



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),



केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136

DIN : 20220664SW0000888A06

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1683/2021 / 1719 - 1723
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-26/2022-23**
दिनांक Date : **16-06-2022** जारी करने की तारीख Date of Issue 16.06.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **42/D/GNR/KP/2020-21** दिनांक: **15.03.2021** passed by Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Gujarat Industrial Investment Corporation Ltd**
Udyog Bhavan, 6th Floor, Block 11th & 12th,
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:

- 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।
 - 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 :
 - 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 प्रकिया 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 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 2ndfloor,BahumaliBhawan,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 पढी 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 filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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 कान्यायालय 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.

- (50) 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.

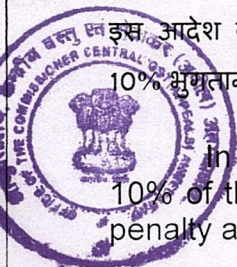
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxxxiii) amount determined under Section 11 D;
- (cxxxiv) amount of erroneous Cenvat Credit taken;
- (cxxxv) 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."

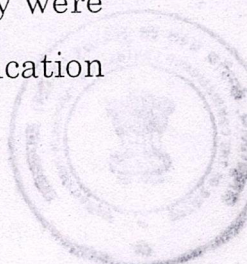
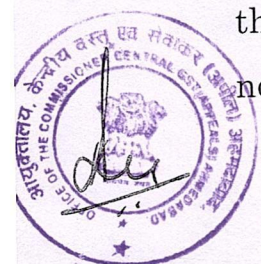


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Gujarat Industrial Investment Corporation Limited, Udyog Bhavan, 11 & 12, 6th Floor, Sector-11, Gandhinagar, Gujarat (hereinafter referred to as the appellant) against Order in Original No. 42/D/GNR/KP/2020-21 dated 15.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AAACG5304QST001 and were engaged in providing services of Renting of Immovable Property, Legal Consultancy, Manpower Recruitment and BAS. Audit of the records of the appellant were undertaken for the period from December, 2015 to June, 2017 by the Departmental officers. During the course of the audit, on reconciliation of the service tax paid under the head of Renting of Immovable Property, it was observed that the appellant had not paid service tax on the rent income received from Indian Coast Guard (NW), Gandhinagar (hereinafter referred to as ICG). On being asked, the appellant submitted letter dated 19.01.2010 of ICG along with letter dated 25.08.2009 issued by the Additional Commissioner, Central Excise, Vishakapatnam, wherein it was stated that the Defence Establishments were not business entities and hence, renting of premises for non-commercial purposes did not qualify for payment of service tax. The appellant also submitted that they were covered under Serial No.54 of Notification No.25/2012-ST dated 20.06.2012.

2.1 It was observed by the audit officers that the appellant was registered under the Companies Act and doing commercial activities, though the financial activity was controlled by the Government of Gujarat. It appeared to the audit officers that the appellant was not covered under the definition of Government or a local authority and, therefore, they were not eligible for exemption under the said Sr.No54 of Notification



No.25/2012-ST dated 20.06.2012. It therefore, appeared that the appellant had not paid service tax amounting to Rs.6,629,750/-, which was liable to be recovered from them. The appellant was, therefore, issued Show Cause Notice No.290/2019 dated 08.06.2020 from F.No. VI/1(b)/444/IA/C-VIII/AP-53/18-19 wherein it was proposed to demand and recover the service tax amounting to Rs.6,62,750/- in terms of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty under Section 78 of the Finance Act, 1994 was also proposed.

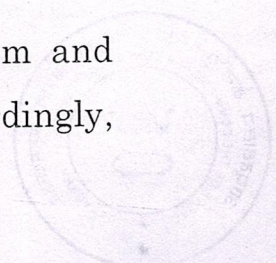
3. The said SCN was adjudicated vide the impugned order wherein the demand was confirmed along with interest. Penalty of Rs.6,62,750/- was imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that the service tax amounting to Rs.10,16,180/- was already paid by them vide Challan No. 00053470007523022018 dated 23.02.2018.

5. Personal Hearing in the case was held on 15.06.2022 through virtual mode. Shri Chintan A. Thakkar, Chartered Accountant, appeared on behalf of the appellant for the hearing. He stated that the firm had already made payment in excess, which is mentioned in the impugned order. He reiterated the submissions made in appeal memorandum.

6. 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 material available on records. It is observed that the dispute involved in the present appeal relates to short payment of service tax on the income received from ICG under the head of Renting of Immovable Property. The demand pertains to the period F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017).

7. I find that the appellant have in their appeal memorandum and during the personal hearing not contested issue on merits. Accordingly,

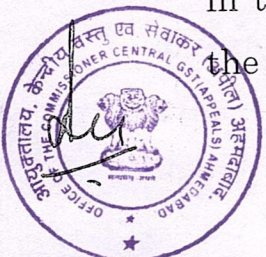


the issue which is to be decided is whether the appellant have already paid the service tax along with interest as contended by them. I find that the appellant had made these submissions before the adjudicating authority also. The details of the payments claimed to have been made by the appellant are recorded at Para 13 of the impugned order. The details pertaining to ICG is reproduced as below :

Period	Rent Income (Rs.)	Service Tax Amount (Rs.)	Challan No. & Date	Remarks
F.Y. 2016-17	38,13,336/-	5,72,001/-	00053470007523022018	Paid on 23.02.2018 along with interest. Challan amount Rs.10,16,280/-
F.Y.2017-18 (upto June, 2017)	6,05,001/-	90,750/-	00053470007523022018	Paid on 23.02.2018 along with interest. Challan amount Rs.10,16,280/-

7.1 The appellant have submitted a copy of the Challan dated 23.02.2018 and on perusal of the same, I find that the appellant have paid service tax amounting to Rs.7,55,675/- under the head of Renting of Immovable Property and also Interest amounting to Rs.1,92,759/- under Other Receipts of the same head. The appellant have also paid the Krishi Kalyan Cess and Swachh Bharat Cess along with interest.

7.2 I find that the adjudicating authority has at Para 20 of the impugned order recorded the finding that the contention of the appellant regarding payment of service tax cannot be accepted for the reason that the rent income from ICG was not included in the taxable value of services in the ST-3 returns for the period April to September, 2016 and also for the reason that the appellant had in the ST-3 returns for the period



October to March, 2017 shown the rent income received from ICG under the exempted category. The claim of the appellant regarding payment of service tax has also been rejected on the ground that the payment made in February, 2018 does not find mention in the Final Audit Report No. 740/2019-20 dated 01.01.2020 and neither is there any mention in the impugned SCN.

7.3 I do not find any substance in the findings advanced by the adjudicating authority. Merely because the payment made by the appellant was not considered or mentioned in the Final Audit Report or in the SCN cannot be a ground for rejecting the claim of the appellant. Further, it is an undisputed fact that the appellant had initially not paid service tax in respect of the rent income from ICG either by not reporting the same in their ST-3 returns or by claiming exemption in respect of the same. The adjudicating authority has failed to consider the fact that even though the appellant had not paid the service tax initially, the same was subsequently paid in the month of February, 2018. The fact that the appellant had made payment of service tax in the GST regime should have weighed in the mind of the adjudicating authority and the payment details and documents should have been verified rather than summarily rejecting them.

7.4 The appellant have also claimed that they have again made payment of service tax amounting to Rs.11,11,612/- on 26.10.2018. However, on going through the particulars and details recorded in Para 13 of the impugned order, I find that the same pertains to the rent income received from parties other than ICG which is not a subject matter of the present appeal. Therefore, the same is not being dealt with.

7.5 Considering the above facts, I am of the view that the matter is required to be remanded back for denovo adjudication by the adjudicating authority for verifying the details of the payment of service tax claimed by the appellant. The adjudicating authority should also verify service tax payment claimed by the appellant vis-à-vis the service tax liability of the

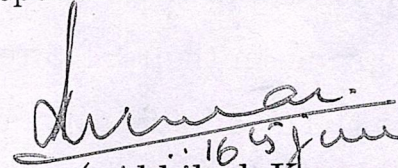


appellant for the impugned period and the service tax paid and reported in the ST-3 returns. In the event the payment is found to be towards the rent income received by the appellant from ICG, the proposal for imposition of penalty under Section 78 of the Finance Act, 1994 has to be re-examined considering the fact that the disputed service tax along with interest was paid by the appellant even before the Audit and before issuance of SCN.

8 In view of the above facts, the matter is remanded back to the adjudicating authority for denovo adjudication in terms of the directions contained in Para 7.5 above. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.

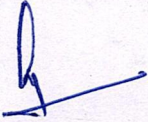
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


 (Akhilesh Kumar)
 Commissioner (Appeals)

Date: .06.2022.

Attested:



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



BY RPAD / SPEED POST

To

M/s. Gujarat Industrial Investment
 Corporation Limited,
 Udyog Bhavan, 11 & 12,
 6th Floor, Sector-11,
 Gandhinagar, Gujarat

Appellant

The Assistant Commissioner,
 CGST & Central Excise,
 Division : Gandhinagar,
 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.

