



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 : 20220164SW000031313C

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/403/2021 / 5646705650

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-84/2021-22**
दिनांक Date : **05-01-2022** जारी करने की तारीख Date of Issue 10.01.2022

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

ग Arising out of Order-in-Original No. **Kalol/DC/D. Khatik/29/ST/2020-21** दिनांक: **04.02.2021**
issued by Deputy Commissioner, CGST& Central Excise, Division Kalol, Gandhinagar Commissionerate

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

M/s Shree Rama Multi Tech Ltd
Plot No. 1557, Moti Bhoyan,
Kalol, Gandhinagar

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 :

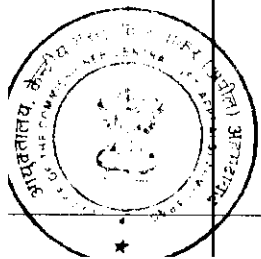
भारत सरकार का पुनरीक्षण आवेदन :

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, 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 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।
 - (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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतरमूल-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 संलग्नरकम 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 2ndमाला, 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 Appellate 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 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 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.

- (65) 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.

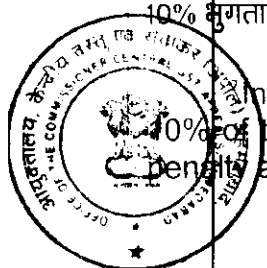
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxviii) amount determined under Section 11 D;
- (clxxix) amount of erroneous Cenvat Credit taken;
- (clxxx) 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. Shree Rama Multi-Tech Limited, Plot No. 1557, Moti Bhoyan, Khatraj-Kalol Road, Taluka : Kalol, District : Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. Kalol/DC/D.KHATIK/29/ST/2020-21 dated 04-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST & Central Excise, Division : Kalol, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is holding Central Excise Registration No. AAJCS1563NXM001 and engaged in the manufacture of goods falling under Chapter 39, 48 and 76 of the Central Excise Tariff Act, 1985. They are also holding Service Tax Registration No. AAJCS1563NSD005. During the course of audit of the records of the appellant conducted by the departmental officers for the period from April, 2016 to June, 2017, the observations detailed in subsequent paras were raised in FAR No. 612/2019-20 dated 06.11.2019.

2.1. It was observed that the appellant had issued debit notes in the name of its suppliers since they received raw material in short quantity. However, while issuing debit notes, the appellant failed to reverse the cenvat credit amounting to Rs.970/- which was proportionate to the quantity short received.

2.2. During scrutiny of the service tax credit ledger, it was found that the appellant had wrongly availed cenvat credit of service tax amounting to Rs.15,612/- on the insurance, repair and maintenance services of vehicles. The vehicles for which service tax was availed by the appellant were not capital goods.

2.3. On verification of the cenvat credit register for inputs/raw materials, it was observed that the appellant had taken credit of CVD and Additional Duty amounting to Rs. 16,349/- twice in respect of three Bills of Entry.



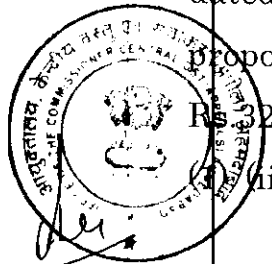
2.4. During the verification of financial records and the corresponding documents of the appellant, it was observed that they had imported raw materials on CIF basis. In case of import on CIF basis, the freight charges are included in the CIF value. It appeared that the appellant was liable to discharge service tax @ 1.4% of the imported goods under the category of transportation of goods by way of vessel service. The appellant had, it appeared, not paid service tax amounting to Rs.4,00,631/- on reverse charge basis.

2.5 It was further observed in the course of the audit that the appellant some of the challans for payment of service tax were not bearing the service tax registration number of the appellant but were bearing the registration number of some other unit. Therefore, the service tax amounting to Rs.6,19,669/- remained unpaid by the appellant and was required to be recovered from them.

2.6 During the course of verification of the ledger for loading and unloading charges for the period from April, 2016 to September, 2016, it was observed that the appellant had availed Goods and Transport Agency service from Desai Jayrambhai Tejmalbhai with whom the appellant was having a contract for providing service on payment of Rs.33,000/- per month. However, the appellant was not paying service tax on the GTA service received from the said person, accordingly the service tax amounting to Rs.7,751/- was recoverable from the appellant.

2.7 On verification of the ST-3 returns and challans for payment of service tax it was observed that there was a short payment of Rs.5,261/- towards Swachh Bharat Cess during the month of March, 2017. Further, there was also a short payment of Rs.1,562/- towards Krishi Kalyan Cess during July, 2016 and Rs.5,837/- during the month of March, 2017.

3. The appellant was issued a SCN bearing No. 188/19-20/CGST (Audit) dated 06.11.2019 from F.No. VI/1(b)-01/AP-70/CIR-X/2018-19 wherein it was proposed to demand and recover the cenvat credit totally amounting to Rs.2,931/- under Section 73 (1) of the Finance Act, 1994 read with Rule 14 (ii) of the Cenvat Credit Rules, 2004 along with interest. Imposition of

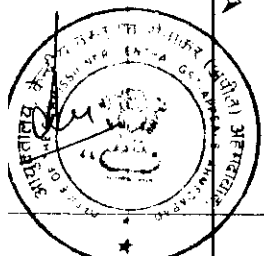


penalty was also proposed under Section 11Ac of the Central Excise Act, 1944 read with Rule 15 (3) of the Cenvat Credit Rules, 2004. It was also proposed to recover the Service tax totally amounting to Rs.10,40,712/- under Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty under Section 78 (1) of the Finance Act, 1994 was also proposed.

4. The said SCN was adjudicated vide the impugned order and the demand for cenvat credit and service tax were confirmed along with interest. Penalty was imposed under Section 11AC of the Central Excise Act, 1944 read with Rule 15 (3) of the Cenvat Credit Rules, 2004. Penalty was also imposed under Section 78 (1) of the Finance Act, 1994.

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

- The confirmation of demand under the impugned order is in violation of the principles of natural justice and due process of law is not followed in as much as the Audit was conducted in the month of August, 2019 and the Audit Report and SCN was issued on the same day i.e. 06.11.2019. As per the Audit Manual issued by Directorate of Audit and the instructions issued by CBIC, the Audit Report is to be issued and proper time is to be provided to the assessee so as to comply to the Audit.
- Moreover, as per Section 11A (2) & (3) of the Central Excise Act, 1944 the option to pay the duty along with interest is to be provided to the assessee and in case they are paid, the proceedings are to be closed. Similar provisions are contained in Section 73 (3) of the Finance Act, 1994. In their case no proper opportunity was provided to comply with these provisions for the issues which they may agree with the Audit findings.
- Even personal hearing was fixed in June, 2020 during the lockdown and due to the pandemic they could not attend the hearing. These actions are in violation of the principles of natural justice and, therefore, the impugned order is not sustainable in law.
- Their first prayer is that the appeal may be allowed and the case may be remanded back to the original adjudicating authority for denovo



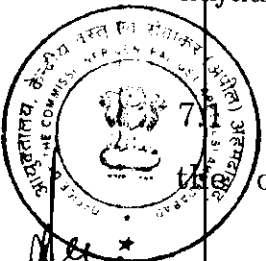
adjudication after granting proper opportunity of hearing and thereafter pass a speaking order considering their submissions.

5.1 The appellant have also made detailed submissions on the merits, individually, of issues involved in the present appeal. They have also submitted that they are not disputing the demand in respect of Revenue Para No. 1, 2, 6 and 7 and have paid the amount along with interest and penalty @ 25%.

6. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri Vikram Singh Jhala, AGM- Indirect Taxation, appeared on behalf of the appellant for the hearing. He stated that the order was passed in violation of principles of natural justice during pandemic situation. He further stated that he did not dispute the demand in respect of Revenue Para No. 1, 2, 6 and 7 and have paid the amount along with interest and penalty @ 25% in respect of these para. He reiterated the submissions made in appeal memorandum as well as written submission dated 17.11.2021. He further stated that the demand is barred by limitation in respect of paras which are not admitted.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. I find that there are seven different issues involved in the present appeal and the appellant have contested four of the issues, except Revenue Para No. 1, 2, 6 and 7 which has been accepted by them, on merit as well as on limitation. They have in their appeal memorandum as well during the course of the personal hearing stated that the personal hearing was fixed in June, 2020 during the COVID-19 lockdown and due to the pandemic they could not attend the personal hearing. The appellant have also contended that the mandatory second opportunity of hearing was not granted. The appellant have, therefore, requested that the case be remanded back for denovo adjudication.

I find that in the impugned order, it has been recorded at para 14 that the opportunity of personal hearing was granted vide letters dated



15.06.2020 and 21.12.2020, but there was no response from the appellant. Thereafter, the case was adjudicated ex-parte.

7.2 In terms of Section 33A (1) of the Central Excise Act, 1944 the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. In the instant case, I find that the prevailing pandemic situation as well as the total lockdown were grounds sufficient for granting of adjournment. I further find that three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have also not been granted to the appellant. Considering the prevailing pandemic situation, the adjudicating authority ought to have adopted a more liberal approach in granting opportunity of personal hearing. I also find it relevant to refer to the judgment of the Hon 'ble High Court of Gujarat in the case of Regent Overseas Pvt Ltd. Vs. UOI – 2017 (6) GSTL 15 (Guj) wherein it was held that :

“12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.”

7.3 In view of the above, I am of the considered view that in the interest of the principles of natural justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of filing their defence reply and after granting them the opportunity of personal hearing.

8. In view of the above, the impugned order is set aside and the matter remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant should



also attend the personal hearing as and when fixed by the adjudicating authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.

9. 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.

Akhilesh Kumar
 05 January, 2022
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 01/01/2022.



Attested:

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

BY RPAD / SPEED POST

To

M/s. Shree Rama Multi-Tech Limited,
 Plot No. 1557, Moti Bhoyan,
 Khatraj-Kalol Road,
 Taluka : Kalol,
 District : Gandhinagar

Appellant

The Assistant Commissioner,
 CGST & Central Excise,
 Division- Kalol,
 Commissionerate : 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.