

<b>केन्द्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</b>	
केन्द्रीय कर शिल्क भवन	7 <sup>th</sup> Floor, Central Excise Building
सातवांम जिल पोलिटिकलिक के पास	Near Polytechnic
आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
फोन: 079-26305065	टेलिफैक्स: 079-26305136

क फाइल संख्या : File No : V2(ST)014/A-II/2017-18 110597 र 10595

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-164-17-18

दिनांक Date : 20-11-2017 जारी करने की तारीख Date of Issue 28-12-17

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-272/VIP-16-17 Dated 07.02.2017  
Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता  
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 अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

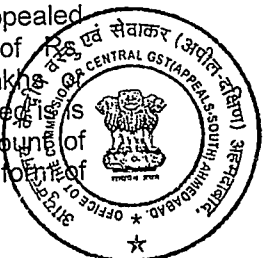
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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 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. 5 Lakhs 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







- (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 notifi. 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.

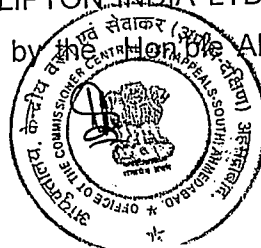
5. I have carefully gone through the case records, appeal memorandum and submission made at the time of personal hearing. I find that the main issue to be decided is whether the appellant can issue NOC to SSNNL without reversing the credit availed on input services utilized for output services when exemption is granted retrospectively. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the appellant is a service provider and SSNNL is a 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 deposited 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.

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 Hon'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:

**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 unjust 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.

9. 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*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

*B.A. Patel*  
(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.



