



## 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 : 20211264SW0000212856

### स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/129/2021 / 5325 T 0 5329
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-80/2021-22**  
दिनांक Date : **24-12-2021** जारी करने की तारीख Date of Issue 27.12.2021
- आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **10/CEX/Ref/DC/2020-21** दिनांक: **11.03.2021** issued by  
Deputy Commissioner, CGST & Central Excise, Division Kalol, Gandhinagar Commissionerate
- ध अपीलकर्ता का नाम एवं पता Name & Address:

#### Appellant:

The Deputy Commissioner,  
CGST Division Kalol,  
2<sup>nd</sup> Floor, Janta Super Market,  
Kalol-382721

#### Respondent:

Shri Sharad C. Patel,  
Director of Shree Ram Multi-Tech Ltd,  
505, Kevanna Building, Near Central Mall,  
Panchwati-Ambawadi Road, Ellisbridge,  
Ahmedabad

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 :

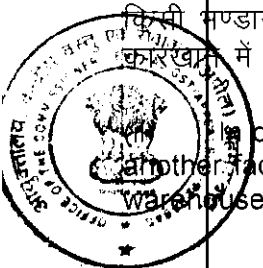
भारत सरकार का पुनरीक्षण आवेदन :

#### Revision application to Government of India:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 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।

(ii) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :

(iii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।



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 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 रकम एक लाख रुपये या उससे कम होतो 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.

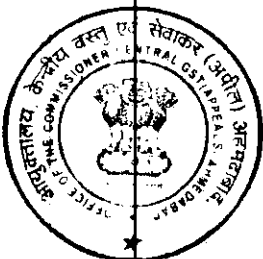
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 Appellate 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

- (57) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

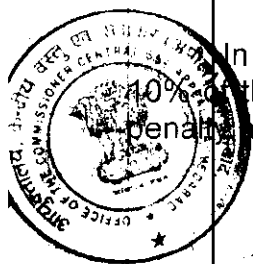
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (cliv) amount determined under Section 11 D;
- (clv) amount of erroneous Cenvat Credit taken;
- (clvi) 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।

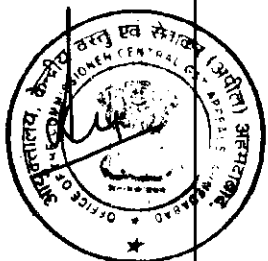
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by the Deputy Commissioner, Central GST & Central Excise, Division : Kalol, Commissionerate- Gandhinagar (hereinafter referred to as the appellant), on the basis of Review Order No. 03/2021-22 dated 17.05.2021 passed by the Commissioner, Central GST & Central Excise, Gandhinagar Commissionerate in terms of Section 35 of the Central Excise Act, 1944 against Order in Original No. 10/CEX/REF/DC/2020-21 dated 11.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST & Central Excise, Division : Kalol, Commissionerate- Gandhinagar [hereinafter referred to as "*adjudicating authority*"] in the case of Shri Sharad C. Patel, Director of M/s. Shree Rama Multi-Tech Ltd, 505, Kevanna Building, Near Central Mall, Panchwati, Ambawdi Road, Ellisbridge, Ahmedabad [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that a SCN dated 12.05.2004 was issued to M/s.Shree Rama Multi-Tech Ltd and the respondent was a co-noticee in the said SCN being the Director of M/s. Shree Rama Multi-Tech Ltd. The said SCN was adjudicated by the Commissioner, Central Excise, erstwhile Ahmedabad-III vide OIO NO. AHM-EXCUS-003-COM-010-16-17 dated 04-05/07.2016 wherein the cenvat credit wrongly availed by M/s.Shree Rama Multi-Tech Ltd was disallowed. A penalty of Rs.50,00,000/- was imposed on the respondent. Being aggrieved, the respondent filed an appeal before the CESTAT, Ahmedabad on 06.10.2016. The respondent also filed application under the SVLDRS Scheme, 2019 and discharge certificate in Form No. SVLDRS-4 No. L280220SV301098 was issued to the respondent. The respondent, thereafter, filed a claim on 16.01.2021 for refund of the pre-deposit amounting to Rs.3,75,000/-. As there was a mis-match in the assessee code in the appeal filed before the Hon'ble CESTAT and in the SVLDRS-4 certificate, a SCN dated 17.02.2021 was issued to the respondent for rejection of the refund claim. The said SCN was adjudicated vide the impugned order and the refund claim was sanctioned to the respondent.

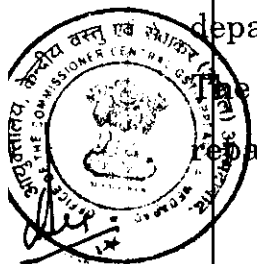


3. Being aggrieved with the impugned order, the appellant department has filed the instant appeal on the following grounds:

- i) The adjudicating authority has committed a grave error in passing the impugned order as he did not consider the fact that the respondent had applied for the SVLDRS, 2019 and relying upon the discharge certificate, the respondent was sanctioned the refund of pre-deposit without going into the pre-conditions prescribed under the SVLDRS, 2019. Section 124 (2) of the Finance (No.2) Act, 2019 clearly barred the respondent from any refund of pre-deposit or deposit already paid by the declarant.
- ii) As per Section 130 of the Finance (No.2) Act, 2019 in case any pre-deposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded. The respondent had taken benefit of full waiver of the penalty amount of Rs.50,00,000/- and over and above he has been granted refund of the pre-deposit amount of Rs.3,75,000/-.
- iii) Both Sections, 124 (2) and 130 have given emphasis on the words 'amount payable'. The respondent availed full waiver of penalty imposed on him and on one hand he again stands benefited by way of sanction of refund of the pre-deposit which otherwise is a part of the penalty imposed on him.
- iv) Waiver of penalty is one of the reliefs under the SVLDRS and the respondent had got relief from payment of full amount of penalty imposed on him or had to make no payment under the scheme. Additionally he had also been granted a refund of an amount which was part of the penalty imposed which stands fully waived.
- v) Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of Lohiya Agencies – 2019 (021) GSTL 113; Dilipkumar & Co – 2018 (361) ELT 577.

4. The respondent was served a copy of the appeal, filed by the appellant department, vide letter F.No. GAPPL/COM/STD/129/2021 dated 19.07.2021.

The respondent vide letter dated 05.08.2021 informed that he was ready to repay the amount of Rs.3,75,000/- refunded to him as per the impugned order



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Date: .12.2021.

To

The Deputy Commissioner,  
CGST & Central Excise,  
Division- Kalol  
Commissionerate : Gandhinagar

Appellant

Shri Sharad C. Patel,  
505, Kevanna Building,  
Near Central Mall,  
Panchwati, Ambawdi Road,  
Ellisbridge,  
Ahmedabad – 380 006.

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.

