



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

DIN: 20210464SW000000A14B

क फाइल संख्या : File No : GAPPL/COM/STP/1394/2020

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 83/2020-21

दिनांक Date : 26-03-2021 जारी करने की तारीख Date of Issue

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST-VI/REF-24/ADDIS INFRA/DC/DRS/2020-21 issued by Deputy Commissioner of CGST, Division-VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Addis Infrabuild LLP, 32, 3RD Floor, Roopa Building, Sona Roopa, Opposite Lal Bungalow, CG Road, Ahmedabad-380009.

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 :

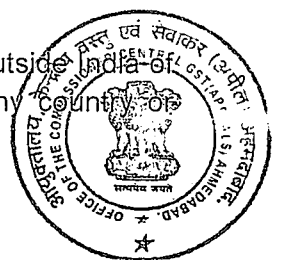
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(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 or on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



) 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 मामलों 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 ड्यूटी क्रेडिट 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 दिनोंक 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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

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. Registrar 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 आदेश 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 है।

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 notwithstanding 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is 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 अपील 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)

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

(xiii) (Section) खंड 11D के तहत निर्धारित राशि;

(xiv) लिया गलत सेनवैट क्रेडिट की राशि;

- (xv) 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:

- (iii) amount determined under Section 11 D;
(liii) amount of erroneous Cenvat Credit taken;
(liv) 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।

8(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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

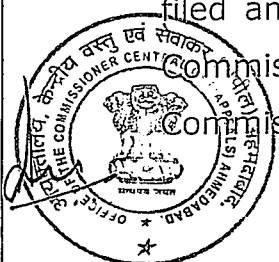


ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Addis Infrabuild LLP, having registered office at 32, 3rd Floor, Roopa Building, Sona Roopa, Opposite Lal Bungalow, CG Road, Ahmedabad-380009 (herein referred to as 'appellant') against Order in Original No. CGST-VI/REF-24/Addis Infra/DC/DRS/2020-21 dated 12.11.2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Central GST, Division VI, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant was holding Service Tax Registration Number ABAFA3593MSD001 for providing taxable services like (1) Construction Services other than Residential Complex, including Commercial/Industrial Buildings or Civil Structures Services, (2) Construction of Residential Complex Service, (3) Works Contract Service, (4) Transport of Goods by Road/Goods Transport Agency Service, (5) Business Auxiliary Service, (6) Maintenance/Repair Service and (7) Legal Consultancy Services etc. falling under erstwhile Section 65 (105) of the Finance Act, 1994. The appellant had filed an application for refund for an amount of Rs. 13,59,620/- under Section 11B of the erstwhile Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1994 on the ground that the customers who had made their booking before July 1,2017 and had paid amount for their booking before implementation of GST law, have cancelled their booking post July 1,2017 i.e. after implementation of new GST Act 2017. Since the Service Tax had been paid but the output service was not provided, the Service Tax was no longer payable and accordingly they had applied for refund of such Service Tax paid by them. The said refund claim was rejected by the Assistant Commissioner, Division-VI, CGST, Ahmedabad-South (herein after referred as "the original adjudicating authority") vide OIO No. CGST-VI/Ref-45/Addis Infrabuild/18-19 dated 25.06.2018 (herein after referred as "the original adjudication order") as per the provisions of the Section 11 B of the Central Excise Act, 1944 as made applicable in case of Service Tax matter vide Section 83 of the Finance Act, 1994.

2.1 Being aggrieved with the original adjudication order, the appellant had filed an appeal before the Commissioner (Appeals), Central GST, Appeals Commissionerate, Ahmedabad. The appeal was decided by the Commissioner (Appeals) vide OIA No. AHM-EXCUS-001-APP-065 to 068-



2018-19 dated 11.09.2018 (herein after referred as "the original appeal order") who remanded the matter back to the adjudicating authority with a direction that the adjudicating authority shall give proper opportunity to produce the documents/details before passing the order.

2.2 Accordingly, the appellant had again filed an application for refund of Rs. 13,59,620/- before the adjudicating authority on the basis of the original appeal order passed by the then Commissioner (Appeals); Ahmedabad. However, the appellant vide their letter dated 16.08.2020 submitted to the adjudicating authority that they had not returned the benefit of Service Tax in case of the persons mentioned below and accordingly the appellant himself agreed to reduce their refund claim to the tune of Rs. 4,30,658/-.

Sr. No.	Name of the buyer (Mr./Mrs.)	Unit Number	Service Tax (Rs.)	SBC (Rs.)	KKC (Rs.)	Total amount of Refund (Rs.)
1	Vaishali D.Parmar & Jaikishan Bulwani	401	120701	4311	2153	127165
2	Nikhil Kanaiyalal Chokshi	1106	122254	2266	1133	125653
3	Vishal Gurnani	1209	165984	5928	5928	177840
TOTAL						430658

2.3 Thereafter, the adjudicating authority vide the impugned order rejected the refund claim to the extent of Rs. 5,37,921/- which comprised of claim for Rs. 4,30,658/- pertaining to the buyers as mentioned in para-2.2 above and also for Rs. 1,07,263/- pertaining to the person/buyer (Unit no. 502) whose details are mentioned below:

Sr. No.	Name of the buyer	Unit Number	Date of Booking	Date of Cancellation	Total amount of Refund (Rs.)
1	Hitesh Jayantilal Shah (HUF)	502	07.02.2015	25.02.2017	107263

2.4 The refund claim pertaining to Unit No.502 has been rejected by the adjudicating authority vide impugned order on the grounds that the booking was cancelled on 25.02.2017 i.e. well before the appointed date of implementation of GST. The appellant could have take credit of Service Tax



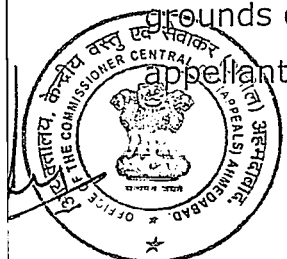
paid in terms of erstwhile Rule 6(3) of the Service Tax Rules, 1994 but they failed and claimed refund in cash which is not admissible to them.

3. Being aggrieved with the impugned order, the appellant preferred this appeal to the extent of rejection of their refund amount of Rs. 1,07,263/- in respect of Unit No.502 by the adjudicating authority, on the grounds that:

- 1) With regards to Unit No. 502, the booking was cancelled on 25.02.2017, however they were still in discussion with the buyer to continue with the booking and hence neither they had refunded any money nor they had issued any credit note till the time the discussion was underway. Eventually, when the booking was confirmed to be cancelled, it was post Service Tax era and hence they could not take the credit of the tax so paid as per the provisions of Rule 6 (3) of the Service Tax Rules, 1994. Since they are alternatively entitled for refund of the said amount so paid under Section 11 B of the Central Excise Act, 1944, they have applied for the refund.
- 2) It can be seen from the provisions of Rule 6 (3) of the Service Tax Rules, 1994, an assessee has a choice to claim the credit, subject to condition that the assessee has to either pay the amount back, or issue a credit note. Whereas they have neither made any payment back to the buyer before 30th June 2017 nor any credit note has been issued.
- 3) Further, the provisions of Rule 6 (3) of the Service Tax Rules, 1994 are not a compulsion but an option to avail the credit. Also, the provisions of Section 11 B of the Central Excise Act are not conditional to ineligibility of them to claim the credit under Rule 6 (3) of the Rules.

4. Personal Hearing in the case was held on 04.03.2021 through virtual mode. Shri Abhishek Shah, Chartered Accountant, attended hearing on behalf of the appellant. He reiterated submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in appeal memorandum and oral submissions made by the appellant at the time of hearing. It is observed that the issue to be decided



in this case is whether the order of the adjudicating authority rejecting the refund claim amount of Rs. 1,07,263/- in this case is legal and proper or otherwise.

5.1. It is observed from the case records that the appellant was engaged in the Construction of residential/commercial complex before 01.07.2017 in the Service Tax regime. They had booked the units in the commercial project named "ADDOR ASPIRE" and received the amount from the prospective buyers and also paid the Service Tax on the amount received towards such booking during the Service Tax regime. Some of the prospective buyers had subsequently cancelled the booking of the units after 01.07.2017 i.e. in GST regime and the appellant has returned entire amount received from the buyers. Thereafter, the appellant has preferred the refund claim of the amount of Service Tax paid on receipt of the booking amount from such buyers, to whom on cancellation the booking no service has been provided. It is observed from Para-19 of the impugned order, the adjudicating authority considering the legal provisions of Service Tax and GST and relying upon the judicial decisions, found the appellant eligible for the refund of the Service Tax on merits. However, he, on verification of records, rejected a portion of refund amounting to Rs. 5,37,921/-. The present dispute is w.r.to cancellation of Unit No. 502 on 25.2.2017.

5.2 It is undisputed as per the findings of the adjudicating authority at Para-21 of the impugned order that the appellant has returned the entire amount (whatever amount received) to the buyer who had cancelled their booking and there was no deduction made for any amount under any head like Service Tax or cancellation charges and the appellant has returned entire amount after 01.07.2017.

5.3 Further, I also find that it is verified and confirmed by the adjudicating authority as per the findings at Para-23 of the impugned order that the appellant has not collected the tax amount from the buyer and paid from their pocket and accordingly it is proved that the incidence of tax has not been passed on to any other person and has been borne by them. Hence, there is no bar of principle of unjust enrichment in the refund claim filed by the appellant.

5.4 It is further observed from Para-13 of the impugned order that the adjudicating authority has recorded his findings that "in the case of non provisions of the services, the service provider had an option to take credit



of the Service Tax paid on the payment received and can be adjusted against the future liability of Service Tax payment. However, in this case, the provision of services cancelled after the implementation of the new GST Act, and therefore the said claimant is not in a position to take the credit as per the provision of Rule 6 (3) of the Service Tax Rules, 1994 as the same is not in existence as on date." However, in case of Unit No. 502, the claim is rejected on the grounds that "the booking was cancelled on 25.02.2017, well before the appointed date of implementation of GST. The claimant can take credit of Service Tax paid in terms of erstwhile Rule 6 (3) of the Service Tax Rules, 1994. Therefore during the material period, the said claimant had to avail Cenvat Credit under Cenvat Credit Rules, 2004 but they failed and accordingly, claimed refund in cash which is not admissible to the said claimant."

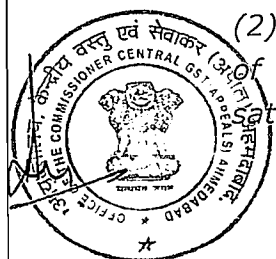
6. The provisions of Section 142 (5) of the Central GST Act, 2017 are reproduced below:

Section 142 (5):- Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

6.1 The provisions of Section 11 B of the Central Excise Act, 1944 is also reproduced below:

"SECTION 11B:— (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :"

(2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the [duty of excise and interest,



if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of [duty of excise and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a)

(b)

(c)

(d) the [duty of excise and interest, if any, paid on such duty] paid by the manufacturer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(e) the [duty of excise and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(f) the [duty of excise and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :"

6.2 Further, the provisions of Rule 6 of the Service Tax Rules, 1994 is also reproduced below:

"Rule 6 (3):- Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, [or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract], **the assessee may take the credit of such excess service tax paid by him, if the assessee.-**

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued."

7. As regards to the case of cancellation of Unit No. 502, I find as per the appeal memorandum, the booking was cancelled on 25.02.2017 [pre GST era] however the appellant has neither refunded any money nor issued any credit note till the implementation of GST. Further, I also find that the adjudicating authority as per his findings mentioned at Para-21 of the impugned order, has also verified and confirmed that the entire amount has been returned after 01.07.2017.

Accordingly, in the present case, as per the conditions of Rule 6 (3) of the Service Tax Rules, 1994, the appellant was not eligible to take the credit

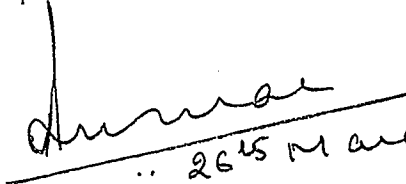


of such excess service tax paid by him, during the period before 01.07.2017 [prior to implementation of the new GST Act.] However, I find that the adjudicating authority has not taken the said fact into consideration and rejected the refund claim to that extent on the only grounds that "during the material period, the said claimant had to avail Cenvat Credit under Cenvat Credit Rules, 2004 but they failed and accordingly, claimed refund in cash which is not admissible to the said claimant" which is not legally sustainable.

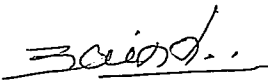
7.2 Even otherwise, as regards the provisions of Rule 6 (3) of the Service Tax Rules, 1994 according to which "the assessee may take the credit of excess Service Tax paid by him", I find that the said provision is optional in nature and not a compulsion. Accordingly, the act of not availing the said option by the appellant cannot restrict the refund claim in any manner which is otherwise available in terms of the provisions of Section 11 B of the Central Excise Act, 1944 made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994 read with sub-section (5) of the Section 142 of the Central GST Act, 2017.

8. In view of the above, the impugned order passed by the adjudicating authority to the extent of rejection of the refund claim for an amount of Rs. 1,07,263/- of the appellant is not found to be sustainable as per law. Accordingly, I set aside the impugned order passed by the adjudicating authority to that extent and the appeal filed by the appellants is allowed.

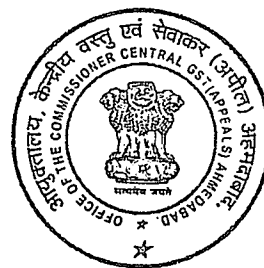
9. The appeals filed by the appellant stand disposed off in above terms.


.. 26th March, 2021 ..
(Akhilesh Kumar)
Commissioner (Appeals)

Attested



(M.P. Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A. D

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Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner CGST and Central Excise, Ahmedabad-South.
3. The Deputy/Asstt. Commissioner, Central Excise, Division-VI, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File



