आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎ 26305065-079 टेलेफैक्स 26305136 - 079 :

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)7/EA-2/Ahd-South/2019-20 /15194 TO 15199

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-29-2020-21**
दिनाँक Date : **10-07-2020** जारी करने की तारीख Date of Issue 28/07/2020

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar** ,Commissioner (Appeals) Ahmedabad

ग Arising out of Order-in-Original No **CGST/WS07/Ref-50/MK/AC/2018-19** & **CGST/WS07/Ref-50/MK/AC/2018-19** दिनाँक: **29.03.2019** issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Mantis Technologies pvt.ltd Ahmedabad
305-A, B-Block, Shivalik Corporate Park, Satellite, 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 aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944,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।

(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) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गतः–

Under Section 112 of CGST act 2017 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. 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 पढ़ी 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।

6(I) 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

This order arises out of an appeal filed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad South Commissionerate (in short '*appellant*') in terms of Review Order No.03/2019-20 dated 20.06.2019 passed under Section 84(1) of the Finance Act, 1994 (in short '*the Act*') by the Reviewing Authority against Order-in-Original No.CGST/WS07/Ref-50/MK/AC/2018-19 dated 29.03.2019 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South Commissionerate (in short '*the adjudicating authority*') in the case of M/s Mantis Technologies Pvt. Ltd., 305-A, B-Block, Shivalik Corporate Park, B/h IOC Petrol Pump, 132 Ft. Ring Road, Satellite, Ahmedabad (in short '*respondent*').

2. The facts of the case, in brief, are that the respondent 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 No.AAFCM0388MST001. During the 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. As Service Tax has been scrapped due to the implementation of GST, the respondent found that they could not use the challans for Service Tax purpose in future. Therefore, they filed a refund claim amounting to Rs.10,11,392/- before the adjudicating authority. The adjudicating authority, on the basis of Deficiency Memo F.No.WS07/Ref-116/Mantis/2017-18 dated 04.04.2018 rejected the refund claim on the ground of limitation as per Section 11B of the Central Excise Act, 1944 (in short '*CEA*') as the refund application in the instant case was filed by the respondent on 17.11.2017 after a period of one year from the date of payment of the said amount on 06.07.2016. The adjudicating authority did not examine the merit of the case.

2.1 Being aggrieved, the respondent filed an appeal with the Commissioner (Appeals), Central Tax, Ahmedabad who vide Order-In-Appeal (in short '*OIA*') No.AHM-EXCUS-001-APP-036-2018-19 dated 27.08.2018 has remanded the matter back to the original adjudicating authority to decide it afresh after considering the points discussed in paragraph 6.1, 6.2 and 6.3 of the above OIA and the aspect of unjust enrichment. The Commissioner (Appeals), in the above order, observed that (i) 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; (ii) 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; and (iii) 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

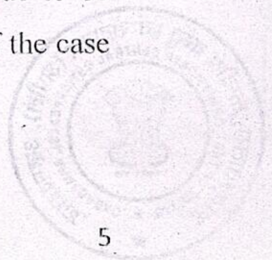
reasoning in case of rebuttal of such points and that the refund amount rejected shall be quantified correctly and the order portion must contain the correct provisions under which the claim is rejected.

2.2 Subsequently, vide impugned Order, the adjudicating authority has sanctioned the refund claim amounting to Rs.10,11,392/- by observing that the service tax was paid by the respondent mistakenly/erroneously and hence the same should be treated as a deposit and not duty. He held that the said refund is not barred by time limitation in view of the decision in the case of CCE, Bangalore Vs. Motorola [2006 (206) ELT 90 (Kar.)] and that the doctrine of unjust enrichment does not apply in this case for the amount being a deposit and not tax and in view of the certificate issued by the Chartered Accountant in this regard and the Tribunal decision in the case of Hexacom (I) Ltd. Vs. CCE, Jaiput [2003 (156) ELT 357 (Tri.-Del.)].

3. The department, on being aggrieved with the impugned Order, filed the present appeal through the appellant on the ground that the refund in the present case has to be considered under the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and therefore the bar of limitation prescribed under Section 11B ibid would be applicable in the present case and accordingly the refund claim of the appellant is hit by limitation under the said provision as the same was filed after a period of one year prescribed therein and that the judgment of Hon'ble High Court of Karnataka in the case of CCE, Bangalore Vs. Motorola relied upon the adjudicating authority is not squarely applicable in the present case as in that case the assessee intimated the excess payment to the notice of department and authorities directed them to file refund claim and the claim was rejected on the ground of lapse of time. The impugned order is therefore liable to be set aside for being not proper and legal. The department has relied upon the judgment of High Court of Madras in the case of Assistant Commissioner of S.T., Chennai Vs. Nataraj and Venkat Associates [2015 (40) STR 31 (Mad.)] and the judgment of Hon'ble Supreme Court in the case of M/s Mafatlal Industries Vs. Union of India [1997 (89) ELT 247 (S.C.)] in support of the appeal.

4. The appellants/respondents were granted opportunities of Personal Hearing on 09.10.2019, 11.11.2019, 04.02.2020, 25.02.2020 and 19.03.2020. No one appeared on behalf of either the appellant or the respondent for the hearing. Hence, I proceed to decide the case on the basis of facts and evidences available on records.

5. I have carefully gone through the facts of the case, submissions made in the appeal memorandum and evidences available on records. I find that the issue to be decided in the appeal in hand is as to whether in the facts and circumstances of the case



limitation prescribed under Section 11B(1) of the Central Excise Act, 1944 would be applicable to the appellant's claim of refund of service tax paid mistakenly/erroneously. The department has contended that the limitation provided under Section 11B would be applicable in the case and they have relied upon the case laws in the cases of Assistant Commissioner of S.T., Chennai Vs. Nataraj and Venkat Associates [2015 (40) STR 31 (Mad.)] and M/s Mafatlal Industries Vs. Union of India [1997 (89) ELT 247 (S.C.)].

6. After going through the facts of the case, I find that the issue of eligibility of the refund in the present case, except for the limitation aspect, is not in dispute. It is clearly held by the adjudicating authority that the amount in question has been paid mistakenly/ erroneously by the respondent and that the three challans, vide which the amounts were deposited, have neither been reflected in any of the ST-3 returns filed for the relevant period nor it has been used for any other payment. Thus, it is clear that the amount in question was paid in excess of their tax liability inadvertently by mistake. It is not disputed that the respondent is eligible for the refund of the said amount paid on merits but it is the case of the department that since the amount is paid as service tax, such a refund has to be in terms of the provisions of Section 11B of CEA made applicable to service tax matters vide Section 83 of the Finance Act, 1994 according to which the claim for refund of the amount has to be filed within one year from the date of payment of service tax.

6.1 In this regard, I find that the issue as to whether the amount paid in the present case would amount to payment of service tax or not has clearly been discussed by the Commissioner (Appeals) in para 6.1 of his OIANo.AHM-EXCUS-001-APP-036-2018-19 dated 27.08.2018 and the adjudicating authority has to decide the refund claim in remand proceedings in accordance of the order. The appellate authority has clearly held 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 and that 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. I am in agreement with the above view of the then Appellate authority. It has been held in catena of decision that when the amount paid is not against any tax liability, the said amount does not take the colour of tax but can only be considered as a deposit. When that being so, the provisions governing refund of duty or tax would not be applicable for the amount paid for the simple reason of the same being not in the colour of duty/tax. In such cases, the amount so paid has to be held as amount paid by mistake and the appellant is rightly eligible for refund of the amount so wrongly paid. The aspect of limitation prescribed under the statute for refund also would not be applicable in such cases for the very same reason. It has been very rightly observed by the appellate authority vide OIA dated 27.08.2018 supra that in such cases, the time

limit given in the tax laws does not apply and 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.

7. It has been consistently held by various High Courts in the country that, when the tax/duty not payable is paid by mistake, refund of such amount paid by mistake would not be governed by the provisions of Section 11 B of the Central Excise Act, 1944.

7.1 In the case of CCE, Bangalore Vs. Motorola India [2006 (206) E L T 90 (Kar.)], which has rightly been relied upon by adjudicating authority, the Hon'ble High Court has held that in the case of claim of refund, limitation under Section 11B of Excise Act is not applicable since the amount paid by mistake in excess of duty and such amount cannot be termed as duty. The department's contention on the applicability of this judgement by distinguishing the facts does not hold water as the legality of the issue decided by the Hon'ble High Court is very much present in the case on hand also and hence the decision is squarely applicable to the present case.

7.2 Further, the Hon'ble High Court of Jharkhand in their ruling in the case of G.B. Engineers Vs. Union of India [2016(43) STR 345 (Jhar.)] has held that *Section 11B of the Central Excise Act to be read with Section 83 of the Finance Act, 1994 are not applicable to the facts of the present case because, the amount paid by the petitioner is never under the Central Excise Tax nor under the service tax when there is no liability to make the payment of the amount and under the mistake of facts or under mistake of law or under both if any amount is deposited by the assessee, the same cannot be retained by the Union of India under the one or other pretext when a service provider is not liable to make payment of the service tax and if any payment is made, it cannot be covered under Section 11B of the Central Excise Act to be read with Section 83 of the Finance Act, 1994.*

7.3 The Hon'ble High Court of Karnataka in their decision in the case of Commissioner of C.Ex.(Appeals), Bangalore Vs. KVR Construction [2012 (26) STR 195 (Kar.)] has held that:

> "**23.** *Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as service tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such*

amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act.

7.4 Similar view has been taken by the Hon'ble High Court of Madras in their decision in the case of 3E Infotech Vs. CESTAT, Chennnai [2018 (18) GSTL 410 (Mad.)]. In the said case, the Hon'ble High Court, after referring to the decision of Hon'ble Supreme Court in the case of Union of India Vs. ITC Ltd. [1993 (67) E.L.T. 3 (S.C.)] and the Gujarat High Court decision in the case of Oil and Natural Gas Corporation Ltd., Vs. Union of India, reported in 2017 (354) E.L.T. 577 (Guj.), has held that:

> *"**12.** Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.*
>
> ***13.** On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683/- cannot be barred by limitation, and ought to be refunded.*
>
> ***14.** There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India."*

7.5 The above judgment of Hon'ble High Court of Madras in the case of 3E Infotech Vs. CESTAT, Chennnai has also relied on to similar views expressed by Hon'ble Gujarat High Court in the case of Joshi Technologies International, INC-India Projects Vs. Union of India [2016 (339) E.L.T. 21 (Guj.)] and Hon'ble Bombay High Court in the case of Parijat Construction Vs. Commissioner Excise, Nashik [2018 (359) E.L.T. 113 (Bom.)].

8. With regard to the Hon'ble Madras High Court judgment in the case of Assistant Commissioner of S.T., Chennai Vs. Nataraj and Venkat Associates [2015 (40) STR 31 (Mad.)] relied upon by the department in the appeal and which holds a contrary view in the subject matter, it is to observe that the said judgment was pronounced on 23.04.2013 and the Hon'ble Madras High Court in their judgment pronounced subsequently on 28.06.2018 in the case of 3E Infotech Vs. CESTAT, Chennai held a different view as discussed in para 7.4 above. The judgments of Hon'ble Gujarat High Court in the case of Joshi Technologies International, INC-India Projects Vs. Union of

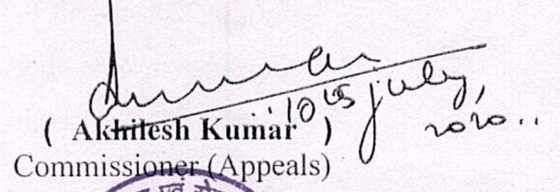
India [2016 (339) E.L.T. 21 (Guj.)] and ONGC Vs. Union of India [2017 (354) ELT 577 and that of Hon'ble Bombay High Court in the case of Parijat Construction Vs. Commissioner Excise, Nashik, reported in 2018 (359) E.L.T. 113 (Bom.) on similar issue are of subsequent date. Being later judgments on the issue, the said judgments take precedence over the earlier one. Further, I find that the view expressed by the jurisdictional Gujarat High Court in the case of Joshi Technologies International, INC-India Projects Vs. Union of India [2016 (339) E.L.T. 21 (Guj.)] is binding on the principles of judicial discipline. Regarding the Supreme Court judgment in the case of M/s Mafatlal Industries Ltd. Vs. Union of India [1997 (89) ELT 247 (SC)] referred in the appeal, I find that the applicability of the said judgment for the issue under dispute had been examined by the High Court of Karnataka in their judgment in the case of Commissioner of C.Ex.(Appeals), Bangalore Vs. KVR Construction [2012 (26) STR 195 (Kar.)] after which they had held that the limitation under Section 11B of the Central Excise Act, 1944 would not be applicable for the issue under dispute. I further find that the Special Leave Petition filed by the department against the above said judgment of High Court of Karnataka has been dismissed by the Supreme Court.

9. Therefore, following the ratio of the above referred judgments of various high courts, it is to be held that limitation prescribed under Section 11B(1) of the Central Excise Act, 1944 would not be applicable to the respondent's claim of refund of service tax wrongly paid by them in the instant case as the service tax wrongly paid by them can not be considered as a tax leviable under the provisions of the Finance Act 1994 so as to attract the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. When 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. The refund claimed by the appellant in the present case is well within the said general time limit under the Limitation Act, 1963.

10. Further, notwithstanding my above views, it is observed that the issue raised by the appellant department in the present appeal has already been discussed by the Commissioner (Appeals), vide OIANo.AHM-EXCUS-001-APP-036-2018-19 dated 27.08.2018 and the adjudicating authority has decided the refund under remand proceedings as per directions contained in the said OIA. Nothing on records suggest that the department having challenged the said order of the appellate authority. When that being so, the appellate authority's views on the subject issue attains finality and the department cannot reopen the same by way of an appeal against the order which has been decided in terms of directions of the said OIA which stand accepted. Therefore, the appeal by the appellant department fails to survive legally on this count also.

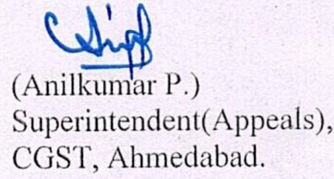
11. In view thereof, I do not find any legal infirmity in the impugned Order passed by the adjudicating authority and accordingly, I uphold the same and reject the appeal filed by the department being devoid of merits.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.



(Akhilesh Kumar)
Commissioner (Appeals)

Attested:



(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO :

The Assistant Commissioner,
CGST, Division-VII,
Ahmedabad South Commissionerate.
Appellant

M/s Mantis Technologies Pvt. Ltd.,
305-A, B-Block,
Shivalik Corporate Park,
B/h IOC Petrol Pump, 132 Ft. Ring Road,
Satellite, Ahmedabad
Respondent

Copy to:

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Addl. Commissioner, CGST, Ahmedabad South.
4. The Assistant Commissioner(System),CGST, Ahmedabad South.
(for uploading the OIA on website.)
5. Guard File.
6. P.A. File.