आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक 07926305136

DIN : 20221164SW00008189E3

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/15/2022 / 5183-87

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-084/2022-23**
दिनॉक Date : **25-11-2022** जारी करने की तारीख Date of issue 30.11.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **CGST/WS07/Ref-03/RAG/AC-2021-22** दिनॉक: **28.10.2021** passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **The Assistant Commissioner**
CGST, Division VII, Ahmedabad South
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad-380015

Respondent

1. **M/s Shilpa Construction Pvt Ltd**
41, Payal Park Society, Satellite Road,
Jodhpur Tekra, Ahmedabad - 380015

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 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 हानिकार खाने 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 मे 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.

(क) 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 मामले में या भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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 इयूटी 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।

(c) 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) नियम, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आवेदन दायर दिनांक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फीस 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) पुनरीक्षण आवेदन के साथ जहाँ संलग्न मामला रुपये दस लाख या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) उपरलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपील के लिए प्राधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद को 2nd माला, बहुमाली भवन, असारवा, 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 होत 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

1ए सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलें में कर्तव्यमांग(Demand) एवं शंड(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. (Section) खंड 11D के तहत निर्धारित राशि;

इए लिया गलत सेनवैट क्रेडिट की राशि;

बए 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:

(clxiii) amount determined under Section 11 D;

(clxiv) amount of erroneous Cenvat Credit taken;

(clxv) amount payable under Rule 6 of the Cenvat Credit Rules.

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

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VII, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 51/2021-22 dated 31.01.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. CGST/WS07/Ref-03/RAG/AC/2021-22 dated 28.10.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Shilpa Construction Pvt. Ltd., 41, Payal Park Society, Satellite Road, Jodhpur Tekra, Ahmedabad - 380 015 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that the respondent were engaged in the business of Works Contract Services. The respondent had entered into an agreement with Surya Real Infrastructure Pvt. Ltd. for construction of Suryan Logico Homes and used to pay Service Tax on the amounts received from their client. After completion of the project, the respondent received a debit note dated 06.08.2018 for an amount of Rs.1,60,32,202/- and had accordingly returned the said amount to their client. As the said amount was inclusive of service tax, the respondent filed refund claim on 02.05.2019 for an amount of Rs.20,91,679/-. Subsequently, vide letter dated 12.07.2019, the respondent reduced the refund claimed to Rs.9,07,709/-. The said refund claim was rejected vide OIO No.CGST/WS07/ref-08/MK/AC/2019-20 dated 17.07.2019.

2.1 Being aggrieved, the respondent filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM-EXCUS-001-APP-013-2020-21 dated 05.05.2020 remanded the case back to the adjudicating authority. In the denovo proceedings, matter was adjudicated vide the impugned order and the respondent was sanctioned the refund amounting to Rs.9,07,709/- along with interest amounting to Rs.1,24,719/-.

3. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

i. The adjudicating authority has erred in sanctioning the refund by merely relying upon the order dated 29.06.2017 of the Commissioner (Appeals), Ahmedabad in the case of M/s. Panchratna Corporation, Ahmedabad.

ii. However, the view of the appellate authority is contrary to law, facts and evidences on record inasmuch as the respondent had made payment of the said amount by GAR Challan under Major Head 0044, which is nothing but service tax.

iii. The adjudicating authority has incorrectly held that due to deficiency in service the amount has been returned and, thus, the claimant has not provided any service equivalent to the amount returned.

iv. The respondent had shown receipts of consideration for providing Works Contract services in the ST-3 returns and accordingly paid service tax on the advances toward the Works Contract service which is a continuous supply of service. Therefore, the amount paid by the service provider was not a deposit but service tax.

v. The statute does not provide that the liability to pay service tax would arise only after the service is provided, rather it provided that service tax is payable once payment towards the service is received. Therefore, the service tax paid was by the service provider on the amount received from the service recipient and its refund would be governed by Section 11B of the Central Excise Act, 1944.

vi. The service tax was paid from October, 2013 to June, 2017 without any protest and the refund claim was filed on 02.05.2019 i.e. after more than one year from the relevant date of payment of service tax. Therefore, the refund claim was hit by limitation as per Section 11B of the Central Excise Act, 1944.

vii. The decision in the case of C.C.E & S.T, Bhavnagar Vs. Madhvi Procon Pvt. Ltd – 2015(38) STR 74 (Tri.-Ahmd.) has been distinguished in the

case of Benzy Tours & Travels Pvt. Ltd. Vs. Commissioner of S.T., Mumbai-I – 2016 (43) STR 325 (Tri.-Mum.);

viii. Reliance is placed upon the judgment in the case of Assistant Commissioner of S.T., Chennai Vs. Natraj and Venkat Associates – 2015 (40) STR 31 (Mad.); Collector of Central Excise Vs. Doaba Co-operative Sugar Mills in Civil Appeal No.253 of 1988; Veer Overseas Ltd. Vs. Commissioner of Central Excise, Panchkula – 2018-TIOL-1432-CESTAT-CHD-LB; Cemex Vs. Commissioner of Central Excise & Service Tax, Ahmedabad – 2020-TIOL-698-CESTAT-AHM.

ix. In view of these decisions involving an identical issue, which are applicable to the present case, the impugned order is liable to be quashed.

x. The service received had issued debit note dated 06.08.2018 to the respondent due to deficient in provision of service. The deficiency in provision of service is stated to be on account of inferior quality of construction work, inferior quality of concrete used in construction and discrepancies relating to measurement.

xi. The respondent had already provided the services and there is no record of any renegotiation of the invoice amount between the service recipient and the respondent. However, there is no record of any deficiency in service. The debit note was issued on 06.08.2018 in respect of service provided during October, 2013 to June, 2017 and appears to be an afterthought to claim refund of service tax.

xii. The respondent had filed refund application for refund on 12.07.2019 and the adjudicating authority has calculated the interest amount from the very next day i.e. 13.07.2019. As per Section 11B, the interest is to be calculated after three months from the application of refund.

4. Personal Hearing in the case was held on 22.11.2022. Shri Bishan Shah, Chartered Accountant, appeared on behalf of respondent for the hearing. He stated that the adjudicating authority has correctly sanctioned the refund. He further stated that he would submit cross-objection to appeal within two days.

5. The respondent filed their cross-objections on 24.11.2022, wherein it was, inter alia, contended that :

- They are eligible for refund of Rs.9,07,709/- in terms of Rule 6 (3) of the Service Tax Rules, 1994 on the debit note issued by the service recipient as value of the services provided is renegotiated due to deficient provision of service.
- Taxable value of Rs.1,51,28,493/- and Service Tax amounting to Rs.9,07,709/- was negotiated and for which credit note of Rs.1,60,36,202/- was issued by them to the service recipient. If the amount was re-negotiated on or before 30.06.2017, they were eligible to take credit in terms of Rule 6 (3). However, the amount was re-negotiated after 30.06.2017.
- The CBIC has vide FAQ issued on Banking, Insurance and Stock Brokers Sector (updated as on 27.12.2018) clarified in response to question 71 that any service paid on or before 30.06.2017 for the services to be provided but subsequently not provided shall be eligible for refund under Section 142 (5) of the CGST Act, 2017. Accordingly, the refund sanctioned to them was in accordance with the law.
- The department has not filed any appeal against the decision of the Commissioner (Appeals) in the case of Panchratna Corporation. So it is deemed that the said decision is acceptable to the department and they cannot now challenge the said decision.
- Service tax is deposited on the basis of provisions of Time of Supply.
- Assuming that the provisions of Section 11B of the Central Excise Act, 1944 is made applicable to the refund claim sanctioned to them, then also the requirement of the said provisions are duly satisfied.
- Reliance is placed upon the judgment in the case of CCE, Pune Vs. Ispat Profiles India Ltd. – 2007 (220) ELT 218 (Tri.-Mumbai) and SS Agro Industries Vs. C.Cus., Air Cargo (Export), New Delhi – 2014 (309) ELT 334 (Tri.-Delhi).
- The relevant date would the date when the price is re-negotiated for deficiency in service by which they came to know about the same and the credit note for the same was issued on 06.08.2018. They had filed

the revised refund claim before the period of one year i.e. on 12.07.2019.

- The points raised in the appeal were never raised before them during the entire proceedings of refund. In accordance with the principles of natural justice, the SCN is expected to contain all these aspects.
- The interest has been sanctioned as per law. The refund application was filed by them on 08.07.2019 and then revised on 12.07.2019. As already proved by the adjudicating authority, the refund claimed and sanctioned is a deposit and hence, not governed by Section 11B of the Central Excise Act, 1944. Accordingly, interest was sanctioned by the adjudicating authority from 13.07.2019.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross objections filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order sanctioning refund of an amount of Rs.9,07,709/- along with interest amounting to Rs.1,[illegible]709/- is legal and proper.

7. It is observed that the impugned order sanctioning the refund along with interest to the respondent has been passed consequent to the remand directions contained in OIA No. AHM-EXCUS-001-APP-013-2020-21 dated 05.05.2020 passed by the Commissioner (Appeals), Ahmedabad. The relevant Para of the said OIA is reproduced below :

> "7. Accordingly, in the interest of natural justice, the matter need to be remanded back to the adjudicating authority. The appellant is also directed to put all the evidences before the Adjudicating authority in support of their contention, as well as any other details/documents etc. and may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the adjudicating authority".

7.1 In terms of the directions of the Commissioner (Appeals) vide the OIA supra, the adjudicating authority decided the refund claim filed by the appellant after granting personal hearing to the respondent. Considering the merits of the case as well as the decision in the case of Panchratna Corporation, the adjudicating authority has held that limitation in terms of Section 11B of the Central Excise Act, 1944 is not applicable. Accordingly, the respondent was sanctioned refund along with interest.

8. It is observed that the refund has been claimed by the respondent on the grounds that they had returned an amount of Rs.1,60,32,302/-, which is inclusive of service tax, to their service recipient on account of deficiency of service for which a Debit Note dated 06.08.2018 was raised by the service recipient. The appellant department has challenged the impugned order on the grounds of limitation. It has been contended that the service tax was paid during the period from October, 2013 to June, 2017 and the refund claim was filed on 02.05.2019 i.e. after more than one year from the date of payment of service tax. The adjudicating authority has on the other hand held that the limitation in terms of Section 11B of the Central Excise Act, 1944 is not applicable in view of OIA No. AHM-SVTAX-000-APP-023-17-18 dated 29.06.2017 passed by the Commissioner (Appeals), Ahmedabad in the case of Panchratna Corporation, Ahmedabad. The adjudicating authority has also relied upon other judicial pronouncements in support of his stand.

8.1 However, I find that the decision in the case of Panchratna Corporation supra, as well as the other case laws are not applicable to the facts of the present case. The issue involved in those cases was pertaining to payment of service tax on advances and subsequent cancellation of the service in respect of which the tax was paid and, therefore, the amount paid was not tax but deposit and accordingly, it was held that limitation under Section 11B would not apply. The issue in the instant case pertains to payment of service tax and it's refund on account of deficiency in service. It would, therefore, be relevant to refer to the provisions of Rule 6 (3) of the Service Tax Rules, 1994, which is reproduced below :

> "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."

8.2 In terms of the said Rule 6(3) and assessee is allowed to take credit of the service tax which was paid in excess in cases where the service was not provided either wholly or partly, subject to the conditions specified therein. In the instant case, the respondent was issued a debit note by the service recipient for deficiency in service and the respondent had returned the amount mentioned in the debit note to the service recipient. Therefore, the relevant date for taking credit of the excess service tax paid by the respondent would be the date of the debit note as per which the respondent had returned the amount to the service recipient. It is also noteworthy that there is no time limit prescribed in Rule 6(3) of taking of credit of the excess service tax paid.

8.3 In the instant case the debit note for the deficiency in service was issued on 06.08.2018 i.e. after the introduction of GST w.e.f 01.07.2017. The date on which the assessment attains finality in respect of the said service would, therefore, be 06.08.2018. Further, in view of the introduction of GST, the respondent was not in a position to take credit of the excess service tax paid by them. Therefore, the respondent had filed a claim for refund of the service tax paid in excess and it is observed that the claim for refund was filed within one year from the date of finalization of assessment i.e. the date of debit note. It is worth mentioning that there is no time limit prescribed under Rule 6 (3) of the Service Tax Rules, 1994 for taking credit of the service tax paid in excess. It is also pertinent that the respondent had filed the refund claim in term of section 142(3) of the CGST Act, 2017. Considering these facts, I am of the considered view that the refund claim filed by the respondent is not hit by the bar of limitation prescribed under Section 11B of the Central Excise Act, 1944.

9. The appellant department has also contended that there is nothing on record to indicate that there was a renegotiation of the amount of invoice between the respondent and the service recipient. In this regard, it is observed that the service provided by the respondent to the service recipient is that of Works Contract Service. In the case of Works Contract Service, the valuation of the service is in terms of Rule 2A of the Service Tax

(Determination of Value) Rules, 2006 (hereinafter referred to as the Valuation Rules). As per Rule 2A (i) of the Valuation Rules, the value of service in execution of a Works Contract shall be the gross amount less the value of property in goods transferred in execution of the said works contract. If it is not possible to determine the value as per clause (i) of Rule 2A, the valuation is to be as per clause (ii) of Rule 2A. Rule 2A (ii) (A) stipulates that in case of original works, the service tax shall be payable on forty per cent of the total amount charged for the works contract.

9.1 In the instant case, it is observed that the deficiency in the service provided by the respondent is stated to be inferior quality of construction, inferior quality of concrete used and discrepancy in measurement and/or rate for various items. It is clearly apparent from the debit note issued to the respondent that amount is sought to be recovered on account of inferior quality of material used as well as discrepancy in rate of items used. There is no detail available on record and neither is any detailed finding given in the impugned order whether the amount returned by the respondent to the service recipient is solely on account of the cost of material used in the Works Contract or whether it is also in respect of the service portion of the Work Contract Service. The respondent would only be entitled to refund of the service tax paid in excess in respect of the service portion of the Works Contract service and not on the amount returned by them which is inclusive of the cost of materials. In the event the amount returned by the respondent to their service recipient pertains only the cost material, the respondent would not be eligible for any refund. It is observed that the impugned order is silent on these aspects. Therefore, the matter is required to be re-visited by the adjudicating authority and decided afresh after giving a clear finding on this issue.

10. The appellant department have also contested the interest sanctioned to the respondent. It has been contended by the appellant department that interest is payable only after three months from the date of filing of the revised refund application which was filed by the respondent on 12.07.2019. It is observed that the adjudicating authority has at Para 18 of the

impugned order held that *"the said claimant had revised filed application of refund Rs.9,07,709/- on 12.07.2019 and as per the provision of Section 11B, the same is required to be sanctioned within three months from the date of filing refund claim. Accordingly, the said claimant is eligible for interest @6% p.a. on Rs.9,07,709/- for the period from 13.07.2019 to 28.10.2021 (838 days) under Section 11BB of the Central Excise Act, 1944."*

10.1 The adjudicating authority has clearly erred in coming to the above conclusion. In terms of Section 11BB of the Central Excise Act, 1944, interest is payable after expiry of three months from the date of receipt of the refund application. Since the revised application was filed on 12.07.2019, the appellant would be entitled to interest only from 13.10.2019 and not 13.07.2019, as held by the adjudicating authority. Therefore, I find merit in the contention of the appellant department in this regard.

11. In view of the discussions and findings recorded hereinabove, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for a decision afresh in light of the findings contained in Para 8.1 and 9.1 above. Accordingly, the impugned order is set aside and the appeal filed by the appellant department is allowed by way of remand.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant department stands disposed of in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 25.11.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

The Assistant Commissioner

Appellant

CGST, Division- VII,
Commissionerate : Ahmedabad South.

M/s. Shilpa Construction Pvt. Ltd., Respondent
41, Payal Park Society, Satellite Road,
Jodhpur Tekra, Ahmedabad – 380 015

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.