



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर शुल्कभवन,  
7<sup>th</sup> Floor, Central Excise Building,  
Near Polytechnic,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
Ambavadi, Ahmedabad-380015  
आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079-26305136



- क फाइल संख्या : File No : **V2(ST)7 /A-II/2017-18** 1025 to 1029
- ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-314-17-18**
- दिनांक Date : **30-01-2018** जारी करने की तारीख Date of Issue 15/02/18

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

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

- ग Arising out of Order-in-Original No **SD-02/Ref/294/VJP/16-17** Dated **23.02.2017**  
Issued by **Assistant Commr STC**, Service Tax, Div-II , Ahmedabad

- ध अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

### **M/s. P.C Snehal Construction Co. Ahmedabad**

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 :-

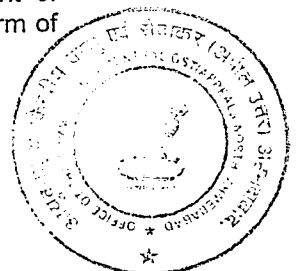
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, 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 विरुद्ध 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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 accompany ed 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

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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-धाराओं एवं (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 (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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 (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 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 adjudication 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, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 हैं -

- (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 बशर्त 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 होगा।

4. 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,

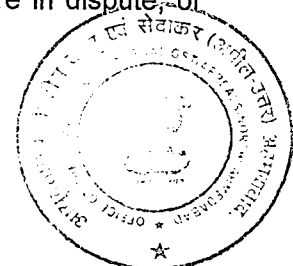
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

4(1) इस संदर्भ में, 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(1) 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**

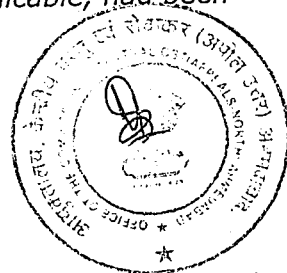
M/s. P. C. Snehal Construction Co. (*hereinafter referred to as 'appellant'*), situated at 9<sup>th</sup> floor, City Centre, CG Road, Navrangpura, Ahmedabad-09, holding Service Tax Registration No. AACFP6233AST001 for providing Works Contract Service i.e. Construction activities to various government authorities, have filed the present appeal on 07.04.2017, against the Order-in-Original number SD-02/REF-294/VJP/2016-17 dated 23.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*), rejecting the appellant's refund claim to the extent of Rs.34,85,849/-, and partially sanctioning the refund claim to the extent of Rs.10,03,235/-, to be credited to the Consumer Welfare fund on the grounds of unjust enrichment.

2. The facts of the case, in brief, are that the appellant was providing Works Contract Service which was wholly exempt under Sl. No. 12 of Notification No. 25/2012-ST dtd. 20.06.2012, being services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration etc. Vide Notification No. 06/2015-ST dtd.01.03.2015, the service provided to the Government was made taxable w.e.f. 01.04.2015, and therefore the appellant started paying Service Tax. However, vide entry No. 1(iv) of the Notification No. 09/2016-ST dated 01.03.2016, the Notification No. 25/2012-ST was amended, as indicated below :

"after entry 12, with effect from the 1<sup>st</sup> March, 2016, the following entry shall be inserted, namely -

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment, under a contract which had been entered into prior to the 1<sup>st</sup> March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date."

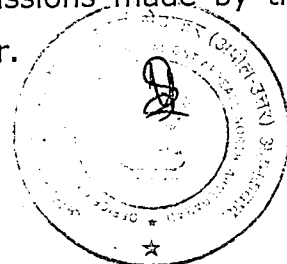


Accordingly, in view of this amendment, the appellant had sought the refund of Rs.44,89,084/-, paid by them. As the appellant had not submitted the concerned ST-3 returns, the copy of Work Order, Ledger Accounts, etc. , he was given a Show Cause Notice dtd. 26.12.2016, as to why his claim should not be rejected as inadmissible. The Adjudicating Authority vide Order-in-Original No.SD-02/REF-294/VIP/2016-17 dt.23.02.2017, rejected the refund claim of Rs. 34,85,849/-, and sanctioned the claim amount of Rs.10,03,235/-, which was credited to the Consumer Welfare Fund. As the appellant had failed to reverse the Cenvat credit amount of Rs.34,85,849/-, as per Rule 6(3) of the Cenvat Credit Rules, 2004, as amended, that has been utilized by them as input service & capital goods cenvat credit, consequent to their service becoming exempted retrospectively, the said claim amount of Rs. 34,85,849/-, was adjusted against the refund amount and for that reason the appellant was not entitled for the refund amount to the tune of Rs. 34,85,849/-. As regards the amount of Rs. 10,03,235/-, the adjudicating authority based on the RA Bills and the invoices, concluded that the appellant had recovered the amount of service tax from the various authorities.

3. Being aggrieved by the said OIO dt. 23.02.2017, the appellant has filed this appeal before me on the grounds that (i) the doctrine of unjust enrichment is not applicable in this case; (ii) they are eligible for refund of Service tax paid by the sub-contractor; (iii) they are eligible for the refund of interest paid; and (iv) interest is payable to them for the delay in the sanction of their refund claim.

4. During the personal hearing, the appellant's authorized Chartered Accountant appeared before me. They reiterated the grounds of appeal and submitted that no duty has been collected and certificate in this regard has been given by the Ahmedabad Municipal Corporation. Invoices, Contractor's Bills and CA's certificate showing that duty has not been collected from the service receiver would be submitted within 7 days.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing and thereafter.



6. The question to be decided is as to whether (i) the claimant is entitled for the refund amount of Rs.34,85,849/-, when they have availed and utilized Cenvat credit of Rs.34,85,849/-; (ii) the adjudicating authority has rightly adjusted and denied the refund claim amounting to Rs. 34,85,849/-, as the appellant has failed to reverse the Cenvat credit availed as per Rule 6(3) of the Cenvat Credit Rules, 2004, or not; (iii) the adjudicating authority has rightly credited the sanctioned Refund claim amount of Rs. 10,03,235/-, to the credit of the Consumer Welfare Fund or not; (iv) the appellants claim for refund of Rs. 54,687/-, being interest paid on delayed payment of service tax is valid or not; and (v) the appellant is entitled to interest for delay in sanction of the refund claim beyond the period of three months.

7. The Adjudicating Authority has found the refund of Rs. 44,89,084/-, admissible on the basis of Notification No. 09/2016-ST dated 01.03.2016, but adjusted the amount of Rs.34,85,849/-, under Rule 6(3) of the Cenvat Credit Rules, 2004, and credited Rs. 10,03,235/-, to the Consumer Welfare Fund in terms of the provision of Section 12C of the Central Excise Act, 1944, read with Section 11B of the Central Excise Act. As such, I am not going in to the admissibility of the refund claim in this case.

8. The claimant has availed and utilized the Cenvat credit amounting to Rs. 34,85,849/-, for their payment of Service tax against the exempted projects, and the same has been confirmed by the Adjudicating Authority. The appellant at Point (B)(2) of their Grounds of appeal filed before me has stated as below :

*"The appellant had utilized CENVAT for the amount paid by them for the same work for which refund being applied for."*

Again at Point (B)(10) of their Grounds of appeal, the appellant has stated as below :

*"The appellant has maintained separate records as the appellant have claimed CENVAT of sub contract of the same project for which refund is claimed"*

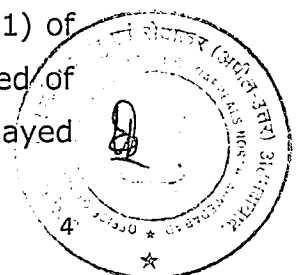
From the above two statements, it is clear that the appellant has availed Cenvat credit as confirmed by the Adjudicating Authority. Rule 6 of the Cenvat Credit Rules, 2004, indicates the obligation of a provider of an exempted service. In this case, the obligation of the appellant to reverse the Cenvat credit does not arise, as the appellant had availed and utilized the Cenvat credit of the sub-contract of the same project. The appellant had



maintained separate records exclusively for claiming the Cenvat credit of the sub-contract of the same project for which refund has been claimed by the appellant: The appellant has provided Affidavits of two Sub-contractors (i) M/s. Harikrupa Construction Company and (ii) M/s. Gajanand Corporation Pvt. Ltd., indicating that they have not claimed refund of the Cenvat credit amount of Rs. 20,19,306/-, and Rs. 8,00,043/-, respectively, paid by them and recovered from the appellant and that they had not availed any Cenvat credit for the payment made by them in this regard. The Cenvat credit availed by the appellant on the sub-contract, which was utilized for payment of the Service tax liability of the appellant in this project, was also exempted with retrospective effect by Section 102 of the Finance Act, 1994, inserted by the Finance Act, 2016. Therefore, as the appellant had borne the burden of Service tax payment by the sub-contractors to the tune of Rs.28,19,349/-, and had not passed on the burden of Service tax in this case to the Service Recipient, he is eligible for the refund of the said amount, if unjust enrichment is not applicable.

9. As regards the appellant's claim that the doctrine of unjust enrichment is not applicable, the Adjudicating Authority in his order dtd.23.02.2017, has stated that from the RA bills itself & the invoices submitted by the appellant, it was clear that the claimant has recovered the amount of service tax from the various authorities. The appellant has also submitted a Certificate dt.4.10.2017, from Chartered Accountants M/s. Jayamal Thakore & Co., confirming that the appellant has not recovered the service tax from their service receivers pertaining to the Service tax payment of Rs.44,89,084/-, which has been claimed as refund. The pre-audit report pertaining to the said refund claim clearly states that the value in the RA Bills were exclusive of Service tax and the Adjudicating Authority's contention that the refund claim is hit by the doctrine of unjust enrichment is not correct. In the light of the above, I allow the refund claim of the appellant to the extent of Rs. 38,22,584/- (Rs.10,03,235/- + Rs. 20,19,306/- + Rs. 8,00,043/-) and reject the refund claim of Rs. 6,66,500/-, under Section 11B of the Central Excise Act, 1944.

10. The appellant had also claimed a refund of Rs. 54,687/-, for interest paid on delayed payment of service tax. The initial line of Section 11B(1) of the Central Excise Act, 1944, amply clarifies that refund can be claimed of the interest paid on such service tax which includes interest for delayed



payment of Service tax. The Adjudicating Authority has avoided any discussion on this claim of Rs.54,687/-, in his OIO dt.23.02.2017, even though the same has been mentioned in the S.C.N.. I hereby allow the appellant's refund claim of interest paid by them amounting to Rs. 54,687/-, for delayed payment of Service tax. The appellant is also entitled to interest for delay in sanction of the refund claim beyond the period of three months. The impugned order is accordingly set aside and the appeal is allowed, on the above mentioned terms.

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

11. The appeal filed by the appellant, stands disposed off in above terms.

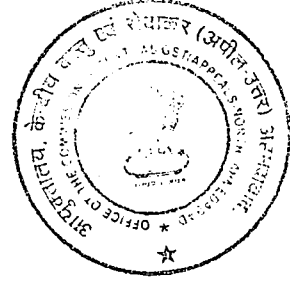
उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED

(R.R. NATHAN)  
SUPERINTENDENT,  
CENTRAL TAX APPEALS, AHMEDABAD.



To,

M/s. P. C. Snehal Construction Co.,  
9th floor, City Centre, C.G. Road,  
Navrangpura,  
Ahmedabad-380009.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Division-VII, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

