



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सातवीं मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7<sup>th</sup> Floor.,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015



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क फाइल संख्या : File No : **V2(WCS)11/RA/GNR/2017-18** / 203  
ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-0176-17-18**  
दिनांक Date : **29.12.2017** जारी करने की तारीख Date of Issue : **18-1-2018**

**श्री उमाशंकर** आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
**18/Ref/ST/AC/2017-18** दिनांक : **25.05.2017** से सृजित

Arising out of Order-in-Original: **18/Ref/ST/AC/2017-18**, Date: **25.05.2017** Issued by:  
Assistant Commissioner, Central Excise, Div:Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Gujarat State Police Housing Corp. Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दोष भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

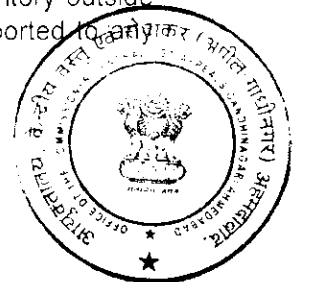
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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.

(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.

ध 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 धालान 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 उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ए/35- इ के अंतर्गत:

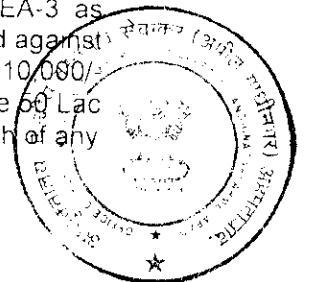
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appea) 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 उद्योग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पट्टी 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 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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

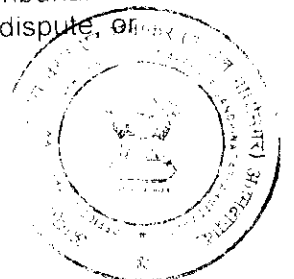
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D.
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



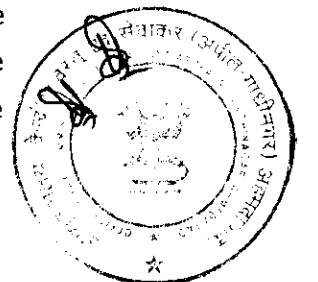
**ORDER IN APPEAL**

The Assistant Commissioner, Central Goods & Service Tax, Division Gandhinagar (*hereinafter referred to as 'appellant'*) has filed the present appeal against the Order-in-Original number 18/Ref/ST/2017-18 dated 25.05.2017 (*hereinafter referred to as 'impugned order'*) passed in the matter of refund claim filed by M/s. Gujarat State Police Housing Corporation Ltd., Civil Supplies Corporation Building, "CH" Road, Sector-10A, Gandhinagar (*hereinafter referred to as 'respondents'*).

2. The facts of the case, in brief, are that the respondents are recipients of services (under Reverse Charge Mechanism) under the categories of 'Manpower Recruitment Service, Works Contract Service, Transport of Goods by Road Service and Sponsorship Service provided to Body Corporate or Firm including Sports Sponsorship' and hold valid Service Tax registration number AAACG5532CSD001. The respondents had filed a refund claim of ₹ 4,99,38,536/- and interest amounting ₹ 1,36,581/- on 29.09.2016, before the adjudicating authority, under Section 102 of the Finance Act, 2016 read with the Finance Act, 1994 and rules made thereunder. The respondents filed the refund claim on the grounds that they are a government company incorporated on 1<sup>st</sup> November 1988 with 100% shareholding subscribed by the Government of Gujarat. Their main objective is to undertake construction as well as repair & maintenance work of residential and non-residential buildings for police, jail, home guards etc. as per the directives and requirements of the Home Department, Government of Gujarat. To carry out these activities, the appellants regularly float tenders with all applicable taxes and duties including Service Tax and the lowest bidder of the tender is awarded the contract. The adjudicating authority, vide the impugned order, sanctioned the refund claim of ₹ 4,99,38,536/- and rejected their claim of refund of the interest of late payment of Service Tax amounting to ₹ 1,36,581/-. The rejection of the interest was on the ground that there is no provision of refund of interest under Section 102 of the Finance Act, 1994.

3. The impugned order was reviewed by the Commissioner of Central Goods & Service Tax, Ahmedabad and issued Review Order No. 17/2017-18 dated 07.09.2017 for filing an appeal under section 84(1) of the Finance Act, 1994 on the ground that the adjudicating authority has wrongly sanctioned adjusted refund amount of ₹ 4,99,38,536/- under Section 102 of the Finance Act, 2016 as the respondents did not suffer the burden of Service Tax. The Service Tax paid by the respondents had been deducted from the accounts of the contractors. Thus, when the respondents did not suffer the burden of tax, they are not entitled for the said refund.

4. Personal hearing in the case was granted on 01.11.2017 wherein Shri Pravin Dhandharia, Chartered Accountant, appeared before me, on behalf of the respondents, and submitted proof of incidence of duty. He further stated that the respondents have reimbursed the amount, to the contractors, after receiving the



refund. He further submitted a copy of a letter addressed to the adjudicating authority, dated 09.06.2017, informing about the reimbursement. He also submitted details of the said amount reimbursed along with break up.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum filed by the appellant and oral submission made by the respondents at the time of personal hearing. I find that the appellants are a government company and their main objective is to undertake construction as well as repair & maintenance work of residential and non-residential buildings for police, jail, home guards etc. as per the directives and requirements of the Home Department, Government of Gujarat. They float tenders for the construction/ repair works of the above mentioned buildings and as per the provision of Reverse Charge Mechanism, pay 50% of the Service Tax payable. The works undertaken by the appellants fall under the works notified in Article 243W (Twelfth Schedule) and in this regard, I would like to discuss the works that are identified under Article 243W of the Indian Constitution, as below;

*TWELFTH SCHEDULE  
(Article 243W)*

1. *Urban planning including town planning.*
2. *Regulation of land-use and construction of buildings.*
3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.*

From the above, it can be seen that the service received by the appellants falls under serial number 2 above i.e. "regulation of land-use and construction of buildings".



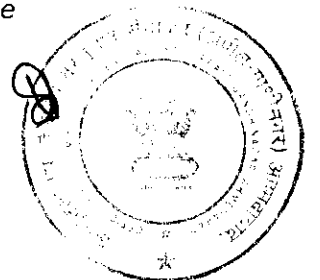
Also, I have gone through the official site of GSPHCL (the appellants), Gandhinagar and found that the appellants were incorporated on 1/11/1988 under Companies Act, 1956. This is a Government Company with 100% share holding subscribed by the Home Department, Government of Gujarat. They are involved in the construction of residential as well as non-residential buildings pertaining to the police force of the State of Gujarat. In the residential section, they are constructing police quarters and in the non-residential sections, they are involved in the construction of police stations, barracks and jails all over Gujarat.

In view of the above, it is sufficient to establish the fact that the appellants are a government authority with 100% share holding subscribed by the Gujarat Government and the works carried out by them fall under the Article 243W of the Indian Constitution and hence, are exempted.

6. Now, I find that the appellant has claimed that the respondents have not suffered the burden of tax as the Service Tax paid by them has been deducted from the accounts of the respective contractors. However, in paragraph 6.3.2 of the impugned order, the adjudicating authority has quoted the fact that the respondents had already issued credit notes to the service providers and filed an affidavit that they amount would be reimbursed when the refund is sanctioned. In paragraph 6.5 of the impugned order, it is mentioned that the respondents had reversed the entire Cenvat credit taken by them. I find that the appellant has not countered the above facts in his Grounds of Appeal. But, the appellant has quoted the judgment of the Tribunal in the case of the Commissioner of Central Excise, Salem vs. M/s. Sheshasayee Paper Boards Ltd. In the said case, the Tribunal proclaimed that issue of credit note cannot be treated as a way to escape unjust enrichment. However, I find that the said case is an exceptional individual one as in the case of M/s. GAIL (India) Ltd. versus The Commissioner of Central Excise, Vadodara, the Tribunal declared that when Service Tax collected by the assessee from customers but was later paid back to them by issuing suitable credit/debit notes, unjust enrichment is not applicable to Service Tax refunds when amount has already been paid to customers by issuing credit note.

*"5. Heard both sides and perused the case records. The issue involved in this appeal is whether unjust enrichment will be applicable in the refund of Service Tax once collected by the appellant but subsequently returned to the customers by issue of credit notes. It is evident from the series of judgments relied upon by the appellant that unjust enrichment is not applicable to the Service Tax refunds when the amount has already been paid to the customers by issuing credit notes or is not paid at all by the customers.*

*In the case of CST, Ahmedabad v. Poornima Advertising & Promotion Pvt. Ltd. [2010 (20) S.T.R. 107 (Tri.-Ahmd.)], this Bench has laid down the following law in Para 4 on this issue :-*



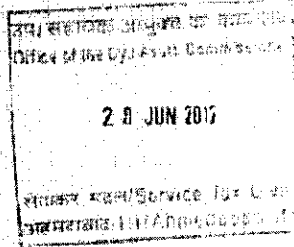
"4. The next point that is required to be considered is whether the refund claim is to be rejected on the ground of unjust enrichment. We find that the reliance of the Id. Advocate on the decisions of this Tribunal in the cases of *Adwise Advertising Pvt. Ltd. v. UOI - 2006 (2) S.T.R. 375 (Mad.) = 2001 (131) E.L.T. 529 (Mad.)*, *Shiva Analytical (I) Ltd. v. CST, Bangalore - 2007 (7) S.T.R.35 (Tri.-Bang.)*, the issue of credit note by Poornima would be sufficient for the purpose of claiming refund from the Department. Further, the Departmental clarifications issued by the Board in the form of frequently asked questions also are in favour of the appellants. In Para 6.1 of the clarification, it has been stated "it is important to note that any amount of Service Tax paid in excess of the actual liability is refundable only if it is proved that the claimant of refund had **already refunded such amount** to the person from whom it was received or had not collected at all. It is not the finding of the lower authorities that appellants have not refunded the amount. The issue of credit note/debit note is a standard practice and accepted practice in accounting terminology for deciding liability or claim for refund. In such a situation issue of credit note would be sufficient unless there is a clear finding that the amount has not been refunded by Poornima to the clients, unjust enrichment clause cannot be invoked. In view of the precedent decisions of the Tribunal which have been rendered in respect of Service Tax and the clarification of the Board, we hold that unjust enrichment is not applicable."

6. The case laws relied upon by the Id. AR are either pertaining to Central Excise refund claims or are pertaining to the period before the above interpretation made by CESTAT, Ahmedabad Bench. In view of the above, it is held that the appeal filed by the appellant is squarely covered by the law laid down by this Bench in the case of *CST, Ahmedabad v. Poornima Advertising & Promotion Pvt. Ltd. (supra)*.

7. Accordingly, Order-in-Revision dated 29-10-2009 passed by the lower authority is set aside holding that refund was correctly sanctioned by the adjudicating authority."

Looking to the above facts, I find that the present case is akin to the case above. The respondents have reimbursed the amount of refund received, to their various contractors. In support of their claim, the respondents have submitted before me a copy of the letter, dated 09.06.2017, addressed to the adjudicating authority informing the latter about the details (including the break up) of the reimbursement. A scanned copy of the said letter is reproduced below;





PHC/ACCT/Service Tax/H.D./2017

June 9 2017

To,  
 Shri C.K. Patel  
 Assistant Commissioner  
 Service Tax Division  
 Sector 10/A, Near CH-3 Circle,  
 Opp. St. Xavier's School,  
 Gandhinagar.

Sub : Refund of Service Tax to the agencies

Ref : Your letter no. V/18-100/Ref/ST-Gng/16-17/8978 Dtd. 25.5.2017

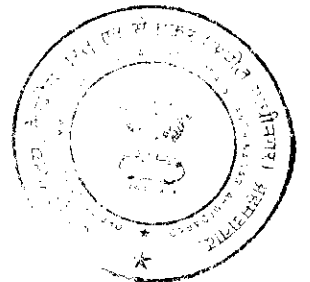
With reference to above, we have received a cheque of Rs. 4,98,01,955/- bearing no. 323780 dated 25.5.17, drawn on Bank of Baroda, Usmanpura Branch, Ahmedabad from Service Tax Department towards the refund of service tax U/s 102 specifies Retrospective Service Tax exemption in certain cases relating to construction of Government buildings for the period from 1.4.15 to 28.2.16 due to the amendment in the Finance Bill 2016.

As per above order, the said amount has been refunded to the various agencies after adding the amount refundable to them towards service tax and deductions/cooveries made thereof from them, as per the details given below :

(1) Service Tax refund received from the Department	- Rs. 4,98,01,955/-
(2) Add: Service tax deducted but not deposited in the Month of March due to the amendment in the Finance Bill vide Govt. Notification no. 9 Dated 1.3.16.	- Rs. 66,92,247/-
	<hr/>
	Total - Rs. 5,64,94,202/-
(a) TDS	- 19,42,312
(b) Works contract tax	- 6,20,943
(c) Construction Cess	- 12,53,911
(d) Recovery of Debit Bal. of various agencies	- 95,56,875
	<hr/>
	- Rs. 1,33,74,041/-
	<hr/>
	- Rs. 4,31,20,161/-



*[Handwritten mark]*





// 2 //

As per the condition of the refund order dated 25.5.2017, the Corporation has refunded/deposited the amount payable to various agencies into the Bank account of respective agencies through RTGS/NEFT (vide payment advice no. 18 dated 8.6.17 through IDBI Bank, Infocity Branch, Gandhinagar). For your ready reference, a copy of the said list (agency-wise) is enclosed herewith.

We hope you will find the same in order.

Thanking you,

Yours faithfully,

  
(SUNIL SHAH)  
Chief Financial Officer

Encl: a/a

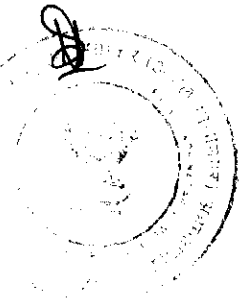
Copy to: Shri Pravin Dhandhariya, C.A., Ahmedabad.



Also, in the case of Commissioner of Service Tax, Bangalore versus M/s. Shiva Analyticals (I) Ltd., The High Court of Karnataka proclaimed that since the assessee issued credit notes towards refund of Service Tax, the refund order passed by original authority is legal and proper.

"2. The respondent claimed refund of Service tax amounting to Rs. 5,69,259/-. The same was granted by an order dated 9-1-2004 by the original authority. It was the subject matter of revision before the Commissioner, who, by his order dated 27-1-2005, held that the refund granted was erroneous and directed to re-credit the amount. The respondent questioned the same before the CESTAT. The Tribunal allowed the appeal vide order dated 1-3-2007. The correctness of the same is questioned in this appeal.

3. We have carefully gone through the orders passed by the authorities. The service tax was paid by the respondent on wrong assumption that they are liable to pay it. Having realised their mistake, refund was claimed. Service Tax is payable by a service provider. The original authority found



*that respondent has not rendered any service. The revisional authority reversed the same. The Tribunal held that since the respondent issued credit notes towards refund of service tax, the refund order passed by the original authority is legal and proper. To arrive at that conclusion, the Tribunal relied upon the decision in the case of Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax reported in 2004 (6) SCC 1083-SC. The order under appeal is perfectly legal and valid and does not call for interference. No questions of law muchless the substantial questions framed in the appeal arise for consideration. The appeal is devoid of merit and liable to be dismissed."*

Thus, as per the views of the Hon'ble Tribunal and Hon'ble High Court, I consider that the respondents have rightly issued credit notes to their respective contractors and the doctrine of unjust enrichment will not be applicable to the present issue.

7. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the Department.

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

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

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),

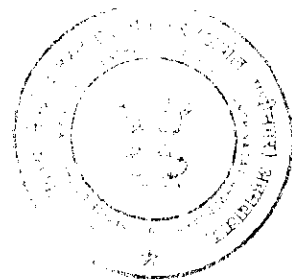
AHMEDABAD.

ATTESTED

*S. DUTTA*  
(S. DUTTA) 16/01/18

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. Gujarat State Police Housing Corporation Ltd.,  
Civil Supplies Corporation Building, "CH" Road, Sector-10A,  
Gandhinagar-382 010.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Dy./Asst. Commissioner, Central Tax, Gandhinagar Division,  
Gandhinagar.
- 4) The Asst. Commissioner (System), Central Tax, Gandhinagar.
- 5) Guard File.
- 6) P.A. File.

