आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN : 20230764SW000000C71D

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3082/2023/3399-83

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-57/2023-24**
दिनाँक Date : **30-06-2023** जारी करने की तारीख Date of Issue 17.07.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of OIO No. **33/AC/Div-I/HKB/2022-23** दिनाँक: **18.08.2022** passed by Assistant Commissioner, CGST, Division-I, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Kataria Motors Pvt Ltd
Kataria Arcade, Behind Adani CNG Pump,
S.G. Highway, Makarba,
Ahmedabad - 380051

कोइ 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 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 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 मामलें में जो 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 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।

(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) 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 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 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 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 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 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.

59ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

(xliii) amount determined under Section 11 D;
(xliv) amount of erroneous Cenvat Credit taken;
(xlv) 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

M/s. Kataria Motors Pvt. Ltd, Kataria Arcade, Behind Adani CNG Pump, S.G. Highway, Makarba, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 33/AC/Div-I/HKB/2022-23 dated 18.08.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad South Commissionerate (hereinafter referred to as '*the refund sanctioning authority*'). The appellant were registered with the Service Tax Department and had Service Tax Registration No.AACCK0029QST001 under the category of Business Auxiliary Services, Business Support Service, and Works Contract Service.

2. The appellant filed a claim on 23.06.2022, seeking refund of Rs. 10,19,181/- under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1944, as service tax paid for the period from December, 2014 to April, 2017. The claim was returned to the appellant vide letter dated 01.08.2022 with observation 'time barred' as it was filed beyond the time limit of one year prescribed in Section 11B of the CEA, 1944. The appellant vide letter dated 02.08.2022, resubmitted the claim and requested to pass a speaking order.

2.1 The refund sanctioning authority in terms of the provision of Section 11B, held the claim of Rs. 10,19,181/- as time barred. He vide the impugned order rejected the claim on the grounds of limitation as the claim was filed beyond the period of one year.

3. Being aggrieved with the impugned order passed by the refund sanctioning authority, the appellant have preferred the present appeal, alongwith the application seeking condonation of delay on the grounds elaborated below:-

- They claim that they are authorized dealer of Bharat Benz (Daimler Commercial Vehicle-Daimler) Trucks & TVS Two wheelers and are also running authorized service station of Bharat Benz and TVS and provides services of Repair & Maintenance of vehicles. Being authorized dealers they carry out the activities of sales promotion as well as warranty services on behalf of Daimler for which they submit their claim to Daimler by way of invoice. However, due to mistake made by accounts section, they wrongly submitted some claims from December, 2014 to April, 2017, to Daimler. As the said claims were raised under invoices and accounted for, consequently they paid service tax on the same and declared the same in ST-3 of respective period. The claims of Rs. 68,86,423/- involving service tax of Rs.10,91,181/- were, however returned without settlement with the observation that no such services were provided either to the customer or to Daimler. This fact was confirmed in writing by Daimler wherein Daimler has also stated that service tax was not collected from them. Though no service was rendered, service tax has been paid based on wrong invoice/debit notes raised due to technical fault in the system. The service tax of Rs.10,91,181/- was paid due to system error and the incidence of tax was borne by them hence they claim that the tax amount should therefore be refunded under Section 11B of the CEA, 1944 read with Section 83 of the F.A., 1994.

- Provisions of Section 11B applies to refund of duty payment only. In the present case as no service has been rendered either to the customer or to Daimler therefore no tax was collected. So, the payment made by the appellant as tax should be refunded, as such amount was not a tax paid or collected against service rendered. They placed reliance on the judgment of Madras High Court in the case of M/s. Natraj & Venkat Associates – 2010-TIOL-67-HC-MAD-ST.

- Section 11B prescribes the time limit and procedures to apply for the refund. It does not restrict the right to claim the refund beyond the time limit of one year specified therein. This issue stands clarified in the case of Uttam Steel Ltd- 2003 (158) ELT 274 (Bom.) wherein it was stated that prescription of time limit in Section 11B is only procedural and not substantive law and thus non-compliance thereof can be waived.

- Tax payment was made on the basis of invoices raised to Daimler however no payment was received either from customer or from Daimler therefore tax payments made by appellant should be refunded alongwith interest as the claims were never settled. In terms of Section 72 of the Indian Contract Act, the government cannot enrich itself by collecting illegal taxes. They placed reliance on following decisions:

    - Pratibha Construction, Engineering & Contract(I) Pvt Ltd – 2011 (22) STR 182 (Tri-Mumbai)
    - Madhvi Procon Pvt. Ltd. – 2015 (38) STR 74 (Tri-Ahmd)
    - Ishwar Metal Industries- Final Order No.50064/2022
    - FAQ (Q-10) issued by Chief Commissioner, Central excise, Coimbatore Zone, 3rd Edition dated 19.06.2006.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 18.08.2022 and the same was received by the appellant on 23.08.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 15.11.2022 i.e. after a delay of 23 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that the Accountant who received the order proceeded on leave and therefore missed filing of appeal. Further, in October there were festivals and a long break on account of Diwali further added to the delay. They requested to condone the delay of 23 days considering the above cause as genuine and sufficient. They placed reliance on Apex Court's decision passed in the case of State of West Bengal Vs The Administration, Howrah Municipality- AIR 1972 (SC) 749 and N Balakrishnan Vs K. Krishnamurthy – AIR 1998 (SC) 3222 in support of their above argument for condoning the de ay in filing the appeal as the delay is within the condonable period.

5. Personal hearing in the matter relating to Condonation of Delay was held on 19.04.2023. Shri Nitesh Jain, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Miscellaneous Application seeking condonation of delay in filing the appeal.

5.1 Subsequently, personal hearing was granted on 27.06.2023. Shri Nitesh Jain, Chartered Accountant appeared for personal hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He submitted that the lower authority has rejected their claim merely on the ground of limitation and not on merits. He submitted that in this case, since no service was rendered and the tax was paid on presumptive basis no service tax is payable and the amount paid already has to be treated as a deposit. Therefore, time limit under Section 11B is not applicable. Further, the appellant came to know about non-payment only in February 2022, when the Principal vide letter dated 04.02.2022, issued a certificate in this regard. This amount has already been written off in their accounts. He undertook to submit a copy of statutory audit report and evidence of the amount having been written off in their accounts. He undertook to submit a copy of statutory audit report and evidence of the amount having been written off, within a week. Therefore, he requested to set-aside the impugned order and remanded the matter back to the lower authority for processing of their refund claim.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 23 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issues to be decided in the present case is whether the refund claim of Rs.10,19,181/- is time barred or otherwise?

7.1 On going through the facts of the case it appears that the appellant in terms of Section 11B of the CEA, 1944 has filed a claim on 23.06.2022, seeking refund of service tax of Rs.10,19,181/- paid during December, 2014 to April, 2017. Without examining the merits of the claim, the refund sanctioning authority rejected the claim purely on time bar. He held that the refund ought to be filed within 1 year from the relevant date. As the claim was not filed within one year from the relevant date, it was concluded that the claim was time bar under the provisions of Section 11B of Central Excise Act, hence was rejected.

7.2 The appellant vide letter dated 30.06.2023 submitted the Ledger of "Service Claim DICV Income" where they have accounted for the income of Rs. 68,86,423/- in respect of the claims which were reversed by them on 04.02.2022 for the reasons that Daimler rejected the claims on the grounds that the appellant never rendered such services to them. The service claim of the appellant was rejected by Daimler vide letter dated 04.02.2022. Thus they have shown Rs.10,19,181/- as service receivable in their

books of accounts. It is observed that the adjudicating authority held that the refund claim is to be filed within one year from the date of relevant date. Relevant date for each case is mentioned in Explanation (B) to Section 11B. The person claiming refund of any duty of excise or service tax (including the rebate of duty as defined in Explanation (A) tc Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The adjudicating authority in the impugned order has not mentioned the category under which the present case would fall under clause (a) to (f) of the Explanation (B) so as to consider the relevant date. Which date has been considered as the relevant date is not forthcoming from the impugned order passed.

7.3 The appellant on the other hand have placed reliance on the judgments passed in the case of **M/s. Natraj & Venkat Associates – (2010 (249) E.L.T. 337 (Mad.)** to substantiate their claim that the provisions of Section 11B applies to refund of duty payment only. In the present case as no service has been rendered either to the customer or to Daimler therefore the amount paid by the appellant as tax should be refunded treating the amount as deposit. While deciding the above case, Hon'ble High Court of Madras has held that;

> *" 16. In Natraj and Venkat Associates (supra), there was a claim for refund of service tax erroneously paid on construction activity undertaken in Sri Lanka by a firm rendering architectural services. The petitioner therein had received payment from a client in Sri Lanka on 27-5-2005 in US Dollars and the petitioner had paid a sum of Rs. 8,67,800/- on 4-7-2005 towards service tax. After realizing that the services rendered for construction of a building in Sri Lanka would not attract service tax, petitioner made a claim for refund on 20-9-2006. On 23-5-2007, the respondents therein rejected the claim of the petitioner for refund on the ground that it is time-barred and also on the ground that the claim was not in proper formant. Petitioner filed appeal to the Commissioner of Central Excise (Appeals), which was rejected by an order dated 21-11-2008 on the ground that even if the tax was collected without authority of law, the claim for refund cannot be entertained beyond the period mentioned in [Section] 11B of the Central Excise Act, 1944. Petitioner assailed the same before the Madras High Court and the Madras High Court allowed the Writ Petition and held that sub-section (1) of Section 11B dealt with only the claim of refund of "any duty of excise"; and that the word "duty" is not defined under the Act. It held that if what was paid cannot be taken to be duty of excise, the bar of limitation under Section 11B(1) cannot be applied. It held that the bar of limitation prescribed under sub-section (1) of Section 11B applies only to "any person claiming refund of any duty of excise and interest". It therefore held that the claim of the petitioner for refund can be entertained by the High Court as there was no dispute about the fact that no service tax was payable by the petitioner on the transaction in question and what was paid by them was not therefore service tax."*

7.4 Similar view was taken by the Division Bench of Karnataka High Court in Commissioner of Central Excise (Appeals), Bangalore v. KVR Constructions- **2012 (26) S.T.R. 195 (Kar.)**. In this case, the assessee was a construction company rendering services under category of "Construction of Residential Complex Service" and was paying service tax. During the relevant period, the assessee had constructed various buildings for one 'A' and had paid service tax on same. Subsequently, the assessee filed an application for refund of the service tax paid on the ground that the building construction, which was done by it for 'A', was a non-profit organization and it was not liable to pay such tax in the light of a Circular No. 80/10/2004, dated 17-9-2004. The Assistant Commissioner rejected the claim for refund on the ground that the application was filed beyond the period of limitation prescribed under Section 11B, though the amount paid by the assessee was not service tax but it was in the nature of deposit with

the Department. The High Court held that the amounts collected erroneously have to be returned to the assessee. It also held that the claim of the petitioner that it was exempted from payment of service tax by virtue of Circular dated 17-9-2004 was not denied by the Department and it is not even denying that the nature of construction/services rendered by the petitioner was exempted from the payment of service tax; that one has to see, whether the amount paid by the petitioner under mistaken notion was payable by the petitioner at all; though under the Act, such service tax was payable, by virtue of the circular, the petitioner was not liable to pay it as there was an exemption because of the nature of the institution for which they have made construction and rendered services. It held that if the respondent had not paid those amounts, the authority could not have demanded the assessee to make such payment and that it had lacked the authority to levy and collect such service tax. It observed that if the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. Therefore, in a converse situation, merely because there is payment of amount, it would not authorize the department to regularize such payment. It held that if the department had no authority to demand service tax from the assessee because of its Circular dated 17-9-2004, the payment made by the assessee would not partake the character of "service tax" paid by them and mere payment made by the assessee will neither validate the nature of the payment nor the nature of the transaction. In other words, mere payment of amount would not make it a 'service tax' payable by them and once there is lack of authority to demand service tax from the assessee, the department lacks authority to levy and collect it. According to the Court, when once there is a lack of authority to collect such service tax, it would not give the department the right to retain the amount paid by the assessee, which would actually not payable by them.

7.5 The above decision of Hon'ble Karnataka High Court was maintained by Hon'ble Apex Court [Commissioner v. KVR Construction - **2018 (14) G.S.T.L. J70 (S.C.)**] and the Special Leave to Appeal (Civil) Nos. CC 10732-10733 of 2011 with I.A. Nos. 1-2 of 2011 filed by Commissioner of Service Tax against the said Judgment was dismissed.

7.6 The Karnataka High Court's above judgment as reported in **2012 (26) S.T.R. 195 (Kar.)** (Commissioner v. KVR Construction) was also relied by Hon'ble High Court of Telangana at Hyderabad in the case Vasudha Bommireddy- **2020 (35) G.S.T.L. 52 (Telangana).** Similar stand was taken by CESTAT, Chennai in the case of Venkatraman Guhaprasad reported at **2020 (42) G.S.T.L. 124 (Tri. - Chennai).** Further, hon'ble High Court of Madras in the case of *3E Infotech* v. *CESTAT, Chennai* - **2018 (18) G.S.T.L. 410** (Mad.) also took a similar view wherein it was held that the provisions of limitation under Section 11B of Central Excise Act, 1944 would not apply for refund of service tax paid by mistake.

8. The notice was issued to the appellant merely on limitation of time and the payment of service tax paid by the appellant was never in dispute. After appreciating the facts and also following the decisions cited above, I am of the view that the rejection of refund claim holding the same being time barred is unjustified as the provisions of limitation under Section 11B of Central Excise Act, 1944, would not apply for refund of Service Tax paid by mistake when no taxable service was rendered by the appellant. Mere payment of an amount by the appellant and acceptance by Department would not

regularize such amount as duty/tax if it was not actually payable and paid by mistake. Therefore, the impugned order rejecting the refund merely on time bar aspect needs to be set-aside.

9. I, therefore, set-aside the impugned order and the appeal filed by the appellant is allowed by way of consequential relief.

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

30.6.23

(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 30.6.23

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Kataria Motors Pvt. Ltd, - **Appellant**
Kataria Arcade, Behind Adani CNG Pump,
S.G. highway, Makarba,
Ahmedabad

The Assistant Commissioner, - **Respondent**
Central GST, Division-I,
Ahmedabad South

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South. (For uploading the OIA)
4. Guard File.