



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



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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:20210664SW0000616766)

क फाइल संख्या : File No : GAPPL/COM/STP/166/2021 /1668 T 0 1673
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP- 12/2021-22
दिनांक Date : 28-05-2021 जारी करने की तारीख Date of Issue 16-06-2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No Supdt/Meh/R-1/ST/02/2020-21 dated 10.07.2020 issued by Superintendent of CGST & Central Excise, Range-I, Mehsana Division, Gandhinagar.

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

M/s Yash Corporation, B-2, Balkrishna Shopping Centre, ST Workshop Road, Mehsana Industrial Estate, Mehsana-384002.

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 issued under the Central Excise Act 1944, 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।

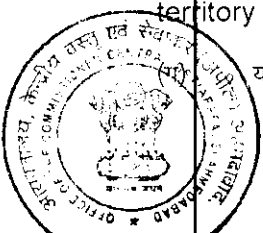
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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.

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



(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 मामले 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.

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 दो 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 ईए-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 सलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ सलग्न 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.

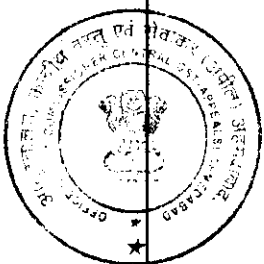
(1) **केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-**

Under Section 112 of CGST act 2017 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 पढ़ी 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 filed 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 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.

- (42) 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)

- (43) 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:

(lxxix) amount determined under Section 11 D;

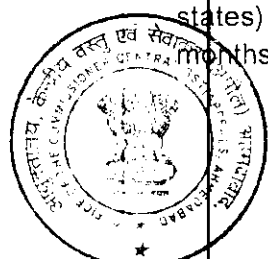
(lxxx) amount of erroneous Cenvat Credit taken;

(lxxxi) 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।

- 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



ORDER-IN-APPEAL

M/s. Yash Corporation, B-2, Balkrishna Shopping Centre, ST Workshop Road, Mehsana Industrial Estate, Mehsana-384002, Gujarat (*hereinafter referred as "appellant"*) has filed the present appeal against the Order-in-Original No. Supdt/Meh/R-1/ST/02-2020-21 dated 10.07.2020 (*hereinafter referred as "impugned order"*) passed by the Superintendent of CGST & Central Excise, Range-I, Mehsana Division, Gandhinagar Comm'rate (*hereinafter referred as "adjudicating authority"*).

2(i). The facts of the case, in brief, are that the appellant was holding service tax registration no.AGWPP5734AST001 for providing various services. During the course of audit of the financial records of the appellant by the departmental officers pertaining to the period April-2013 to June-2017, it was observed that the ST-3 return pertaining to the period April-2013 to September-2013 had been filed late by 123 days for which they were liable to pay late fee in view of Section 70(1) of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994. However, the late fee was not found to have been paid by them.

2(ii). A Final Audit Report (*hereinafter referred as "FAR"*) No.1212/2018-19 dated 26.02.2019 was issued by the Deputy Commissioner of CGST Audit, Circle-IX, Audit Comm'rate, Ahmedabad. Subsequently, a Show Cause Notice (*hereinafter referred as "SCN"*) dated 06.03.2019 was issued by the Superintendent of CGST & Central Excise, Circle-IX, Audit Comm'rate, Ahmedabad, proposing imposition of penalty of Rs.10,300/- under Section 70 of the Finance Act, 1994, as amended, read with Rule 7 of the Service Tax Rules, 1994.

2(iii). The adjudicating authority vide the impugned order confirmed the recovery of penalty(Late Fee) as proposed under the SCN.

2(iv). Being aggrieved with the impugned order, the appellant preferred the appeal on following grounds :

- (a) that the SCN fails to mention under which section the late fee are being demanded of Section 73 and under which Section the SCN is issued;
- (b) that it only mentions the section under which late fee is prescribed without giving reference to the manner of computation and how the same is compute;
- (c) that SCN does not mention which provisions of law are being invoked and under which section/authority of law revenue is demanding late fee;
- (d) that the SCN is time barred;



- (e) *that the SCN can not be issued if the amount of service tax is paid with interest and there is no such allegation against them.*

3. Personal hearing in the matter was held on 19.02.2021 in virtual mode. Shri Bishan Shah, Chartered Accountant, attended the hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum.

4(i). I have carefully gone through the facts of the case, 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 appellant is liable to pay late fee on late filing of ST3 return.

4(ii). It is observed that the adjudicating authority has ordered for confirmation and recovery of late fee for filing the ST3 Return (pertaining to the period April-2013 to September-2013) late by 123 days, in view of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. Relevant part of Section 70 of the Finance Act, 1994, as amended, reads as under :

"SECTION 70. Furnishing of returns. —

(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

[Emphasis supplied]

The frequency of filing ST3 returns has been prescribed under Rule 7 of the Service Tax Rules, 1994. Relevant part of Rule 7 of the Service Tax Rules, 1994, as amended, reads as under :

"7. Returns :

(1) Every assessee shall submit a half yearly return in Form 'ST-3' or 'ST-3A' or ST-3C, (Inserted vide Notification 48/2016 –Service tax) as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.

(2) Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

(3) Every assessee shall submit the half-yearly return electronically."

[Emphasis supplied]

4(iii). It has been clearly mentioned under the SCN under para-2 that the quantum of late fee is prescribed in Rule 7C of the Service Tax Rules, 1994. The relevant part of the said Rule reads as under :

"7C. Amount to be paid for delay in furnishing the prescribed return.-



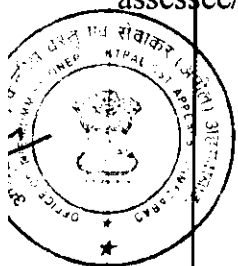
(1) Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

- (i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;
- (ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and
- (iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return."

[Emphasis supplied]

4(iv). The conjoint reading of the above referred provisions of law make it clear that the appellant was required to file a half-yearly service tax return by the 25th of the month, following the particular half-year. However, in the event of late-filing of the return, the same was required to be filed with late fee. In the present case, the ST3 return pertaining to the period April-2013 to September-2013 was required to be filed by 25.10.2013 but found to be filed late by 123 days. Therefore, the appellant was required to file and furnish the ST3 return before the jurisdictional Superintendent of Central Excise alongwith late fee prescribed under the law. The late fee is prescribed under Rule 7C of the Service Tax Rules, 1994, according to which the late fee for 123 days comes to Rs.10,300/- which was found not paid by them, while filing the relevant return. Thus, the said amount of late-fee was found unpaid till the audit took place and the audit team indicated the said irregularity.

4(v). I find that the Section 70 has made it ample clear that the Assessee has to furnish the prescribed return to the Superintendent of Central Excise with such late fee, in case the return is filed late. The quantum of late fee is prescribed under Rule 7C of the Service Tax Rules, 1994. Thus, the provisions of law has made it very much clear that late fee is required to be paid by the assessee by its own. The appellant mistakenly comparing the provisions of the non-payment of late-fee with the provisions of non-payment/short-payment of service tax. The short-payment/non-payment of service tax is governed by the provision of Section 73 of the Finance Act, 1994 whereas the payment of late-fee for delayed filing of service tax return is governed by the provisions of Section 70 of the Finance Act, 1994. The payment of late-fee is mandatory in nature as stipulated under the Act which is required to be paid along with the late-filing of service tax return. Recovery of such unpaid amount can be initiated straight away under the law, as a sum due to the Government. The contention of the appellant is without any appreciation of law in this respect and hence not acceptable. The amount of late-fee could have been calculated/ascertained by the assessee/appellant themselves as the provision of law in this respect is very clear. The

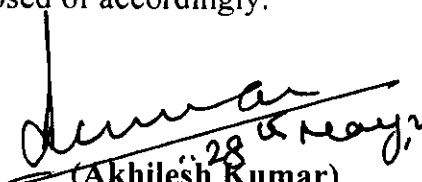


liability to pay the amount of late-fee, has been cast upon the assessee/appellant, while filing the ST3 return late, under the provisions of law.

4(vi). The SCN has not been issued under Section 73 of the Finance Act, 1994 where a time-limit is prescribed. Since the SCN is not issued under Section 73, the time-limit prescribed under the said Section will not be applicable in the present matter. Hence, the contention of the appellant in this respect also does not hold any ground. Though the word penalty has been used in place of late-fee in the SCN, but this will not affect the implementation and the essence of law in any manner for recovery of the amount not paid i.e. late-fee, as the Section and Rules of the law has been correctly mentioned and invoked in the matter.

4(vii). The contentions raised by the appellant in the matter are devoid of any merits and are liable for rejection. The facts and circumstances of the case is totally different from the facts of the case relied upon by the appellant and therefore the same can not be considered.

5. In view of above discussion, I reject the appeal of the appellant and uphold the impugned order. Appeal of the appellant stands disposed of accordingly.

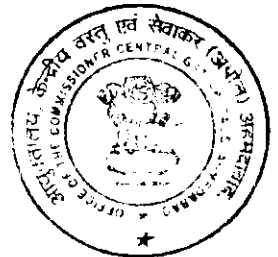

(Akhilesh Kumar)
Commissioner (Appeals)

Date : .05.2021.

Attested


09/06/21

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



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

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3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Mehsana Divn, Gandhinagar Comm'rate.
5. The Superintendent of CGST & Cen. Excise, Range-I, Mehsana Division, Gandhinagar Comm'rate.
6. Guard File.
7. P.A. File.