केंद्रीय कर आयक्त (अपील)

0/0 THE COMMISSIONER (APPEALS); CENTRAL I

पोलिढेकनिककेपास

वाडी , अहमदाबाद- 38001

- क फाइल संख्या : File No : V2(ST)014/A-II/2017-18 / 1059 2 40 10515
- ख अपील आदेश संख्या : Order-In-Appeal No..<u>AHM-EXCUS-001-APP-164-17-18</u> दिनॉक Date :20-11-2017 जारी करने की तारीख Date of Issue <u>२६-१२१२</u>

# <u>श्री उमा शंकर</u>, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-02/Ref-272/VIP-16-17 Dated <u>07.02.2017</u> Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध <u>अपीलकर्ता का नाम एवं पता</u> Name & Address of The Appellants

## M/s. L& T Ltd

#### 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 अपीलः— 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. २०, 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 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 आर 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 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 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakter of less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the tot service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the tot service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the tot service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the tot service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the tot service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the tot service tax & interest demanded & penalty levied is service tax & interest demanded & penalty levied is service tax & int

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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 A2I9k 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 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.

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 निर्मन 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

अगे 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 Thurder of payment of 10% of the duty demanded where duty or duty and penalty are in dispute.

### ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Larsen & Toubro Ltd., 1009, Sakar-II, Near Ellisbridge, Opp. Town Hall, Ashram Road, Ahmedabad-380006 (in short 'appellant') against OIO No.SD-02/REF-272/VIP/2016-17 dated 07.02.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Service Tax Division-II, Ahmedabad (in short 'adjudicating authority')

Briefly stated that M/s. Sardar Sarovar Narmada Nigam Ltd., Gandhinagar 2. (in short 'SSNNL') filed refund claim of Rs.6,20,77,742/- on the ground that they are wholly owned Gujarat Govt. limited company and Gujarat Govt. had assigned works contract to construct 'Statue of Unity' to the appellant viz M/s. Larson & Toubro Ltd.(service provider) Ahmedabad 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 appellant availed exemption from payment of service tax in terms of Notifn. No.25/2012-ST dated 20.06.2012. However, consequent to withdrawl of said exemption vide Notifn. No.6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015, the appellant started levying tax in the bill raised to the SSNNL who in turn paid to the appellant and the same was remitted 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 SSNNL filed the subject refund claim 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 SSNNL. The appellant was made co-noticee since it had issued NOC without reversing input credit availed on input services utilized for outward services violating provisions of Rule 6(3) of the CCR, 2004. 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 on the ground that NOC issued by the appellant without reversing the Cenvat credit availed on input services utilized for output services.

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



- (a) provisions of Rule 6(3) did not attract since they had maintained separate accounts for the input services used in the exempted and taxable services.
- (b) the adjudicating authority has wrongly distinguished the ratio of judgement of Hon'ble Karnataka High Court holding that "because vide notifn. No.09/2016-ST granted exemption retrospectively the input services/input credit which were taken when the final goods/services were exempted" are liable to be reversed under Rule 6 of CCR, 2004.

4. Personal hearing in the matter was held on 08.11.2017. Shri Keval Parikh, AGM, Indirect Taxes and Shri Jitendra Padhiyar, Manager, Indirect Taxes, appeared on behalf of the appellant and reiterated the ground of appeals.

5. 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 appellant can issue NOC to SSNNL without reversing the credit availed on input services utilized for output services when exemption is granted retrospectively. Accordingly, I proceed to decide the case on merits.

Prima facie, I find that the appellant is a service provider and SSNNL is a 6. service recipient and has assigned works contract to construct 'Statue of Unity' to it 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 charged service tax at appropriate rate to the SSNNL and deposed this amount to govt. exchequer and availed Cenvat credit of service tax so paid. Now, this exemption was re-introduced with retrospective effect vide Notifn. No.9/2016-ST dated 01.03.2016 Entry No.12A. Accordingly, the SSNNL filed the refund claim for service tax paid to the appellant 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. The appellant has not denied or disputed the fact that it had availed the CENVAT credit of Rs.2,39,05,224/- or that this credit was used in relation to exempted services by virtue of Section 102 of Finance Act, 1994 applied retrospectively. It is pertinent to note that the admissibility of CENVAT credit has not been disputed or denied in the impugned order. The exemption in the instant case is by virtue of the provisions of Section 102 of Finance Act, 1994 that granted exemption for the



period 01/04/2015 to 29/02/2016 (both days inclusive) in respect of specified services meant for use other than for commercial purpose and rendered to the Government or a local authority or a Government authority. Further, sub-section (2) of Section 102 of Finance Act, 1994 provides for refund in lieu of the said retrospective exemption. The SSNNL had filed a refund claim of Rs.6,20,77,742/in accordance with the provisions of Section 102(2) of the Finance Act, 1994 on the strength of NOC issued by the appellant and this claim amount includes the amount of Rs.2,39,05,224/- that has already been availed and utilized by the appellant as CENVAT credit. In such a situation, if the entire refund claim amount of Rs.6,20,77,742/- is sanctioned as claimed by the SSNNL, then the benefit of this amount would be available twice over at the cost of govt. exchequer - once as CENVAT credit to the appellant and secondly as refund to the SSNNL. Such a situation is detrimental to the interest of Revenue and is neither justified nor is legally tenable. The appellant has not reversed the impugned credit of Rs.2,39,05,224/- before issuing the NOC to the SSNNL, enabling the SSNNL to file the refund claim, which is against the spirit of the provisions of the CCR, 2004 that envisages to prevent cascading effect of taxation and does not provide for double benefit at the cost of govt. exchequer. On the other hand, the rejection of the claim of Rs.2,39,05,224/- to the SSNNL ordered by the adjudicating authority does not entail any encumbrance on the appellant to reverse the CENVAT credit of Rs.2,39,05,224/-. Hence there is no loss or injury accruing to the appellant by the rejection of the CENVAT quantum of refund in the impugned order. In this regard, I find that in the case of MAFATLAL INDUSTRIES LTD. vs UNION OF INDIA - 1997 (89) E.L.T. 247 (S.C.), the Hon'ble Supreme Court has laid down the principle that as per the Law of Restitution, "the person claiming restitution should have suffered a 'loss or injury'" and that "the very basic requirement for claim of restitution under Section 72 of the Contract Act is that the person claiming restitution should plead and prove a loss or injury to him. If that is not done the action for restitution or refund should fail." In the present case the appellant or the SSNNL have not claimed any loss or injury to itself by the action of the adjudicating authority rejecting the claim of Rs.2,39,05,224/- already availed and utilized as CENVAT credit by the appellant. No evidence has been adduced showing that the appellant or the SSNNL had suffered any loss or injury emanating from the impugned order. Therefore, there is no merit in the plea of the appellant made against the rejection of the CENVAT credit quantum in the impugned order.

- 5 -

7. Further, in the case of BROOK BOND LIPTON INDIA LTD. vs C.E.R. -2012 (283) E.L.T. 336 (All.), it has been held by the Hen ble Allahabad High



Court that allowing credit on inputs which are brought into the factory and for which the credit has been taken before the date when the final product became exempted will amount to **unjust enrichment**. The relevant portion of the order is reproduced below:

- 6 -

16. We have noticed that Rule 57-A underwent amendment and was substituted by M.F. (D.R.) Notification No. 6/97-C.E. (N.T.), dated 1-3-1993, inserting sub-rule (4) which provides that the credit of specified duty under this section shall be allowed on inputs used in relation to manufacture of the final products whether directly or indirectly and whether contained in the final product or not. Rule 57(3)(c) was also amended by Notification dated 2-3-1998 providing that no credit of the specified duty shall be allowed on such quantity of inputs which are used in the manufacture of final product (which are exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty). A new Rule 57-CC was inserted for adjustment of credit or inputs used in exempted final products or maintenance of separate in the entry and accounts of the inputs by the manufacturer. After these amendments the credit on inputs may be adjusted where the final product is exempted. Prior to the amendment, however, such adjustment was not permissible.

**17.** In view of the aforesaid discussion, we are of the opinion that allowing the Modvat credit on inputs which are brought into the factory and for which the credit has been taken before the date when the final product became exempted lying unutilised, as raw material will amount to **unjust enrichment**. The question no. 1 is thus answered against the applicant, and in favour of the revenue.

In the light of the above ruling, it is seen that in the present case, the claim of Rs.2.39.05,224/- has been rejected to the SSNNL not on the ground of ineligible CENVAT credit but it has been rejected because no evidence was adduced either by the appellant or the SSNNL to show that the CENVAT quantum of the refund claim had been reversed. Therefore, if the entire claim amount of Rs.6,20,77,742/- is sanctioned then it will amount to unjust enrichment as per ruling of Hon'ble Allahabad High Court as cited supra. The question of separate records under Rule 6(2) of CCR, 2004 as well as reversal under Rule 6(3) of CCR, 2004 stands decided in the impugned order in favor of the appellant. It is pertinent to note that the appeal has been filed by the appellant who in the present case is the service provider, whereas the refund claim was filed by the SSNNL who is the service recipient. In view of the fact that the impugned CENVAT credit of Rs.2,39,05,224/- availed by the appellant has not been denied in the impugned order nor is there any order to the appellant to reverse such credit, the rejection of the refund amount does not amount to denial of substantive benefit to the appellant. On the other hand sanctioning of the CENVAT credit quantum of refund claim will amount to Divisient enrichment at the



cost of Government exchequer. Hence, I find that the NOC issued by the appellant to the SSNNL is bad in law for the reason stated hereinabove.

8. In view of the above discussion and findings, I reject the appeal filed by the appellant.

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.

3 MIZI

(उमा शंकर) केन्द्रीय कर आयुक्त (अपील्स)

Attested:

(B.A. Patel) Supdt.(Appeals) Central GST, Ahmedabad.

#### BY SPEED POST TO:

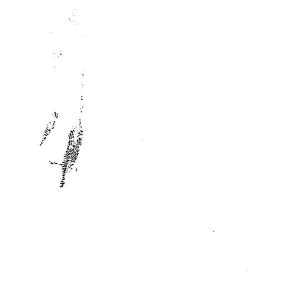
M/s. Larsen & Toubro Ltd., 1009, Sakar-II, Near Ellisbridge, Opp. Town Hall, Ashram Road, Ahmedabad-380006

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.



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