



सत्यमेव जयते

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

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टैलेफैक्स 07926305136



DIN : 20210364SW000000F897

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)16/GNR/2020-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-061/2020-21**
दिनांक Date : **16-02-2021** जारी करने की तारीख Date of Issue 08.03.2021

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

ग Arising out of Order-in-Original No. **11/D/GNR-DK/20-21** दिनांक: **11.05.2020**,
issued by Deputy Commissioner of CGST, Preventive Section, Gandhinagar Commissionerate

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

M/s Murlidhar Horticulture Pvt. Ltd.,
Plot No. 332, Sector 1-C,
Gandhinagar-382001

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 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.



(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 मामलों 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 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।

(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 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-बी/35-इ के अंतर्गत:-

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. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case 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 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा '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:

- (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.

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

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."



2(iv). The Department preferred an appeal against the said Order-in-Appeal before the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad (hereinafter referred to as "CESTAT").

2(v). In the meanwhile the Department issued another SCN dated 07.08.2018 in terms of Section 73(1A) of the Finance Act, 1994 for the period March-2016 to June-2017, demanding service tax amount of Rs.17,77,192/- under Section 73(1) alongwith interest under Section 75 of the said Act. Penalties under Section 76, 77(1) and 77(2) of the Finance Act, 1994 were also proposed to be imposed upon the appellant under the said SCN.

2(vi). The CESTAT vide Final Order No.A/10582/2019 dated 25.03.2019 in Appeal No. ST/10330/2018-DB, dismissed the appeal filed by the Department (as mentioned under para-2(iv) above) and upheld the said Order-in-Appeal of the Commissioner(Appeals).

2(vii). The order of the CESTAT was challenged by the Department vide Civil Appeal No.008122-2019 before the Hon'ble Supreme Court of India, who vide its Order dated 14.10.2019 dismissed the appeal in view of Instruction dated 22.08.2019 of the Director(Review) of CBIC, New Delhi due to low tax effect but kept open the question of law.

2(viii). The adjudicating authority vide the impugned order dated 11.05.2020 confirmed the demand alongwith interest and also imposed penalties as proposed in the SCN dated 07.08.2018.

3. Personal hearing in the matter was held on 26.11.2020. Shri Gunjan Shah and Shri Kiran Tahelani, both Chartered Accountants, appeared for the appellant. They reiterated the submissions made in appeal memorandum and further stated that this is a periodical demand and the SCN for earlier period was decided by Commissioner(Appeals) in their favour.

4(i). I have carefully gone through the facts of the cases, the records/documents available in the matter and the submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. It is observed that the issue to be decided in this case is whether the activities undertaken by the appellant for M/s. Reliance Industries Ltd. is liable to be taxed as Service under Section 65B(44) of the Finance Act, 1994 or otherwise. The SCN issued is periodical in nature.



4(ii). It is observed that the appellant was providing various services to M/s. Reliance Industries Ltd. relating to maintenance of garden as per work order and receiving consideration. The Department seeks to tax this consideration under 'service' defined under Section 65B(44) of the Finance Act, 1994. It is further observed that the demand pertaining to the period 01.10.2010 to 28.02.2016, in case of the said appellant, was set aside by this authority vide its Order-in-Appeal No. AHM-EXCUS-003-APP-0131-132-17-18 dated 26.09.2017 by way of allowing the appeal of the appellant and by rejecting the appeal of the Department. Against such rejection, the Department filed an Appeal against the said Order-in-Appeal before Hon'ble CESTAT, Ahmedabad, who upheld the Order-in-Appeal and rejected the appeal filed by the Department. The matter was carried further by the Department by filing appeal before the Hon'ble Supreme Court against the said order of Hon'ble CESTAT, Ahmedabad which was dismissed and therefore the order passed by Commissioner(Appeals) attained finality.

4(iii). It is further noticed that the adjudicating authority has passed the impugned order on 11.05.2020 i.e. after the order of the Hon'ble Supreme Court dated 14.10.2019 dismissing the appeal of the Department. Though the Hon'ble Supreme Court while dismissing the appeal of Department kept open the question of law, but this, in no way, gives liberty to the adjudicating authority to pass an order (where appeal can not be filed due to monetary limit) contrary to an order of the higher Appellate Authority which has attained finality. It is judicial discipline that an order, issued by the higher appellate forum, is binding to the lower authority. I find that the violation of principle of judicial discipline on part of the Respondent has been made as ground of appeal by the appellant in appeal memorandum. I find that the adjudicating authority should have followed the decision of higher Appellate Authority in the case, which was final in case of the appellant for earlier period. No change in legal position is forthcoming from the impugned order. In view of this, the demand for the subsequent period, i.e. March-2016 to June-2017, confirmed under the impugned order does not sustain. The reliance is placed upon the case law of M/s. Lubi Industries LLP reported at 2017(52)STR 95(Guj) wherein it is held as under :

"6. In our opinion, the Assistant Commissioner committed a serious error in ignoring the binding judgement of Superior Court that too in case of the same assessee. The principle of precedence and judicial comity are well established in our legal system, which would bind an authority or the court by the decisions of the Corordinate Benches or of Superior Courts. Time and again, this Court has held that the departmental authorities would be bound by the judicial pronouncements of the statutory Tribunals. Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision....."



5. In view of above discussion, I set aside the impugned order and allow the appeal filed by the appellant. Appeal of the appellant stands disposed of accordingly.

Akhil Kumar
 16th February,
 (Akhil Kumar) 2021
 Commissioner (Appeals)

Date : .02.2021.

Attested

Jitendra Dave
 08/03/21

(Jitendra Dave)
 Superintendent (Appeal)
 CGST, Ahmedabad.

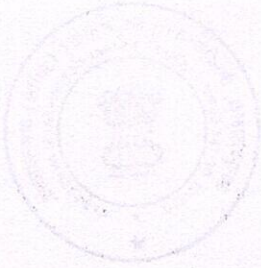


BY R.P.A.D. / SPEED POST TO :

M/s. Murlidhar Horticulture Pvt. Ltd.,
 Plot No.322, Sector-1-C,
 Gandhinagar-382001.

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Gandhinagar Divn, Gandhinagar Comm'rate.
5. The Dy. Commissioner, Preventive Section, CGST & Cen. Excise, Gandhinagar Comm'rate.
6. Guard File.
7. P.A. File.



15/05/80