केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

सत्यमेव जयते

☎ : 079-26305065 टेलेफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

6296 to 6300

क फाइल संख्या : File No : V2(ST)27/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-036-2018-19**
दिनाँक Date : **27-08-2018** जारी करने की तारीख Date of Issue 11/9/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **letter F.No. WS07/Ref-116/mantis/2017-18** दिनाँक: **04.04.2018** issued by Assistant Commissioner, Div-I, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Mantis Technologies Pvt. Ltd.
Ahmedabad

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 a 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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 4th 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.

(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।

Recieved
Anurag Khandelwal
8989-256396

... 2 ...

OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

(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 मामलें 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.

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.

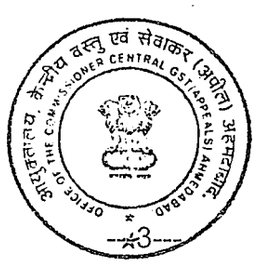
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) 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

(a) 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.



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 यथास्थिति 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 अपीलो 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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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

M/s. Mantis Technologies Pvt. Ltd., 302-A, B-Block, Shivalik Corporate Park, B/h IOC Petrol Pump, 132 Ft. Ring Road, Satellite, Ahmedabad (hereinafter referred to as *'the appellants'*) have filed an appeal against the deficiency memo issued from file number WS07/Ref-116/mantis/2017-18 dated 04.04.2018 (hereinafter referred to as *'impugned order'*) passed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad-South (hereinafter referred to as *'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants are engaged in the business of providing services of online travel agent running online portal in the name of 'Travelyaari' and were holding Service Tax Registration number AAFCM0388MST001. During statutory audit of their company, it was noticed that they had paid three Service Tax challans excessively by oversight and none of the challans was used in any Service Tax return. Now that Service Tax has been scrapped due to the implementation of GST, the appellants found that they could not use the challans for Service Tax purpose in future. Therefore, they filed for a refund amounting to ₹ 10,11,392/- before the adjudicating authority. The adjudicating authority, vide the deficiency memo (here the impugned order), rejected the refund claim on the ground of limitation (without going to the merit of the claim) as per Section 11B of Central Excise Act, 1944.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have argued that the adjudicating authority has wrongly rejected the refund claim vide the deficiency memo. They stated that Service Tax was paid by them inadvertently and due to computer system error as it could not ascertain at the time of payment. Thus, the case does not fall within the purview of Section 11B of Central Excise Act, 1944. The appellants further contended that the refund claim was rejected by issuing a deficiency memo and not by a speaking order. They further pleaded that they were not even given any opportunity of being heard and thus, the rejection is against the principles of natural justice.

4. Personal hearing in the matter was granted and held on 21.08.2018. Shri Deepak Kumar Gupta, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of appeal memo. He further tabled before me additional written submission and requested to set aside the impugned order.

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

case, I find that the rejection of the refund claim involves three major issues viz;

(i) The claim was rejected on the ground of limitation under Section 11B of the Central Excise Act, 1944.

(ii) The claim has been rejected without awarding the appellants the opportunity of being heard.

(iii) The order of rejection is a mere deficiency memo therefore a non-speaking one.

Now, I am going to discuss all the three issues at length.

6.1. At the onset, I find that the refund has been denied by the adjudicating authority on the ground of limitation. The refund was claimed by the appellants because there had been excess payment of Service Tax and any amount that is not supposed to be legitimate tax, must be treated as a deposit. Thus, I understand that the Service Tax was paid by the appellants mistakenly/erroneously and hence, the same should be treated as a deposit and not duty. Hon'ble High Court of Kerala, while disposing the writ petition of M/s. Geojit BNP Paribas Financial Services Ltd. on 23.06.2015, has held that if Service Tax is not leviable, the refund claimed is not relatable to Section 11B of the Central Excise Act, 1944.

"10. The question of alternative remedy would arise if Service Tax is otherwise leviable under the Central Excise Act. Herein, in this case, there is no dispute with regard to the fact that no Service Tax is leviable for the service extended by the petitioner to the Muscat Bank SAOG. Thus, the writ petition is maintainable when the amount is arbitrarily withheld without any justification under law as the refund claimed by the petitioner is not relatable to Section 11B of the Central Excise Act. Similar view was also taken by the Karnataka High Court in K.V.R. Constructions v. Commissioner of Central Excise (Appeals) and another [(2010) 28 VST 190 (Karn)] and by the Madras High Court in Natraj and Venkat Associates v. Asst.Commr. of S.T., Chennai-II [2010 (249) E.L.T.337 (Mad.)].

11. In that view of the matter, the writ petition is allowed. There shall be a direction to the second respondent to sanction, refund claimed by the petitioner based on the request made by him within two months from the date of receipt of a copy of this judgment".

In the case of Joshi Technologies International vs. the Union of India, the Hon'ble High Court of Gujarat proclaimed that in case of amount paid by mistake or through ignorance, the revenue is duty bound to refund it as its retention is hit by Article 265 of Constitution of India which mandates that no tax shall be levied or collected except by the authority of law, Section 11B of Central Excise Act, 1944. I would quote the required contents of the paragraph 15.3 and 15.4 of the said judgment as below;

".....Therefore, the contention that the self assessment made by the petitioner has attained finality and hence, the petitioner cannot claim refund unless the assessment is challenged is misconceived and contrary to the law laid down in the above decision. The upshot of the above discussion is that even in case where any amount is paid by way of self assessment, in the event any amount has been paid by mistake or through ignorance, it is always open to the assessee to bring it to the notice of the authority concerned and claim refund of the amount wrongly paid. The authority concerned is also duty bound to refund such amount as retention of such amount would be hit by Article 265 of the Constitution of India which bears the heading "Taxes not to be imposed save by authority of law" and lays down that no tax shall be levied or collected except by authority of law. Since the Education Cess and Secondary and Higher Secondary Education Cess collected from the petitioner is not backed by any authority of law, in view of the provisions of Article 265 of the Constitution, the respondents have no authority to retain the same. The decision of the Supreme Court in the case of Paros Electronics (P) Ltd. v. Union of India (supra) would have no applicability to the facts of the present case, inasmuch as, in that case the refund was not granted as the levy had become final being contested at all departmental levels. In the present case, the education cesses have been paid by the petitioner by way of self assessment and no assessment order has been passed thereon.

15.4*Reference may also be made at this stage to the decision of this court in the case of Alstom India Ltd. v. Union of India, 2014 (301) E.L.T. 446 (Guj.), on which reliance has been placed by the learned counsel for the petitioner, wherein it has been held as follows :*

It is now "11. well-settled law that a citizen, even after making payment of tax on demand by either misinterpretation of the statutory provision or under unconstitutional provision or under mistake of law, can subsequently challenge the inherent lack of jurisdiction on the part of the said State authority to demand tax, and if such a citizen succeeds, the Court can, in an appropriate case, direct refund of the amount which had been collected by the State authority having no jurisdiction. There are instances where after payment of tax by an assessee, on his prayer, the provisions of imposition of tax has been held ultra vires the Constitution of India and in such a case, the subsequent proceedings for annulment of the proceedings under which the tax was collected cannot be dismissed on the sole ground of payment of tax by the petitioner inasmuch as there cannot be a waiver of constitutional rights of mandatory character or fundamental rights. The only exception to this principle is where the assessee has passed on the burden of tax to the third parties i.e. the consumers. [See Mafatlal Industries Ltd. and Others v. Union of India and Others reported in (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.)]. Thus, if the Constitution does not permit an authority to collect tax by enactment of appropriate law vesting such power, merely because such authority has recovered the amount by virtue of ultra vires adjudication, cannot be a factor standing in the way of the assessee to challenge the provisions as ultra vires just as in a Civil Litigation after suffering a decree, the judgment debtor in the executing proceedings can pray for declaration that the decree sought to be executed is a nullity for want of inherent jurisdiction without preferring any appeal against the original decree

[See Chiranjilal Shrilal Goenka v. Jasjit Singh reported in (1993) 2 SCC 507]."

Also in the case of Alstom India Ltd. vs. the Union of India, the Hon'ble High Court of Gujarat proclaimed that;

"Refund-Tax paid-On misinterpretation of statutory provision or under unconstitutional provision or under mistake of law-In such case, inherent lack of jurisdiction of State authority to demand tax can be challenged subsequent to payment of tax-If citizen succeeds, Court can, in appropriate case, direct refund of amount collected by State authority having no jurisdiction-Subsequent proceedings cannot be dismissed on sole ground of payment of tax by citizen as there cannot be waiver of constitutional rights of mandatory character or fundamental rights-Only exception to this principle is where assessee has passed on burden of tax to third parties".

Thus, in view of the above, I hold that when a particular amount has been paid in excess, then in such a situation what has been collected as Service Tax is not 'tax' in the first place. It is only the 'amount' collected without authorization of law which is illegal and hence cannot be retained by the department and has to be refunded to the person who has paid such amount. This is a settled principle of law; time and again it has been reiterated by various judicial authorities. In Cawasi & Co case [1978 E L T (J 154)] the Hon'ble Supreme Court observed that the period of limitation prescribed for recovery of money paid under a mistake of law is three years from the date when the mistake is known, be it 100 years after the date of payment. This judgment has been quoted and depended upon by the Hon'ble Andhra Pradesh High Court in the case of M/s. U Foam Pvt. Ltd vs. Collector of Central Excise -1988 (36) E L T 551(A P). In the case of Hexacom (I) Ltd vs CCE, Jaipur - 2003 (156) E L T 357 (Tri -Del), the tribunal held that if any amounts are collected erroneously as representing Service Tax, which is not in force, there is no bar to the return of such amounts. The time limit under Section 11B of Central Excise Act, 1944 does not apply. The tribunal observed the following, *"We have perused the records and heard both sides. It is not in dispute that no Service Tax was leviable during the period in question. Therefore, whatever payment was made did not relate to Service Tax at all. It was merely an erroneous collection by DOT and payment by the appellants. Therefore, provisions relating to refund of Service Tax, including those relating to unjust enrichment, cannot have any application to the return of the amount in question. It is further noted that provisions contained in Section 11D of the Central Excise Act have not been made applicable to Service Tax. Therefore, if any amounts are collected erroneously as representing Service Tax, which is not in force, there is no bar to the return of such amounts. The rejection of refund application was, therefore, not correct".* In the case of CCE, Raipur vs. Indian Ispat Works Ltd -2006 (3) S T R 161 (Tri -Del), the Tribunal held that, *"The department has allowed the*

claim of the respondents for the period 16-11-97 to 1-6-98, but rejected the refund claim for the previous period and subsequent period as time barred. The rejection of the claim of refund is wrong as it can be seen from the records, that the amount paid by the respondents is not a tax, but an amount collected by the department without any authority of law". In the case of CCE, Bangalore vs Motorola India – 2006 (206) E L T 90 (Kar), the High Court has held that in the case of claim of refund, limitation under Section 11B of Central Excise Act is not applicable since the amount paid by mistake in excess of duty and such amount cannot be termed as duty. Thus, the conclusion is clear that if a tax has been collected which is not leviable at all, the time limit given in the tax laws does not apply. The general time limit under the Limitation Act 1963, applies under which the limit is three years from the time of coming to know of it.

6.2. Now comes the second issue i.e., the claim was rejected without awarding the appellants the opportunity of being heard. As regards the issue that the appellants were not given any opportunity to present their case personally as per the principle of natural justice; I consider that the adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased arbitrary or based on mere conjectures and surmises. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. The order should not travel beyond the SCN. However, if a new ground is required to be considered, the same could be done by way of putting the party to notice subject to law of limitation. [refer SURESH SYNTHETICS 2007 (216) E.L.T. 662 (S.C.)]. Further, time given for the purpose should be adequate so as to enable an assessee to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the

case before any adverse order is passed against him. This is one of the most important principles of natural justice. Secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. The Supreme Court in the case of S.N. Mukherjee vs Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

> *".....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ...".*

The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

6.3. Now is left the final issue i.e. the impugned order is a non-speaking one. I find that the impugned order seems to be biased, arbitrary and a non-speaking one. The claim seems to be rejected only for the sake of rejection. Thus, I am of the view that the adjudication order must be a speaking order giving clear findings of the adjudicating authority and he shall discuss each point raised by the defense and shall give cogent reasoning in case of rebuttal of such points. The refund amount rejected shall be quantified correctly and the order portion must contain the correct provisions of law under which the claim is rejected.

7. Therefore, in view of the discussion held above, I consider that the case should be remanded back to the adjudicating authority to decide it afresh. While adjudicating the case, the adjudicating authority must consider the points discussed in paragraph 6.1, 6.2 and 6.3 above. He should also verify the application of unjust enrichment and must discuss fully as to why the clause of unjust enrichment should/should not be applicable to the refund claim. The appellants are also directed to cooperate with the adjudicating authority by providing all the genuine documents pertaining to the claim.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the appellants stands disposed off in above terms.

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(S. DUTTA) 10/09/18

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

To,
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132 Ft. Ring Road, Satellite,
Ahmedabad

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
2) The Commissioner, Central Tax, Ahmedabad-South.
3) The Dy./Asst. Commissioner, Central Tax, Div-VII, Ahmedabad-South.
4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad-South.
5) Guard File.
6) P. A. File.