



सत्यमेव जयते

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

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



**DIN : 20220764SW000000D744**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2668/2021 *PH 51 TO 2455*
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-30/2022-23**  
दिनांक Date : **05-07-2022** जारी करने की तारीख Date of Issue 08.07.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-MS-015-21-22** दिनांक: **15.06.2021**  
passed by Additional Commissioner, CGST & Central Excise, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

- M/s Shilp Gravures Ltd**  
**780, Pramukh Industrial Estate,**  
**Sola-Santej Road, Rakanpur, 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:**

- 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, 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 :
  - 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 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 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, 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 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 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.

- (55) 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.

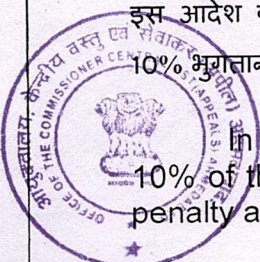
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxlvi) amount determined under Section 11 D;
- (cxli) amount of erroneous Cenvat Credit taken;
- (cl) 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."

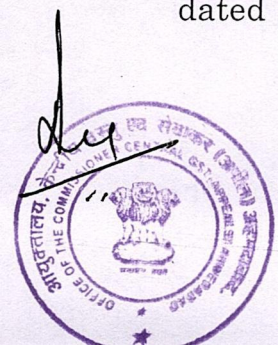


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Shilp Gravures Ltd., 780, Pramukh Industrial Estate, Sola-Santej Road, Rakanpur, Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-MS-015-21-22 dated 15.06.2021 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AADCS0868GXM001 and were engaged in manufacture of Engraved M.S. Copper Plated Rollers. Intelligence was gathered that the appellant was clearing engraved and re-engraved M.S. Copper Plated Rollers under memos without payment of Central Excise duty/ and or Service Tax. Preliminary inquiry revealed that appellant were re-engraving the old and used cylinder supplied by various customers and paying service tax at the time of clearance under the category of Business Auxiliary Services. The investigation revealed that the appellant were also clearing the re-engraved cylinders under Memo without any valid invoice, without payment of service tax, and payments for such clearances were received by them in cash. It appeared that the process of re-engraving and re-chroming on the old and used cylinders does not amount to manufacture as defined under Section 2 (f) of the Central Excise Act, 1944. Therefore, the services rendered by the appellant appeared to be covered under Business Auxiliary Services as defined under erstwhile Section 65(19) of the Finance Act, 1994. Thus, the charges received by the appellant for the services rendered were liable to service tax. The appellant had during the period from 10.09.2004 to 17.05.2006 provided taxable Business Auxiliary services totally amounting to Rs.1,55,31,517/- on which service tax amounting to Rs.16,04,940/- was evaded by them.

3. The appellant was issued a SCN vide F.No. DGCEI/AZU/36-68/2006 dated 18.04.2006 wherein it was proposed to recover service tax amounting to



Rs.16,04,940/- along with interest. Penalty under Section 76 and 78 of the Finance Act, 1994 was also proposed to be imposed.

4. The said SCN was adjudicated vide OIO No. 29/Addl.Commr/2008 dated 28.03.2008 wherein the demand for service tax was confirmed and the amount paid by them was appropriated. Interest was also charged under Section 75 of the Finance Act, 1994. Penalty of Rs.200/- per day was imposed under Section 76 of the Finance Act, 1994. Further, penalty of Rs.16,04,940/- was imposed under Section 78 of the Finance Act, 1994.

5. The appellant, upon receipt of the said OIO paid the interest and penalty under Section 76 of the Finance Act, 1994. They also paid 25% of the penalty imposed under Section 78 of the Finance Act, 1994.

6. However, being aggrieved by the said OIO, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. 112/2008 (Ahd-III) CE/KCG/Commr.(A) dated 24.09.2008 upheld the OIO and rejected the appeal filed by the appellant.

7. Subsequently, the appellant filed appeal against the said OIA before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal, Ahmedabad vide Order No. A/11602/2016 dated 25.11.2016 held that simultaneous penalty cannot be imposed under Section 76 and 78 of the Finance Act, 1994 and accordingly, set aside the penalty under Section 76. The Hon'ble Tribunal further held that the appellant would be entitled to discharge 25% of the penalty imposed under Section 78 of the Finance Act, 1994, subject to fulfilment of conditions laid down therein. For the purpose of ascertaining the quantum of interest and fulfilment of conditions laid down in Section 78 of the Finance Act, 1994, the Hon'ble Tribunal had remanded the matter back to the adjudicating authority.

8. In the denovo proceedings, the case was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs.16,04,940/- was confirmed and the amount paid by the appellant was appropriated. Interest was ordered to be paid and the amount of interest already paid by the appellant was appropriated. Penalty of Rs.4,01,235/- (25% of the service tax



confirmed) was imposed under Section 78 of the Finance Act, 1994 and the amount of penalty paid by the appellant was appropriated.

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

- i) The impugned order is a non speaking order inasmuch in spite of their categorically raising the contention regarding setting aside of penalty under Section 76 and payment of penalty under Section 78 twice and requesting refund of the aforesaid penalties, no finding has been given by the adjudicating authority.
- ii) No findings have been given as regards the contention raised by them regarding exercise of powers under Section 80 of the Finance Act, 1994. The power under Section 78 was required to be exercised considering the fact that service tax was already paid by them and confusion as regards applicability of excise duty or service tax was prevailing in industry as a whole.
- iii) The adjudicating authority has not appreciated that penalty under Section 78 of the Finance Act, 1994 could not be recovered twice and the amount which was paid twice was required to be refunded to them.

10. Personal Hearing in the case was held on 24.05.2022 through virtual mode. Shri Uday Madhurkar Joshi, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further stated that they have got the refund of amount involved in penalty under Section 76 of the Finance Act, 1994.

11. I find that the impugned order was passed in the remand proceedings ordered by the Hon'ble CESTAT, Ahmedabad vide Order No. A/11062/2016 dated 25.11.2016. The relevant Paragraphs of the said order are reproduced as below :

“ 6. Therefore, simultaneous penalty under Sec. 76 and Sec. 78 of the Finance Act, 1994 cannot be imposed on the Appellant. Consequently, penalty under Section Sec.76 is set aside. As regards the benefit of 25% of penalty on payment of duty and interest, the issue is covered by the decision of Hon'ble Gujarat High Court in the case of Santosh Textile Mills (supra) and Appellant would be entitled to discharge 25% of the



penalty imposed under Section 78 of Finance Act, 1994 subject to fulfillment of the conditions laid down therein.

7. However, for the purpose of ascertaining the quantum of interest, and fulfilment the conditions laid down under Sec. 78 of the said Act, the matter needs to be remanded to the Adjudicating Authority.

8. In the result, the impugned order is set aside to that extent and appeal disposed of in the above terms.”

11.1 It is clear from the above order of the Hon'ble Tribunal that the case was remanded for denovo adjudication only to the limited extent of ascertaining the quantum of interest and fulfilment of conditions laid down in Section 78 of the Finance Act, 1994 to be entitled to 25% penalty.

12. I find that the adjudicating authority has vide the impugned order accepted the interest paid by the appellant and appropriated the same. As regards payment of 25% of the penalty imposed under Section 78 of the Finance Act, 1994, the adjudicating authority has at Para 8.12 of the impugned order recorded that the appellant have made payment of the entire amount of service tax, interest and 25% of penalty within 30 days from the date of communication of the order and as such they have complied with the conditions laid down in Section 78 of the Finance Act, 1994. Accordingly the adjudicating authority has imposed 25% penalty and appropriated the amount paid by the appellant.

13. I find that the impugned order has been passed in compliance with the directions of the Hon'ble Tribunal, Ahmedabad and there has been no deviation by the adjudicating authority insofar as compliance of the directions of the Hon'ble Tribunal are concerned. However, the appellant have in their appeal memorandum raised the issue of non-exercise of the powers under Section 80 of the Finance Act, 1994. This in my considered view is not permissible as the same was not raised before the Hon'ble Tribunal and neither has it been directed by the Hon'ble Tribunal to consider it in the remand proceedings. Since the scope of the remand proceedings was limited to the extent directed by the Hon'ble Tribunal, it is not permissible for the appellant to raise any fresh grounds in such remand proceedings.



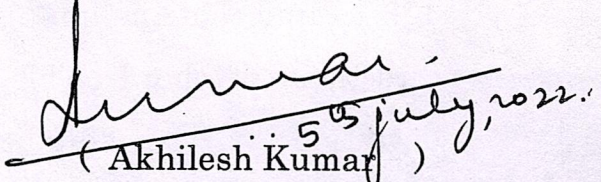
14. The appellant have claimed that since the penalty under Section 76 of the Finance Act, 1994 was set aside, the same should be refunded to them. During the course of Personal Hearing, the appellant submitted that they have received refund of the amount of penalty under Section 76 of the Finance Act, 1994. Hence, there appears to be no dispute on this issue and is considered to be settled as per law.

15. The appellant have also claimed that they have paid the penalty under Section 78 of the Finance Act, 1994 twice, which is required to be refunded to them. As stated hereinabove, the impugned order was passed in the remand proceedings ordered by the Hon'ble Tribunal with specific directions of the issues to be decided and the same was complied by the adjudicating authority while passing the impugned order. If the appellant have paid the amount of penalty, under Section 78 of the Finance Act, 1994, twice, the proper course of action would have been to file a claim for refund of the penalty paid in excess. The appellant cannot seek refund in the course of the adjudication of the main proceedings relating to payment of service tax, interest and penalty. Therefore, I do not find any merit in the contention of the appellant.

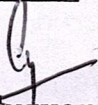
16. In view of the facts discussed herein above, I uphold the impugned order and reject the appeal filed by the appellant.

17. 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)

Attested:

  
(N.Suryanarayanan. Iyer)  
Superintendent(Appeals),  
CGST, Ahmedabad.  
**BY RPAD / SPEED POST**

To

M/s. Shilp Gravures Ltd.,

Date: .07.2022.



Appellant



780, Pramukh Industrial Estate,  
Sola-Santej Road, Rakanpur,  
Gandhinagar

The Additional Commissioner,  
CGST & Central Excise,  
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.

