovar Narmada Nigam Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या उससे कम है वहाँ रूपे 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहाँ रूपे 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 43 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 अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to 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.

(6)(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।

(6)(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."

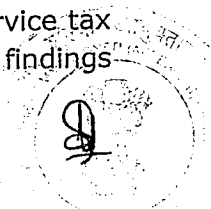
**ORDER-IN-APPEAL**

This order arises out of an appeal filed by M/s. Sardar Sarovar Narmada Nigam Ltd., Block No.12, 2<sup>nd</sup> Floor, New Sachivalaya Complex, Gandhinagar-382010 (in short 'appellant') against OIO No.SD-02/REF-272/VIP/2016-17 dated 07.02.2017 (in short 'impugned order') passed by the Assistant Commissioner, Service Tax Division-II, Ahmedabad (in short 'adjudicating authority')

2. Briefly stated that the appellant filed refund claim of Rs.6,20,77,742/- on 10.10.2016 for the period from 01.04.2015 to 29.02.2016 on the ground that they are wholly owned Gujarat Govt. limited company and Gujarat Govt. has assigned to construct 'Statue of Unity' to them and they have awarded the same work to M/s. Larson & Toubro Ltd.(service provider) Ahmedabad division in terms of contract dated 03.12.2014 on a turnkey basis involving design, engineering, procurement, construction, operation and maintenance of said Statue of Unity. Since the said contract involved the execution of original work, the said service provider claimed exemption from payment of service tax in terms of Notifn. No.25/2012-ST dated 20.06.2012. However, consequent to withdrawal of said exemption vide Notifn. No.6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015, the said service provider started levying tax in the bill raised to the appellant who in turn paid to the service provider and who have also remitted the tax to the govt. account. Consequent to re-introduction of the said exemption retrospectively w.e.f. 01.04.2015, vide Section 102 of the Finance Act, 1994 subject to certain conditions, vide Notification No. 09/2016-ST dated 1st March, 2016, the appellant filed the subject refund claim for the taxes paid to the service provider alongwith NOC of the service provider which culminated into issue of Show Cause Notice dated 15.12.2016 for recovery of amount on exempted services under Rule 6(3) of the Cenvat Credit Rules, 2004 (in short 'CCR, 2004') from the service provider and appropriate the same against refund claim of the appellant(service receiver) and rejection of refund claim of Rs.6,20,77,742/- filed by the appellant on the basis of NOC issued by the service provider as the service provider has taken cenvat credit on input services which are used in the taxable as well as non-taxable services and that in light of retrospective grant of exemption, the credit taken by the service provider is not proper and violative of Rule 6(3)ibid. This SCN was adjudicated by the adjudicating authority vide impugned order wherein Rs.3,81,72,518/- was sanctioned and Rs.2,39,05,224/- was rejected.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, interalia, submitted that:

- (a) demand of any amount pertaining to ineligible input service tax credit is demandable only from the assessee who had availed the said credit in the manner known to law and cannot be deducted as ineligible input service tax credit taken by their service provider which is contrary to the findings recorded in para 13 of the impugned order.



- (b) \* since they have paid entire tax charged on them by the service provider and the service provider has also paid it to govt. account, there is no justification of adjusting Rs.2,39,05,224/- alleged to be ineligible input service tax credit.
- (c) the service provider has maintained separate account in compliance of Rule 6(2) of the CCR, 2004 and therefore recovery under Rule 6(3)ibid does not arise.
- (d) NOC issued by the service provider was submitted as a measure of abundant caution to ensure their right to claim the refund by them and the adjudicating authority ought not to have proceeded to pass the impugned order to deduct Rs.2,39,05,224/- from the legitimate refund claim.
- (e) credit taken by the service provider do not attract the provisions of Rule 6ibid in light of output tax rendered by services for which the refund claim has been filed by them is to be considered as non-taxable and not as a taxable services charged to NIL rate of duty or exempted from payment of tax which is basic requirement for invocation of said rule.

3. Personal hearing in the matter was held on 07.09.2017. Shri Yash Shah and Vedant Rawal, both Chartered Accountants, appeared on behalf of the appellant and reiterated the ground of appeals and stated that they are not aware whether M/s. L & T Ltd has reversed cenvat credit or not.

4. I have carefully gone through the case records, appeal memorandum and submission made at the time of personal hearing. I find that the main issue to be decided is whether the amount of refund claim rejected vide impugned order by the adjudicating authority is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.

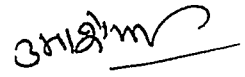
5. Prima facie, I find that the appellant is a service receiver and has assigned works contract to construct 'Statue of Unity' to service provider viz. M/s. Larson & Toubro Ltd. as stated in para 2 supra. The said activity was exempted from levy of service tax in terms of Notification No.25/2012-ST dated 20.06.2012 vide Sr. No.12(a), (c) and (f). This exemption was withdrawn vide Notifn. No.6/2015-ST dated 01.03.2015. Hence, the appellant paid service tax at appropriate rate to the service provider and in turn the service provider deposited this amount to govt. account and availed cenvat credit of service tax paid by the service receiver i.e. appellant. Now, this exemption was re-introduced with retrospective effect vide Notifn. No.9/2016-ST dated 01.03.2016 Entry No.12A. Accordingly, the appellant filed the refund claim for service tax paid to the service provider during the period April-2015 to February-2016 alongwith NOC of service provider. In this regard, I find that it is a settled law that when the final product is exempted (in the present case outward service), credit availed on input services needs to be reversed in terms of provisions contained in Rule 6(1) of the CCR, 2004. I find that the appellant should have ensured before claiming said refund that the service provider has reversed the said input credit availed before issue of NOC. I find that the appellant has failed to ensure this aspect. I find that there is nothing on record which indicates that the service provider has reversed the said input credit already

availed I also find that when the output service provided is exempted retrospectively, the input service credit availed also becomes ineligible. . I find that if refund is allowed to the appellant, then it would amount to undue advantage to the service provider which is not permitted under the law. Hence, the NOC issued by the service provider without reversing input service credit availed is questionable and has no value in the eyes of law.

6. In view of the above discussion and findings, I uphold the impugned order and set-aside the appeal filed by the appellant.

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

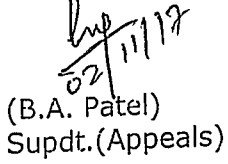
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

  
(B.A. Patel)  
Supdt.(Appeals)



**BY SPEED POST TO:**

M/s Sardar Sarovar Narmada Nigam Ltd.,  
Block No.12, 2<sup>nd</sup> Floor, New Sachivalaya Complex,  
Gandhinagar-332010.

**Copy to:-**

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad-South (RRA Section).
- (3) The Assistant Commissioner, Central Tax Division VI(Vastrapur), Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax , Ahmedabad-South (for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.