


	केन्द्रीयकर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building, 7 th Floor Near Polytechnic Ambavadi, Ahmedabad-380015	
	सातवीं मंजिल, पोलिटेक्निक के पास	380015	
	आम्बावाडी, अहमदाबाद-380015		
 079-26305065			 टेलिफैक्स: 079-26305136

क फाइल संख्या : File No : **V2/1/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-41-18-19**

दिनांक Date : **29-06-2018** जारी करने की तारीख Date of Issue: **27/7/2018**

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 :

AHM-CGX-003-ADC-AJS-017-17-18 दिनांक : **31-01-2018** से सृजित

Arising out of Order-in-Original: **AHM-CGX-003-ADC-AJS-017-17-18**, Date: **31-01-2018**
Issued by: **Additional Commissioner, CGST, Div: RRA, Gandhinagar**
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Tuls Infrastructure Pvt. Ltd

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 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 दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

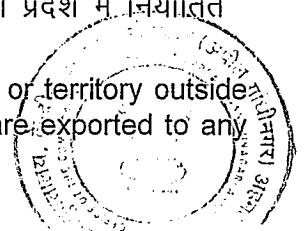
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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.



- (म) 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 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 उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ञबी/35-इ के अंतर्गत:-

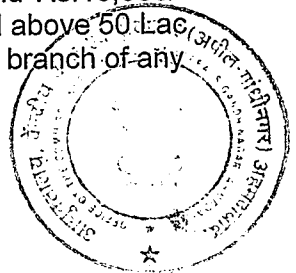
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मैन्टल 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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(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



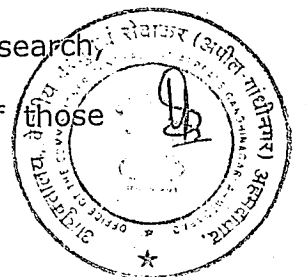
ORDER IN APPEAL

M/s. Tulsi Infrastructure, FF 1,2,48,49,50, Ratnadip Plaza, Sahkari Jin Char Rasta, Himmatnagar (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number AHM-CEX-003-ADC-AJS-017-17-18 dated 31.01.2018 (*hereinafter referred to as 'impugned order'*) passed by the then Additional Commissioner, Central GST & Central Excise, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in the construction of residential and commercial complex and were registered with the Service Tax department with Service Tax registration number AAGFT6377DSD001.

3. During the course of scrutiny of their ST-3 return for the period October 2012 to March 2013, it was noticed that they had declared gross receipt as ₹32,75,000/- and shown payment of Service Tax amounting to ₹1,01,198/-. It appeared that the appellants were indulging in evading the correct amount of Service Tax payable by them. Thus, a search was conducted at the premises of the appellants by the departmental officers. During the search and scrutiny of available documents, some discrepancies were noticed and accordingly, a show cause notice, dated 20.10.2016, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of total Service Tax amounting to ₹78,69,085/- on the total taxable value of ₹6,36,65,733/- under Section 73(1) of the Finance Act, 1994 and ordered to appropriate total Service Tax amount of ₹50,00,000/- already paid by the appellants. The adjudicating authority further ordered to recover interest at appropriate rate under Section 75 and imposed penalties under Sections 77(1), 77(2), 78 and 78A of the Finance Act, 1994.

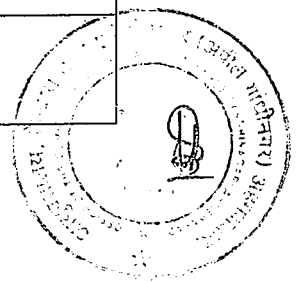
4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants stated that during the search, the departmental officers had seized some documents and out of those



documents they had relied upon only one sheet titled "Shree 1.25; debtors for booking; Group Summary; 01-Apr-2010 to 01-Jan-2014". The appellants claimed that out of total proceeds, they had already returned the amounts due to cancellation of booking. In some cases, the customers booked two/three or more premises and later on lesser number of premises were agreed to be bought by the customers. The appellants further claimed that in certain instances, the department has shown value of certain premises more than the prevailing market rate which, according to the appellants, is not acceptable. In support of their claim, the appellants have submitted before me additional documents claiming that the adjudicating authority has failed to verify those documents. They informed me that they do not desire to avail the benefit of personal hearing and requested to remand the case back to the original adjudicating authority so that the later can verify all the documents and decide the case on merit.

5. The appellants, in their additional submission, contended that during the recording of their statement in September 2016, they had already intimated the departmental officers that they had returned majority of amount to their prospective buyers. In support of their claim the appellants have submitted year wise details of return of money which I reproduce below in a tabular form;

Month .	Amount of booking returned (₹)	Service Tax involved in the returned amount (₹)
Jan.2014	4,89,67,331	15,13,090
Feb.2014	2,60,45,201	8,04,797
March2014	4,57,25,501	14,12,918
Apr.2014	1,10,27,200	3,40,740
May2014	65,57,910	2,02,639

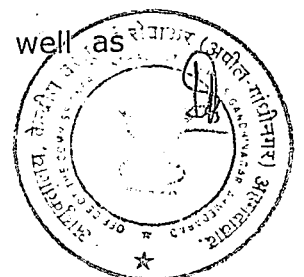


June2014	77,44,500	2,39,305
July2014	27,53,500	85,083
Aug.2014	39,68,750	1,22,635
Sept.2014	4,50,000	13,905
Oct.2014	13,28,500	41,051
Nov.2014	7,40,000	22,866
Dec.2014	13,91,000	41,982
Jan.2015	64,49,000	1,99,274
Feb.2015	19,95,000	61,646
March2015	0	0

Further, in support of their above claim, they submitted before me the following evidences as proof of return of money to their buyers;

- i) Affidavit dated 20.09.2016 executed by the appellants in respect of return of money;
- ii) Self-certified copy of vouchers/receipts given by prospective buyers in respect of money received by them;
- iii) Certified copy of ledger accounts and balance sheets for the relevant periods evidencing the return of money;
- iv) Income Tax returns for the relevant periods.

However, it is not possible for the undersigned to verify the above documents at such a short time span. In my opinion the adjudicating authority is the best suited person to verify the authenticity as well as applicability of the said documents in the present case.

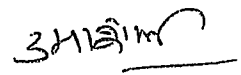


6. In view of the above and as per the request made by the appellants, I remand back the case to the adjudicating authority, in light of the principle of natural justice. While doing so, I direct the adjudicating authority to check the bonafides of the documents issued by the appellants by way of cross examining the books of accounts or any other records in that regard and to ascertain the genuineness of the statement. The adjudicating authority is further directed to ensure that the applicability of the said documents is elaborately reflected in the fresh order he would pass. The adjudicating authority should verify all the documents, submitted by the appellants, on merit. The appellants should be awarded all the chances to represent their case under the provisions of principle of natural justice. The appellants are hereby directed to extend full cooperation to the adjudicating authority by submitting required relied upon documents.

7. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh.

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

8. The appeal filed by the appellants stands disposed off in above terms.


(उमा शंकर)

CENTRAL TAX (Appeals),

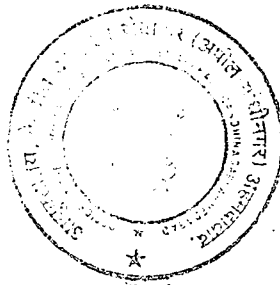
AHMEDABAD.

ATTESTED


(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. Tulsi Infrastructure,

FF 1,2,48,49,50, Ratnadip Plaza,

Sahkari Jin Char Rasta,

Himmatnagar-383 001.

Copy to:

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

