

क फाइल संख्या : File No : V2(ST)7/RA/A-II/2017-18

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ख अपील आदेश संख्या : Order-In-Appeal No..AHM-EXCUS-002-APP-328-17-18

दिनाँक Date : 23-02-2018 जारी करने की तारीख Date of Issue 23 -3 - 2 6) &

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

Arising out of Order-in-Original No SD-02/REF-274/VJP/2016-17 Dated 07.02.2017 Issued by Asst Commr STC, Service Tax, Div-II, Ahmedabad

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

M/s. Electricals India 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 मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी 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 न्यायपीट स्थित है, वहाँ के नामित सार्वजिनक क्षेत्र बैंक के न्यायपीट के सहायक रिजस्ट्रार 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 और लगाया गया जुर्माना रूपए 5 लाख या जुर्माना रूपए 5 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 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 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 service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees.

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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 (२ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (२ए) के अंतर्गत निर्धारित फार्म एस.टी.-७ में की जा सकेंगी 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 अधिकिक 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 (OlO) 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 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.
- सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियगावली, 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, 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 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
- अागे 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 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.

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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—बी / 35—इ के अंतर्गत:— Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं
- the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.
- (ख) 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, मेघाणी नगर, अहमदाबाद—380016.
- (b) 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 प्रपन्न इ.ए—3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/— फीस बोजनी होगी। जहाँ उत्पाद शुल्क की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो ली रूपए 5000/— फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना अपर के लाख या उससे ज्यादा है वहां रूपए 10000/— फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

रेखाकिंत बैंक ड्रापट के रूप में संबंध की जाये। यह ड्राफ्ट उस रथान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 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 filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि—1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथारिथित निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 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 in 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलों के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ 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।

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*::

The Assistant Commissioner, Service Tax, Division-II, Ahmedabad- (hereinafter referred to as 'appellant') has filed the present appeal against the Order-in-Original No. SD-02/REF-274/VPJ/2016-17 dated 07.02.2017 (hereinafter referred to as 'impugned orders') passed in the matter of refund filled by M/s. Electricals India, 74 Ajanta Commercial Centre, Ashram Road, Ahmedabad-380014. (hereinafter referred to as 'respondent').

- 2. The facts of the case, in brief, are that the respondent are registered with the department under category of Works Contract Service and holding registration No. AAAFE5505CSD001. The respondent are engaged in providing the work contract service and filed the refund claim of Rs. 2,07,407/- on 11.11.2016 under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as amended vide notification No. 09/2016-ST issued under Section 102 of Finance Act, 1994 on the ground that they were engaged in providing work contract service i.e. maintenance of electric work to Military Engineering Service Department [MES] which is a government authority and the services were wholly exempt under SI. No. 12 of notification No. 25/2012-ST dated 20.06.2012
- The impugned order was reviewed by the Commissioner of 3. Service tax, Ambawadi vide his review order No. 04/2017-18 dated 09.05.2017 wherein the appellant was directed to file an appeal under sub section (1) of Section 84 of the Finance Act, 1944 on the ground that the adjudicating authority has committed grave error in not verifying documentary evidences , to ascertain whether the incidence of service tax involved has been passed on or otherwise. Impugned OIO is contrary to law, hence it deserves to be quashed and set aside. The respondent from the para No. 4,5 & 6 of the Affidavit by Ashok Kumar Tuli partner of M/s electrical India, the service tax deposited by the claimant is already been reimbursed to them by Military Engineering Service Department. The respondent had also stated that once Service tax Department sanctions the refund, they will refund the money to Military Engineering Service. Further letter no. 8003/REC/441/E8 dated 12.01.2017 issued by Lt. Col Garrison Engineer (I)(AF) chiloda, mentioned at para 11 of the OIO states that "this is to confirm that No refund has been made against service tax paid by M/s Electrical India". The respondent had already received the amount service

tax paid from the Milirary Engineering Service Department the said refund claimed by the respondent was not eligible as the claim was hit by the bar of unjust enrichment under section 11B ibid. The adjudicating authority had sanctioned the refund claim on the basis that the respondent had provided the service to Government of India i.e. Military Engineer Service which is exempted under SI. No. 12 of notification No. 25/2012-ST dated 20.06.2012

- 4. Personal hearing in the matter was held on 12.10.2017. Mr. Ashok Tully, Partner and Mr. G.R. Patel, CA, appeared on behalf of the respondent. The respondent stated that in the affidavit there was mistake of copy paste wherein they stated that they had received reimbursement from MES. The appellant did not receive any reimbursement of the disputed amount from MES for they had claimed refund from the department.
- 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 respondents during the course of personal hearing.
- 6. The appellant in their grounds of appeal contended that the adjudicating authority erred in not verifying documentary evidences, to ascertain whether the incidence of service tax involved has been passed on or otherwise.
- 7. The Hon'ble Supreme Court of India in the case of Mafatlal Industries [1997(89) ELT 247(SC)], has held as follows:

(iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.



person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.

- 8. I find that there is an affidavit on record filed by the respondent which states that MES had reimbursed the respondent in respect of the service tax paid by them. It is further stated that they would refund the amount to MES, once the refund is granted by the Department. Now the respondent has claimed that it was a cut and copy error in the affidavit. The argument is difficult to understand. Further, in their cross objection dated 14.6.2017, the respondent has stated that the MES had not reimbursed the service tax paid in this instant case, which goes on to show that MES was reimbursing the respondent in case of payment of service tax. Hence, it was all the more important that the appellant prove that the incidence of the service tax was not passed on in this case. Unless documentary evidence depicting the claim that the incidence of the tax has not been passed is produced, the respondent's version is difficult to believe. The refund claim therefore is hit by the doctrine of unjust enrichment in view of the Hon'ble Supreme Court's judgement in the case of Mafatlal Industries, supra, as the respondent has failed to prove to the satisfaction of the Department that the service tax paid for which refund is claimed, was ultimately borne by him.
- 10. In view of the foregoing, I allow the appeal filed by the department and set aside the impugned OIO dated 7.2.2017.
- 11. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeals filed by the appellant stand disposed off in above terms.

केन्द्रीय कर आयुक्त (अपील्स)

प्रस. बसा/SABYASACHI D'Ti. अधीकक/SUPERINTEND''NT केन्द्रीय वस्तु एवं सेटाकर (अपीटा), उस्तर स्ट्रा

ATTESTED

(S. DUTTA)
SUPERINTENDENT (APPEALS),
CENTRAL TAX, AHMEDABAD.

To,
M/s. Electricals India,
74 Ajanta commercial Centre,
Ashram Road, Ahmedabad-380014

Copy to:

The Chief Commissioner, Central Tax, Ahmedabad.

The Commissioner, Ahmedabad North.

The Addl. Commissioner, Ahmedabad North..

The Dy./Asst. Commissioner, Division-II, Ahmedabad North.

Guard File.