



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20211064SW000061616F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1186/2020 /3915 to 3919
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-43/2021-22
दिनांक Date : 11-10-2021 जारी करने की तारीख Date of Issue 21.10.2021
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 22/D/GNR/KP/2020-21 दिनांक: 07.09.2020 issued by Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Gujarat Power Corporation Ltd
Block No. 8, Sixth Floor, Udyog Bhavan,
Sector 11, Gandhinagar, Gujarat-382011

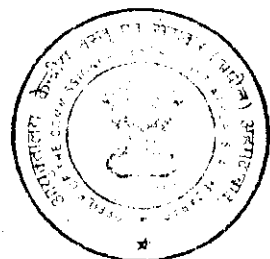
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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 :

- (i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 47(1) के अन्तर्गत अपील करने वाले 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।
- (ii) 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 मान 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.



(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 जोड़यूटीक्रेडिटमान्य 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 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 कर एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न कर 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.

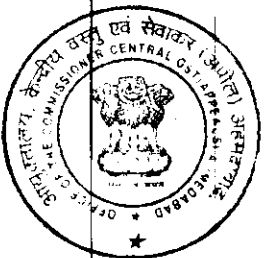
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) उक्त लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेशों 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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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.

- (21) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 उत्पादन शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेन वैट क्रेडिट की राशि;
- (iii) सेन वैट 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:

- (xlv) amount determined under Section 11 D;
- (xlvii) amount of erroneous Cenvat Credit taken;
- (xlviii) 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

The present appeal has been filed by M/s. Gujarat Power Corporation Limited, 6th Floor, Block No. 8, Udyog Bhavan, Sector-11, Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. 22/D/GNR/KP/2020-21 dated 07-09-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Gandhinagar, Gandhinagar Commissionerate [hereinafter referred to as "*adjudicating authority*"]:

2. Briefly stated, the facts of the case is that the appellant are engaged in providing taxable services as defined under Section 65B(44) of the Finance Act, 1994 and are also the person liable to pay service tax under Reverse Charge Mechanism in terms of Section 68(2) of the Finance Act, 1994. They are holding Service Tax Registration No. AAACG5596JSD002. During the course of audit of the records of the appellant by departmental officers covering the period from April, 2016 to June, 2017, it was observed that the appellant had taken Cenvat Credit of input service of Works Contract Service used for making civil structure i.e. roads/pipe fitting for water supply. Works Contract service used for a civil structure is excluded from input service in terms of Rule 2 (i) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). Therefore, the Cenvat Credit of the Service Tax paid on works contract service was not admissible and the appellant had wrongly availed and utilized Cenvat Credit of Rs.4,49,948/- .

2.1 Further, it was also observed during reconciliation of the income received towards provision of taxable services vis-à-vis the value shown in the ST-3 returns that the appellant had short paid Service Tax of Rs.1,01,827/- .

3. The appellant was issued SCN No. 235/19-20 dated 31.12.2019 under F.No. VI/1(b)-165/1A/C-VIII/MIS/19-20 proposing :

- i) denial and recovery of wrongly availed Cenvat Credit of Rs.4,49,948/- under Rule 14 (i) (ii) of the CCR, 2004 read with the proviso to Section 73 (1) of the Finance Act, 1994;



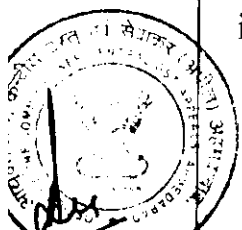
- ii) Demand and recovery of the short paid Service Tax amounting to Rs.1,01,827/- under the proviso to Section 73 (1) of the Finance Act, 1994;
- iii) Recovery of Interest under Rule 14 (i) (ii) of the CCR, 2004 read with Section 75 of the Finance Act, 1994;
- iv) Imposition of penalty under Rule 15 (3) of the CCR, 2004 read with Section 78 of the Finance Act, 1994.

4. The said SCN was adjudicated by the adjudicating authority vide the impugned order wherein she has :

- A) Confirmed the recovery of wrongly availed and utilized Cenvat Credit amounting to Rs.4,49,948/- under Rule 14 (i) (ii) of the CCR, 2004 read with the proviso to Section 73(1) of the Finance Act, 1994;
- B) Ordered recovery of interest under Section 75 of the Finance Act, 1994;
- C) Imposed penalty of Rs.4,49,948/- under the provisions of Section 73(1) of the Finance Act, 1994; and
- D) Dropped the demand for recovery of Service Tax amounting to Rs.1,01,827/-.

5. Aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

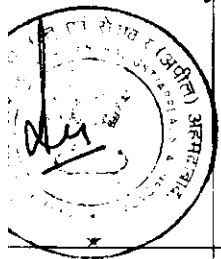
- i) They have been playing the role of developer and catalyser in the energy section for the state of Gujarat. They identify the power project , prepare feasibility report, identify suitable private joint section parties and implement the projects jointly with the selected parties. They also provide Operation and maintenance service – O&M services.
- ii) For developing Solar park and for providing services of O&M, they had availed the services of Works Contract and on which they had paid Service Tax under RCM and availed credit of the same.
- iii) The adjudicating authority has mis-directed himself by not understanding that the Cenvat Credit availed by them is in the nature of Repair & Maintenance Services and not works contract services.



- iv) The services received by them are in the nature of Repair and Maintenance services. However, for Service Tax, the same has been classified as Works Contract Services as per Service Tax Rules and Regulations.
- v) The adjudicating authority has concluded without base that service received by them has no direct nexus with the output services provided by them.
- vi) Without prejudice, even if the service tax was paid under Works Contracts service, they are eligible for Cenvat Credit as per Rule 4 of the CCR, 2004.
- vii) The adjudicating authority has ignored the judgement of the Hon'ble CESTAT in the case of Red Hat India Pvt. Ltd Vs. Principal Commissioner, Service Tax wherein it was held that Works Contract service are excluded only when it is used for construction service, whereas in the present case input service were used for maintenance of office equipment and building. Therefore, this particular works contract service does not fall under the exclusion of input service and therefore, eligible for Cenvat Credit.
- viii) They being a government company, do not have any malafide intention for availing Cenvat Credit. There is only conflicting opinions between them and the department. They rely upon various judgements in this regard.

6. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri Sandip Gupta, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and evidences available on records. I find that the crux of the issue which requires to be decided is whether the appellant was eligible to avail Cenvat Credit on the Works Contract service used for civil structure i.e. reconstruction of roads dug for laying of power cables at the site.



8. I find that the adjudicating authority has recorded in the impugned order that the disputed Cenvat Credit is on the strength of invoices issued by M/s.Hariom Builders and M/s.Saraswati Construction and that both these firms were Work Contractors involved in the re-construction of roads dug for laying of power cables at the site. The impugned order also mentions that the invoice of M/s.Saraswati Construction clearly states the nature of work as “ *Development of Internal roads and pipe culverts extension of SN03 to WE 06 to SN 02 and SN 05, for solar park phase-1, at Charanka, in Santalpur Taluka, Patan District, Gujarat State*”. This leaves no room for any ambiguity as to the nature of the works contract service i.e. construction of civil structure. Therefore, their claim for Cenvat Credit on the grounds that the Cenvat Credit availed by them is for Repair & Maintenance Services and not works contract services is not supported by facts and evidences

9. I further find that the appellant have *per se* not disputed this fact and have on the contrary accepted that the services received by them are in the nature of Repair and Maintenance services, though the same has been classified as Works Contract Services as per Service Tax Rules and Regulations.

10. The appellants have, in support of their contention, relied upon the decision in the case of Red Hat India Pvt Ltd. Vs. Principal Commissioner of S.T., Pune reported at 2016 (44) STR 451 (Tri.-Mumbai). However, the decision of the Hon'ble Tribunal in the said case does not support the claim of the appellants inasmuch as the Hon'ble Tribunal had in the said case held at para 6.1. of their judgement that :-

“From the above Rule, it is clear that Works Contract Services are excluded only when it is used for construction service, whereas in the present case input services were used for maintenance of office equipment and building therefore, this particular works contract service does not fall under the exclusion category in the definition of input service, therefore works contract service in the present case is input service and eligible of refund under Rule 5.”

10.1 In the present case, as has been clearly brought out the Works Contract services received by the appellant are for Civil Structure and not for maintenance of office equipment and building thereof. Therefore, the judgement has no applicability to the facts of the present case.

11. The appellant have also contended that being a government company there was no malafide intention on their part in availing Cenvat Credit. I find that the contention of the appellant is not borne out by their actions. They have before the adjudicating authority as well as in the present appeal wrongly attempted to justify their eligibility to Cenvat Credit by claiming that the services received by them are in the nature of Repair and Maintenance services despite the clearly worded description of the services in the invoices of the service providers. This misleading claim does not establish help them in establishing their bonafides. I therefore, do not find any justification for interference as regards the penalty imposed upon them.

12. In view of the above discussions and the material available on record, I reject the appeal filed by the appellant and uphold the impugned order.

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

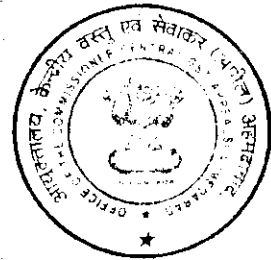
The appeal filed by the appellant stands disposed off in above terms.

(Signature)
(Akhilesh Kumar)
Commissioner (Appeals)

Attested:

Date: .10.2021.

(Signature)
(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s Gujarat Power Corporation Limited,
6th Floor, Block No.8,
Udyog Bhavan, Sector-11,
Gandhinagar.

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division- Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

4. Guard File.

5. P.A. File.

