



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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टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:20210664SW000000EC21)

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फाइल संख्या : File No : GAPPL/COM/STP//404/2020 /1651 T o 1655

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP- 8/2021-22

दिनांक Date : 29-04-2021 जारी करने की तारीख Date of Issue 09-06-2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

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Arising out of Order-in-Original No 20/D/GNR/KP/2020-21 dated 22.07.2020 issued by Assistant Commissioner, Div-Gandhinagar, Central Tax, Gandhinagar.

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

M/s Industrial Extension Bureau, Block No.18, 2nd Floor, Udhyog Bhavan, Sector-11, Gandhinagar-382010.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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।

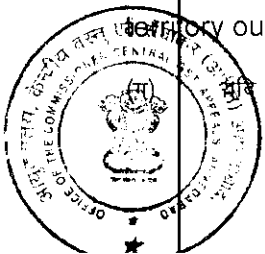
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 द्वारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं०) 1998 द्वारा 109 द्वारा नियुक्त किए गए हैं।

(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) केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या डिए 8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनों के तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता डी. का मुख्यशीर्ष के अंतर्गत द्वारा 35 डी में निर्धारित फी के भुगतान के सबूत के साथ टीआर 6 बालान की प्रतियाँ 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, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील.

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

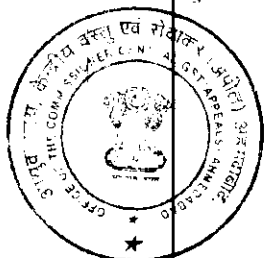
(1) केंद्रीय जीएसटी अधिनियम 2017 की धारा 112 के अंतर्गत

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय 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 समरूप ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथारिथिति 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 यथारिथिति 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 और 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.

- (38) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) के प्रति अपील के मामले में कर्तव्य माँग (Demand) एवं दण्ड (Penalty) का भुगतान पूर्व जमा करना अनिवार्य है। हालाँकि, अधिकतम पूर्व जमा करीब रु.10 करोड़ है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

- (39) केन्द्रीय उत्पादन शुल्क और सेवा कर से अंतर्गत शामिल होना "कर्तव्य की माँग" (Duty demanded) है।

(i) (Section) खंड 11 D के तहत निर्धारित माँग

(ii) लिया गया सेनवैट क्रेडिट की राशि

संलग्न सेनवैट क्रेडिट नियमों के नियमन के तहत देय राशि

इस पूर्व जमा 'लबित अपील' से पहले पूर्व जमा की दण्ड या 'अपील' वाकित न हो के लिए पूर्व जमा देना शर्त 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)

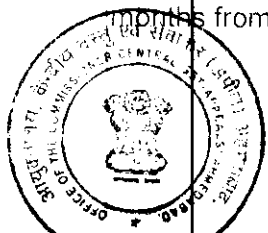
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (Ixxiii) amount determined under Section 11 D;
- (Ixxiv) amount of erroneous Cenvat Credit taken;
- (Ixxv) 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.



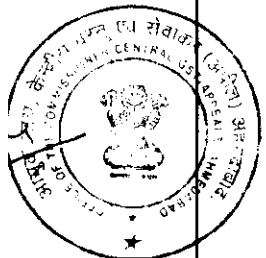
ORDER-IN-APPEAL

M/s. Industrial Extension Bureau, Block No.18, 2nd Floor, Udyog Bhavan, Sector-11, Gandhinagar-382010 (hereinafter referred as '*appellant*') has filed the present appeal against Order-in-Original No. 20/D/GNR/KP/2020-21 dated 22.07.2020 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise, Gandhinagar Division, Gandhinagar Commissionerate (hereinafter referred as '*adjudicating authority*').

2(i). The facts of the case, in brief, are that the appellant was holding Service Tax Registration No.AAATI0635DST001 for providing the Convention Service, Business Management Service, Business Consultancy Service, Information Service, Business Support Service and Business Exhibition Service.

2(ii). The audit of financial records of the appellant, for the period April-2016 to June-2017, was undertaken by the Department. During the course of audit, it was noticed that the appellant, in their ST-3 Return for the period April-2017 to June-2017, under "*Cenvat Credit Taken and Utilized*" head, had shown the amount Rs.14,45,546/- as '*Credit taken on input services received directly*' and had shown the amount of Rs.17,59,069/- as '*Credit utilized for payment of service tax*' pertaining to the month of June-2017. When the calculation was checked by the audit team, it was found that the amount of Rs.17,59,069/-, shown as utilized for payment of service tax for the month of June-2017, had not taken in effect the Closing Balance of cenvat credit. Thus, the Closing Balance of cenvat credit was showing the amount more by Rs.17,59,069/-, than the actual amount which should have been available. Moreover, the appellant carried forward this excess cenvat credit balance under CGST regime by filing TRAN-1. This lead the audit team to believe that the said amount, which had been shown by the appellant as utilized for payment of service tax in the cenvat credit details against their service tax liability, had actually not reduced their liability as the closing balance of cenvat credit for the month of June-2017 was consisting/including the said amount of Rs.17,59,069/-. Hence, it has resulted in non-payment of service tax.

2(iii). The Final Audit Report No.ST-1129/2019-20 dated 28.01.2020 was issued by the Assistant Commissioner of CGST Audit, Cir-VIII, Ahmedabad in this respect. Subsequently, based on this Final Audit Report, a Show Cause Notice (hereinafter referred as '*SCN*') dated 14.02.2020, was issued by the Assistant Commissioner



(Circle-VIII) of CGST Audit Comm'rate, Ahmedabad to the appellant, proposing recovery of Rs.17,59,069/- alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994 respectively. Penalty under Section 78(1) of the Finance Act, 1994 was also proposed to be imposed upon the appellant.

2(iv). The adjudicating authority, vide the impugned order, confirmed the recovery of service tax of Rs.17,59,069/- alongwith interest and penalty, as proposed under the SCN.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds :

- (i) that they have availed cenvat credit of input service of Rs.31,67,294/- in June-2017 and actually eligible for cenvat credit of the said amount for June-2017;
- (ii) that since cenvat credit availed is Rs.31,67,294/- and cenvat utilized is Rs.17,59,069/-, the closing balance of cenvat credit would be Rs.1,18,74,757/-, whereas the closing balance of cenvat credit in ST-3 Return for June-2017 is shown as Rs.1,19,12,078/-; that the difference in closing balance of cenvat credit comes to Rs.37,321/- only, which has already been paid by them;
- (iii) that departmental audit is not authorized by law and audit can be conducted by a Chartered Accountant or Cost Accountant in terms of Section 14A & 14AA of Central Excise Act, 1944; that they rely on the Delhi High Court decision on Mega Cabs Pvt. Ltd. reported at 2016-TIOL-1061-HC-DEL-ST; that they also rely upon some other case laws in the matter;
- (iv) that ST-3 return for the period April-2017 to June-2017 was filed on 14.08.2017 and SCN has been issued on 14.02.2020 and as such time barred;
- (v) that no suppression of facts is involved in their matter and they have shown these details in their books of accounts and also made submission to the department in January-2018 and in April-2018 and thus no intention to evade service tax;
- (vi) that levy of service tax was through Chapter-V of the Finance Act, 1994 and by virtue of Section 173 of the CGST Act, 2017, Chapter V of the Finance Act, 1994 has been omitted and Section 174(2) of the CGST Act, 2017 refers to repeal of the various Act and amendment of Finance Act, 1994;
- (vii) that repeal and saving provisions do not permit issue of notice by one authority and adjudication by another authority;
- (viii) that they are not required to pay penalty under Section 78(1) of the Finance Act, 1994 as they were eligible for cenvat credit of Rs.31,67,294/-, but due to typographical error cenvat taken was shown as Rs.14,45,546/- and there was no mala fide intention to avail excess credit by suppression of fact; thus provisions of Section 78(1) is not applicable;
- (ix) that they being a Gujarat Government Undertaking, there is no intention to evade tax;

4(i). Personal hearing in the matter was held on 19.01.2021 in virtual mode. Shri Bishan R. Shah, Chartered Accountant, attended the hearing for the appellant. He reiterated the submissions made in appeal memorandum.

4(ii). The appellant submitted additional submission on 19.01.2021 alongwith the list of invoices showing cenvat credit amounting Rs.31,67,294/-. A list of invoices

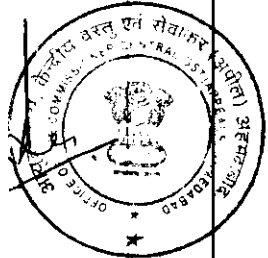


showing cenvat credit amounting Rs.31,90,547/- (without Cess) and Rs.34,17,781 (with Cess) alongwith photocopies of invoices etc. was again sent on 27.01.2021. Further, few photocopies of invoices were sent on 09.02.2021. In the additional submission, they submitted that they pointed out the said technical mistake to the authority on 24.04.2018 but they were advised to claim their actual credit in TRAN-1. They have taken cenvat credit based on the ST-3 Return as per Section 140(1) of the CGST Act, 2017 in TRAN-1, instead of as per books of accounts. They have paid back the differential excess credit of Rs.37,322/- (Rs.1,19,12,078 – Rs.1,18,74,757).

5(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 and under the additional submission. The issue to be decided in this case is whether the impugned order passed by the adjudicating authority ordering for recovery of Rs.17,59,069/- as service tax is correct and legal or not.

5(ii). It is observed that by showing Rs.17,59,069/- as '*utilized for payment of service tax*', in ST-3 Return pertaining to the month of June-2017, the appellant has already accepted their service tax liability to the tune of Rs.17,59,069/-. However, the said amount was found to be not deducted from the cenvat credit account as is revealed from the closing balance of cenvat credit of the appellant, which reflected sum of opening balance of cenvat credit and the amount of credit availed during the period without deduction of the amount of credit, shown to have utilized for payment of tax. In view of above, the amount of Rs.17,59,069/- was not paid by the appellant towards their service tax liability for the month of June-2017. This amount not paid, was a part of their self-assessed service tax liability and hence is a confirmed tax dues.

5(iii). The appellant, before the audit team, submitted that the cenvat availment of Rs.31,67,294/- was wrongly stated as Rs.14,45,546/-. I find that the appellant themselves have filled/shown the details of cenvat credit in their ST3 return pertaining to the period April-2017 to June-2017. There was no bar upon them from taking/availing cenvat credit amounting Rs.31,67,294/- instead of Rs.14,45,546/- and showing it in their ST-3 return, if they were having the invoices at the relevant point of time and were eligible for availment of the said cenvat credit as per the provisions of law in this respect. However, they did not do so and remained silent and careless for the availment of correct cenvat credit. It is also submitted by the appellant before the audit team that they tried to



correct the data by revising form ST-3 but same was not allowed, due to which they could not correct the ST-3 return. This statement of the appellant itself proves that during the course of audit, they were well aware that the ST-3 return for the period April-2017 to June-2017 was not reflecting the correct data pertaining to cenvat credit. Even though, they never come forward by their own before the authority with the correct figures at any time before the commencement of departmental audit (Audit dates were 30.07.2019, 22.08.2019, 13.09.2019 and 02.12.2019). Even if it is presumed that a correspondence was made by the Department in this respect, (as claimed by the appellant that a communication was made by the Department in this respect towards which they replied vide their letter dated 24.04.2018), it is evident from their own statement that they remained silent even till such correspondence made by the Department. The appellant themselves have filled in the data pertaining to cenvat credit for the month June-2017 showing Opening Balance of Cenvat Credit as Rs.1,04,66,532, Cenvat Credit availed as Rs.14,45,546/-, and Cenvat Credit utilized as Rs.17,59,069/-. Therefore, it is not acceptable that they could not ascertain that the Closing Balance of Cenvat Credit for the month June-2017 should have been Rs.1,01,53,009/- instead of Rs.1,19,12,078/- and Closing Balance of Cenvat Credit is exceeding by Rs.17,59,069/-. Since Rs.17,59,069/- was an admitted liability of service tax for the month of June-2017, which was found to be not paid as the Closing Balance of Cenvat Credit was exceeding with the same amount, the adjudicating authority was correct in ordering the recovery of the said amount alongwith interest. Thus, the impugned order in this respect is upheld.

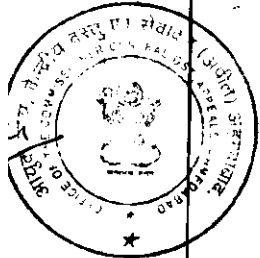
5(iv). Though fully aware that the wrong data pertaining to cenvat credit is reflecting in their ST-3 return for the month of June-2017, the appellant never came forward at their own, disclosing the correct data in this respect. They remained silent till it was pointed out by the audit team. The appellant has submitted a photocopy of letter dated 24.04.2018 addressed to the Asstt. Commissioner of CGST Division, Gandhinagar and tried to contend that they have informed about the discrepancy to the authority. However, it is not forthcoming from the face of the letter that the said letter was ever submitted/delivered to the authority as it is not having any receipt stamp/ acknowledgement of the authority's office. The appellant also failed to provide any proof regarding the delivery of the said letter to the authority's office. The appellant further failed to provide the letter/mail of the authority/authority's office, as referred by them in the said letter. In view of above, the said letter can not be considered.



5(v). It is also the contention of the appellant that the details were in their books of accounts and hence there is no suppression. This statement of the appellant is enough to prove that though they were well aware that there was difference between the figures reflected under ST-3 return and the figure reflected in their books of accounts, then also they remained silent till the departmental audit took place. They did not come forward at their own to approach the proper authority with correct facts & figures. Even when they could not file the revised ST-3 Return and TRAN-1, they did not approach the authority/Department with the facts that there was mistake in their ST-3 return pertaining to the month of June-2017 and they are not able to file the revised ST-3 return or TRAN-1. Even if it is presumed that the correct figures were shown by them in their books of account, how the Department could have come to know that the figures shown by them under ST-3 returns were different from what is reflected in their books of account. The reliance is placed on the case law of M/s. Kopran Ltd. reported at 2011(23)STR 627(Tri-Mumbai) in this respect. The Department can not be expected to call for the financial records of each and every Assessee, who file the Returns, that too when the Assessee is working under self-assessment regime where a trust has been placed upon every Assessee, to fill the correct figures in the Return and pay the tax/duty accordingly. Thus, it was on part of the appellant to provide/submit the correct figures in the Return and pay the tax/duty accordingly which they failed to do so. They even did not come forward at their own to disclose that the ST-3 return, pertaining to the month of June-2017, is having some discrepancy regarding cenvat credit, though they were aware about the correct facts and situation. The suppression in this case is therefore proved.

They also remained totally careless towards the liability of service tax amounting Rs.17,59,069/- for the month of June-2017, to be discharged by them, as the same was shown by them as '*cenvat credit utilized for payment of service tax*' which had not affected the closing balance of cenvat credit and the closing balance was exceeded by Rs.17,59,069/-. Therefore the penalty in this respect has been rightly imposed by the appellant authority in the impugned order and same is upheld.

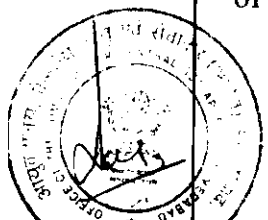
5(vi) It is also pertinent to mention that the adjudicating authority in its para-16 and para-17 under the impugned order has mentioned that she has considered the appellant's claim of availment of cenvat credit to the tune of Rs.31,67,294/- and given findings that there were several invoices pertaining to earlier period and no evidence has been brought on record by the appellant before her to establish that the cenvat credit pertaining to earlier period has not been taken earlier and thus accepted the cenvat credit availment for Rs.14,45,546/- only as shown by them in the said ST-3 Return. If the



appellant wish to avail the cenvat credit, it lies on the appellant to prove that the same has not been taken earlier and the credit has been taken within the time-limit specified in the law. Since the appellant failed to prove this, the adjudicating authority rejected the claim of the appellant for cenvat credit availment of Rs.31,67,294/- for the month of June-2017 and accepted the cenvat credit availment for Rs.14,45,546/- as shown by the appellant themselves in their ST-3 return. I did not find any contention of the appellant to rebut the said findings of the adjudicating authority even at Appellate stage. When the appellant is availing the cenvat credit late, it is on part of the appellant to prove that the same has not been availed earlier. The appellant was having ample time to prove so, however, they failed. Looking to the discussion here-in-above, I am in agreement with the findings of the adjudicating authority in the matter and uphold the same.

5(vii). The appellant has claimed that since ST-3 return for the period April-2017 to June-2017 has been filed on 14.08.2017, the SCN issued on 14.02.2020 is time barred. It is observed in this regard that Section 73(1) of the Finance Act, 1994 stipulates that the notice can be served within Thirty Months and in case of fraud, suppression of facts etc. notice can be served within Five Years. The photocopy of the said ST-3 return pertaining to the period April-2017 to June-2017, submitted by them, shows that the said ST-3 return has been filed on 20.09.2017. Thus, the said contention of the appellant is misleading and has been raised carelessly without verifying their own facts available with them. Since the ST-3 return has been filed on 20.09.2017 and SCN is served on 14.02.2020, it is well within the normal period of Thirty Months and thus, well within time and not time-barred. However, though the SCN is issued within time, due to the existence of suppression of facts in the matter, the adjudicating authority has passed the impugned order accordingly.

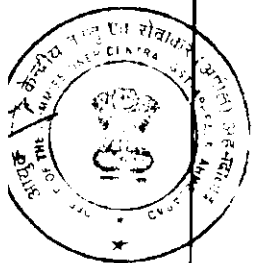
5(viii). As regards the contention of the appellant that departmental audit is ultra vires, it is observed that they neither objected to the departmental audit, when the intimation of such commencement of audit was communicated to them nor they objected over it during the course of audit. It became their contention only when the audit is concluded with a recovery of service tax with interest and penalty. The decision of Delhi High Court on Mega Cabs Pvt. Ltd. reported at 2016-TIOL-1061-HC-DEL-ST and Travelite (India) reported at 2014-TIOL-1304-HC-DEL-ST, upon which reliance has been placed by them for the same, can not be considered as it is found that there is a Stay by the Hon'ble Supreme Court upon operation of these decisions. Hence, the contentions of the appellant are devoid of merit and is rejected.



5(ix). As regards the contention of the appellant regarding the omission and repeal of the Finance Act, 1994, the appellant appears to have not fully gone through the Section 174(2) of the CGST Act, 2017, which contains the saving provisions of the Finance Act, 1994 and other Acts referred by the appellant. As regards their contention that the saving provisions do not permit to issue notice by one authority and adjudication by another authority, it is observed that the appellant has raised the said contention in a generalized manner and has not indicated the specific provisions of law which put restrictions as contended by them. In absence of indication of specific provisions of law, the said contention can not be considered. However, it is observed that the Section 73(1) of the Finance Act, 1994 authorizes "*Central Excise Officer*" to issue notice and "*Central Excise Officer*" means the [Principal Chief Commissioner of Central Excise, Chief Commissioner of Central Excise, Principal Commissioner of Central Excise], Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, [Joint Commissioner of Central Excise] [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act.] according to Section 2(b) of the Central Excise Act, 1944. In the present case, the SCN has been issued by the Assistant Commissioner and has been adjudicated by the Assistant Commissioner which can definitely be considered to be "*Central Excise Officer*" as per the provisions of law. Therefore the appellant's contention in this respect is devoid of merit.

5(x). It is also observed that the appellant did not provide/submit the copies of any of case laws relied upon by them, though some of which were pertaining to some other law and thus, do not deserve consideration.

5(xi). It is further observed that the appellant has claimed that the amount of Rs.37,322/- has been paid by them (as discussed in para-4(ii) here-in-above). A challan bearing CIN No. CORP20012400592709 (showing deposit date as 29.01.2020 and total amount as Rs.37,322/-) has been submitted by the appellant in this respect. It is pertinent to mention that an amount paid by any Assessee through challan is reflected in the credit side of their Cash Ledger. Unless, the amount is reflected as debit in the Cash Ledger, the said payment can not be considered to be received at Government's end. Since, the appellant is now working under CGST regime, they are aware of how the payment can be




made to the Government from Cash Ledger. Appellant neither submitted the DRC-03 nor submitted the copy of Cash Ledger showing the Debit Entry with the said amount i.e. Rs.37,322/-. Under the circumstances stated above, the said challan can not be considered to be the payment of differential amount as claimed by the appellant.

Moreover, the said Challan shows an amount of Rs.18,661/- as CGST, an amount of Rs.18,661/- as SGST and total amount of Rs.37,322/-. Thus, the amount paid as CGST can only be considered towards any Central Government Taxes/Duties dues as Central Government Taxes/Duties have been subsumed in CGST. In view of this, the claim of the appellant regarding the payment of Rs.37,322/- is also not true.

Over and above, perusal of the said challan reveal that the said amount has been deposited on 29.01.2020 i.e. after issuance of FAR (FAR issued on 28.01.2020) in this respect. Thus, the said amount has also not been paid by the appellant at their own before the commencement of audit even as per their own calculation. Hence, their contentions are liable for rejection.

6. In view of above, the impugned order is upheld and appeal of the appellant is rejected. The appeal of the appellant is disposed of accordingly.

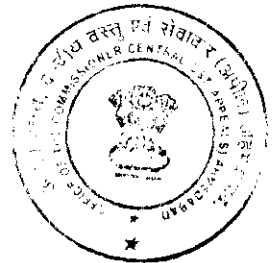

(Akhilesh Kumar)
Commissioner (Appeals)

Date : .04.2021.

Attested


09/06/21

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



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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. Guard File.
6. P.A. File.