



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 - टेलीफैक्स 07926305136

DIN : 20220764SW000000E543

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2674/2021 /2434 - 2438
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-34/2022-23**
दिनांक Date : **07-07-2022** 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 Letter F.No. **GEXCOM/RFD/ST/98/2021-CGST-DIV-GNR-COMMRTE-GANDHINAGAR** दिनांक: **25.05.2021** passed by Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Dolphin Projects**
FP No. 90 & 95, TP-18,
PDPU-Gift City, 200 ft. Highway,
Off. Gandhinagar-Koba Highway,
Rayson, Gandhinagar - 382007

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।
- (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 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।
- (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 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 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 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 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 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.

- (56) 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.

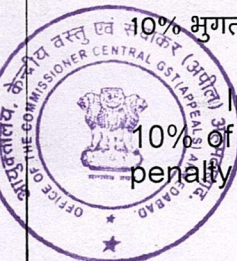
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cli) amount determined under Section 11 D;
- (clii) amount of erroneous Cenvat Credit taken;
- (cliii) 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."



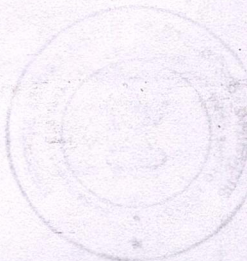
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Dolphin Projects, FP No.90 & 95, TP-18, PDPU – Gift City, 200 Feet Highway, Off. Gandhinagar-Koba Highway, Rayson, Gandhinagar – 382 007 (hereinafter referred to as the appellant) against Letter F.No. GEXCOM/RFD/ST/98/2021-CGST-DIV-GNR-COMMRTE-GANDHINAGAR dated 25.05.2021 [hereinafter referred to as “*impugned letter*”] issued by the Assistant Commissioner, CGST, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as “*issuing authority*”].

2. Briefly stated, the facts of the case is that the appellant had filed an application dated 30.03.2021 for refund of an amount of Rs.15,58,631/- in respect of the service tax paid by them on the booking deposit accepted prior to July, 2017, wherein the bookings got cancelled after July, 2017. It was submitted by the appellant that the whole booking amount along with service tax was refunded by them to the customer.

2.1 The issuing authority vide the impugned letter rejected the claim for refund on the grounds that claim for refund of the service tax has to be filed within one year from the relevant date and in terms of sub-section 5(B) (f) of Section 11B of the Central Excise Act, 1944, the relevant date was the date of payment of duty. It was further stated that the refund claim in respect of the service tax paid during the period 2015-16 and 2016-17 was filed on 30.03.2021, which was beyond the stipulated period and therefore, the appellant were not eligible for refund of service tax claimed by them.

3. Being aggrieved with the impugned letter, the appellant has filed the instant appeal making detailed submissions on merits. They have also contended that the impugned order is *ex-facie* bad in law since the principles of natural justice have not been followed. Before rejection of the refund claim, they were not issued any SCN and were not accorded the opportunity to present their case. The action of rejection of refund claim without issuance of SCN and without according opportunity of being heard in person is bad in law



and, therefore, deserves to be set aside since the fundamental principles of natural justice have been violated.

4. Personal Hearing in the case was held on 15.06.2022 through virtual mode. Ms. Snehal Somani, Chartered Accountant, appeared on behalf of the appellant for the hearing. She stated that the impugned order was passed in violation of principles of natural justice. She reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing as well as material available on records. I find that the appellant have contested the issue on merit as well as raising the grounds of violation of the principles of natural justice.

6. I find that the refund claim filed by the appellant was rejected without issuing any Show Cause Notice to the appellant and also without granting them the opportunity of personal hearing. The impugned letter rejecting the refund claim of the appellant was, therefore, issued in clear violation of the principles of natural justice. It is a settled law that orders passed without affording the opportunity of personal hearing are in violation of the principles of natural justice and hence, not sustainable.

6.1 I find that the Hon'ble High Court of Madras had in the case of PNP Polytex Pvt. Ltd. Vs. Asstt. Commr. of Cus. (Refund), Chennai – 2018 (360) ELT 964 (Mad.) held that :

“6. Firstly, the proceedings were communicated to the incorrect address. The petitioner had no notice of the proceedings. Apart from that, before rejecting the petitioner's claim, it appears that no notice of hearing was issued to the petitioner. Though the statute does not mandate an opportunity of personal hearing, as the impugned order rejecting the petitioner's claim results in civil consequences, principles of natural justice have to be read into the provisions and the petitioner should have been afforded an opportunity, as the impugned order is an order of adjudication. Therefore, on the said ground, the impugned order calls for interference.”



6.2 Similarly, in the case of Vasta Bio-Tech Pvt. Ltd V. Assistant Commissioner of Customs, Chennai – 2018 (360) ELT 234 (Mad.), the Hon'ble High Court of Madras had held that :

“5. The petitioner's case is that, had a show cause notice been issued to them, they would have explained to the Authority, as regards the discrepancies between the imported goods and the sale invoice, and would have extended full cooperation, and to the said effect, the reply affidavit has been filed to justify their stand. Since the partial rejection of the petitioner's claim for refund results in civil consequence, the principles of natural justice demands that the petitioner be afforded an opportunity. The explanation sought to be given by the respondent, in Para No. 10 of the counter affidavit cannot be countenanced, as the statute does not put a bar for an opportunity being granted, and if statute is silent, then, principles of natural justice has to be read into the statute, so that the assessee has reasonable opportunity to put forth this case.”

7. In view of the above, I set aside the impugned letter and remand the matter back to the issuing authority to decide the matter after considering the submissions of the appellant and after granting them the opportunity of personal hearing. 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 letter is set aside and the appeal of the appellant is allowed by way of remand.

8. 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.

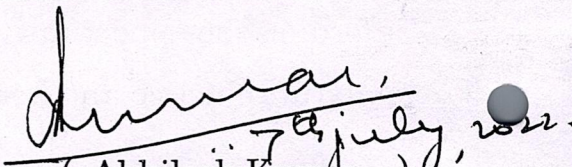
Attested:

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

To

M/s. Dolphin Projects,
FP No.90 & 95, TP-18,
PDPU – Gift City 200 Feet Highway,
Off. Gandhinagar-Koba Highway,
Rayson, Gandhinagar – 382 007

The Assistant Commissioner,


(Akhilesh Kumar)
Commissioner (Appeals)
Date: .07.2022.



Appellant

Respondent

CGST & Central Excise,
Division : Gandhinagar,
Commissionerate : Gandhinagar

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.

