



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.

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रजिस्टर्ड डाक ए.डी. द्वारा

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क फाइल संख्या : File No : V2(ST)15/Ahd-South/2020-21 / 1261 T 0 1265

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 89/2020-21

दिनांक Date : 31-03-2021 जारी करने की तारीख Date of Issue 06/04/2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No 12/Ref/MK/DC/Div-I/19-20 dated 24.01.2020 issued by Deputy Commissioner, Div-I, Central Tax, Ahmedabad-South.

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

M/s Jas Infracon LLP, 5/C, Archana Ind. Estate, Opposite Ajit Mill, Rakhial, 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 :

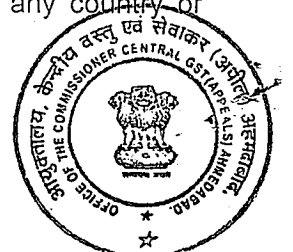
(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 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 दिनांक 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 Appellate 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.

- (36) 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)

- (37) 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 'संबंधित 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:

- (lxi) amount determined under Section 11 D;
- (lxii) amount of erroneous Cenvat Credit taken;
- (lxiii) 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(l) 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. Jas Infra Con LLP, 5/C, Archana Ind. Estate, Opposite Ajit Mill, Rakhial, Ahmedabad [having office at Ahmedabad City Mall, Raipur, Ahmedabad-380002] (hereinafter referred to as 'appellant') against Order in Original No. 12/Ref/MK/DC/DIV-I/19-20 dated 24.01.2020(hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Central Tax, Division I, Ahmedabad-South (hereinafter referred to as 'theadjudicating authority').

2. Facts of the case, in brief, are that the appellant is engaged in providing taxable service under the category "Construction Service" falling under erstwhile Section 65(105)(zzq) of the Finance Act, 1994 and holding Service Tax Registration Number ADFPD4986LST001. The appellant had filed Service Tax refund claim for an amount of Rs.1,47,12,180/- under Section 11B of the erstwhile Central Excise Act, 1944 as made applicable in the case of Service Tax matters vide Section 83 of the Finance Act, 1994 on the ground that the customers who had made their booking before 1<sup>st</sup>July,2017 and had paid amount for their booking before implementation of GST law, have cancelled their booking post July 1,2017. Since the Service Tax had been paid but the output service was cancelled, the service tax was no longer payable and accordingly they had applied for refund of service tax paid by them. The appellant was issued a Show Cause Notice vide F.NO. V/16-07/Ref/Div-I/19-20 dated 11.12.2019. The refund claim was rejected vide the impugned order by the adjudicating authority on grounds of being time-barred and also on ground of unjust enrichment.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds that:

- a. Refund claim filed is not time barred under the provisions of Section 11B of the Central Excise Act, 1944;
- b. Levy of Service Tax on a service which is not rendered to the recipient is illegal and unauthorized: The Service Tax was paid on the amount received as advance from the prospective customer. But the booking was cancelled based on mutual understanding and certain deficiency issues. The customer did not get the possession of the property booked by them since they cancelled their booking and the booking amount was refunded entirely to them. Hence, the intended service was never provided;



- c. Section 11B of the erstwhile Central Excise Act, 1944 applies to refund of payment of duty and any payment of service tax for services not eventually rendered is not covered under Section 11B of the Central Excise Act, 1944;
- d. The appellant vide their letter dated 20.01.2020, while submitting the relevant documents in compliance of the condition of "unjust enrichment" to the adjudicating authority, had themselves restricted their refund claim to the amount of Rs. 1,08,25,898/- only pertaining to the period from 12.08.2017 to 05.11.2018 and forgone their claim for refund of the remaining amount of Rs. 38,86,282/- stating that they were not able to justify the same. In the present appeal also, the appellant has contested the impugned order in respect of their refund claim to the extent of an amount of Rs. 1,08,25,898/- only.

3.1. The appellant placed reliance on the following Judgements:

- (i) M/s. Pratibha Construction Engineers and Construction (I) Private Limited V/s Commissioner of Central Excise, Kolhapur [2016 (42) S.T.R. 856 (Tri. Mumbai) ];
- (ii) Commissioner of Central Excise & Service Tax, Bhavnagar V/s M/s.Madhvi Procon Private Limited [2015(38) S.T.R.74 (Tri.-Ahmd.)];
- (iii) Commissioner of Central Excise (Appeals), Bangalore V/s KVR Construction [2012 (26) S.T.R. 195(Kar.)];
- (iv) Uttam Steel Limited V/s Union of India [2003(158)E.L.T.274(Bom.)];

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

5. I have carefully gone through the facts of the case available on record, grounds of appeal and 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 appellant is eligible for refund of service tax which was paid prior to 01.07.2017 in respect of booking towards sale of offices/shops in commercial building, which were subsequently cancelled by prospective buyers to whom the amount was refunded after 01.07.2017, under Section 11B of the Central Excise Act, 1944 made applicable to service tax matters by Section 83 of the Finance Act, 1994.



5.1. It is observed that the appellant had provided services under the category of Construction Service and had booked the units in their Commercial Complex named City Centre-2 after receiving payments from the prospective buyers of the units. They have claimed to have discharged the service tax liability based on advance received from the customers. However, some of the units were cancelled by the prospective buyers and consequently the booking amount was fully refunded to them. It has been contended that the Service Tax was paid on the advance received from the customers and no adjustment of the tax amount paid was allowed after 01.07.2017. Hence, the appellant had filed a refund claim for an amount of Rs.1,47,12,180/-, which was subsequently reduced to an amount of Rs. 1,08,25,898/- as per their letter dated 20.01.2020 stating that they could not be able to substantiate their claim for the remaining amount of their refund claim on the aspect of 'unjust enrichment'.

5.2 It is observed that as per Section 66 E (b) of the Finance Act, 1994, in case of construction of complex intended for sale to a buyer, consideration received from the prospective buyers before the issuance of completion certificate by the competent authority has been included as 'Declared Service'. Further, some of the bookings have been cancelled, as detailed in the impugned order, and the amount of booking has been refunded to prospective buyers. Hence, there has been non-provision of service as regards these units and consequently they were eligible for credit of tax paid in respect of these units in terms of Rule 6 (3) of the Service Tax Rules, 1994. However, such cancellation has occurred after 01.07.2017 i.e. after implementation of GST and hence they were unable to take such credit, which has led to filing of the refund claim in question. It is further observed that the refund claim was filed on 31.10.2019. These are undisputed facts.

6. It is observed that the adjudicating authority has vide impugned order rejected the refund claim on the following grounds:

- (i) The refund claim of Service Tax of Rs. 1,47,12,180/- is time-barred as per Section 11B of the Central Excise Act, 1944;
- (ii) The claimant has failed to substantiate their claim on the footing of unjust enrichment.

The Adjudicating Authority has relied upon the following case laws:

- (i) Vodafone Cellular Limited [2014(34) STR 890 (Tri. Mumbai)]
- (ii) National Fertilizers Limited [2019(31)GSTL 38 (MP)]
- (iii) MMTCL Limited [2019(26) GSTL 248 (Tri. Hyd)]



(iv) Benzy Tours & Travels Private Limited [2016(43) STR 625 (Tri-Mumbai)]

6.1 It is observed that the Hon'ble CESTAT, Mumbai had in Vodafone Cellular Limited case reported at 2014 (34) STR 890 (Tri-Mumbai) considered the issue of rebate claim of Service Tax paid in case of telecom services provided in India to international inbound roamers registered with foreign telecom network operators in terms of the Notification No. 11/2005-S.T., dated 19-5-2005 issued under Rule 5 of Export of Services Rules, 2005 and the question under consideration before the Hon'ble Tribunal was that whether the time limit as per Section 11B of the Central Excise Act, 1944 would be applicable to file a rebate claim when there is no specific time-limit provided under the said Notification?

6.2 Further, in case of order of Hon'ble Tribunal, Hyderabad in MMTC Limited reported at 2019(26) GSTL 248 (Tri. Hyd), the matter pertained to refund of Service Tax paid on services used in the goods exported by them beyond one year from the date of LEO as specified in the Notification No. 41/2012-S.T. The issue before the Hon'ble Tribunal for consideration was whether the limitation of time imposed by the notification for claiming the refund of Service Tax on inputs which went into export of goods can be altered by reckoning the date on which the appellant received the invoices instead of the date of Let Export Order as laid down in the notification?

6.3. I find that the facts involved in the appellant's case are different than those mentioned in abovementioned two case relied upon by the adjudicating authority in as much as that this case pertains to continuous supply of Construction Service where service tax is paid on advance amount received and the event of refund is triggered by cancellation of unit. Hence, the application of the above case laws in the case is accordingly distinguishable.

6.4. It is further observed that the Hon'ble High Court of Madhya Pradesh in National Fertilizers Limited case reported at 2019(31) GSTL 38 (M.P.) considered the matter related to refund claim filed by buyer in respect of Service Tax paid on higher value at which service provider, M/s. GAIL raised bills which got reduced subsequently due to downward revision in the values. Further, in the above mentioned case law, the assessee's claim for the refund was filed without documentary evidence stating that they were not obliged to pay Service Tax at the very instance. I find that the facts involved in the instant case are different in as much as that this case



pertains to continuous supply of Construction Service and the event of refund is triggered by cancellation of unit. Hence, the application of said case law is accordingly distinguishable.

6.5 It is further observed that the Hon'ble Tribunal, Mumbai had in case of Benzy Tours & Travels Private Limited, reported at 2016(43) STR 625 (Tri-Mumbai) considered the issue of payment of Service Tax on the service which was not liable to Service Tax. There is no discussion about its applicability in the facts of the case.

7. It is further observed that the adjudicating authority has not given any findings on the case laws relied upon by the appellant during the adjudication proceedings. One such case law, i.e., the judgement of Hon'ble Tribunal, Ahmedabad in case of CCE & ST, Bhavnagar Vs. Madhvi Procon Pvt. Limited, reported at 2015 (38) STR 74 (Tri.Ahmd) is of jurisdictional Tribunal, which dealt with the issue of refund of service tax in case of termination of contract and applicability of Section 11B of the Central Excise Act, 1994 in such cases. Hence, the contention of the appellant has not been fully considered during the adjudication proceedings.

8. It is observed that in case of M/s. Panchratna Corporation, Ahmedabad, the Commissioner (Appeals), Ahmedabad had considered similar issue and vide his order dated 29.05.2017 (issued on 29.06.2017) held that the limitation as per the provisions of Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994 are not applicable in cases where services were not provided. The Commissioner (Appeals), Ahmedabad had in this order dated 29.05.2017 (issued on 29.06.2017), examined and analysed the issue at length and also relied upon various judgements passed by the different High Courts and Tribunals, in similar sets of facts.

9. It is a settled position that the adjudicating authority is bound to follow the decisions of the jurisdictional appellate authorities in the similar set of facts, in terms of the principle of judicial precedence. However, in the present case, the adjudicating authority has passed the impugned order without examining the applicability of the judgement of Hon'ble Tribunal, Ahmedabad in case of Madhvi Procon Pvt. Limited [2015 (38) STR 74 (Tri.Ahmd)], relied upon by the appellant during the adjudication process, and (2) the order dated 29.05.2017 issued by the Commissioner (Appeals), Ahmedabad in case of M/s. Panchratna Corporation, Ahmedabad, to the





facts of the present case nor produced any findings thereon to distinguish the same, in the impugned order. Hence, the impugned order has been passed without correct appreciation of judicial pronouncement on the subject and needs to be remanded back to the adjudicating authority to decide the case afresh after analysing the abovementioned two judicial pronouncements.

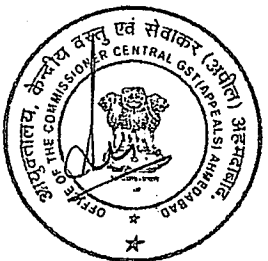
10. As regards the issue of unjust enrichment, I find that the adjudicating authority has held that the claimant had produced certificate issued by their auditor certifying that an amount of Rs, 1,08,25,898/- has been refunded to their clients for the period covering from 12.08.2017 through 05.11.2018 only. No other evidence as specified in Section 12A of the Central Excise Act, 1944 has been produced. The relevant extract of legal provision is reproduced verbatim:

**Section 12A in the Central Excise Act, 1944**

*\*12A. Price of goods to indicate the amount of duty paid thereon.—Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.*

It is observed that the above mentioned section clearly mentions the documents which will stipulate the excise duty which will form part of the price to be paid on the goods to be sold. Since, construction is a continuous process and the payment of tax is done on the advances received from the prospective buyers, no such document is issued from the service provider to ascertain the tax liability as the tax is paid on the receipt of advances from the customers and not on completion of service.

10.1. Further, it is observed that the appellant had produced the documents viz. Ledgers of Customers whose bookings have been cancelled, Bank Statements etc. before the adjudicating authority in respect of their refund claim amounting to Rs. 1,08,25,898/- pertaining to the period 12.08.2017 to 05.11.2018 alongwith a certificate issued by their auditor certifying that this Service Tax amount had been refunded by them to their clients, on account of cancellation of booking. However, the impugned order



does not mention about the eligibility of such documents towards the refund claims nor records any specific discrepancy/deficiency in this regard. Accordingly, it would be appropriate to remand the matter back to the adjudicating authority to examine the documents submitted by the appellant so as to satisfy the requirement of "unjust enrichment" and record his findings. It will be obligatory on the part of the appellant to produce all the documentary evidences as required by the adjudicating authority for conducting the suitable verification.

11. In view of the above discussion, I set aside the impugned order and remand the matter to the adjudicating authority for de-novo consideration in light of observations made in Para 9 and Para 10.1. above, after according the appellant to represent their case as part of natural justice. The appellant is required to submit before the adjudicating authority relevant documents in support of their claim for refund.

12. The appeal filed by the appellant stand disposed of in above terms.

*Akhil Kumar*  
 .. 31<sup>st</sup> March, 2021  
 (Akhil Kumar)  
 Commissioner (Appeals)



Attested

*Sisodiya*

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

By Regd. Post A. D

M/s.Jas Infra Con LLP,  
 5/C,Archana Ind. Estate,  
 Opp. AjitMill,Rakhial,  
 Ahmedabad

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The 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

