



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By Regd. Post

DIN No.: 20221264SW0000000B58

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1764/2022-APPEAL / 53M9 = 53
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-076/2022-23 and 12.12.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	13.12.2022
(ङ)	Arising out of Order-In-Original No. 29/AC/DEMAND/2021-22 dated 15.02.2022 passed by the Assistant Commissioner, CGST & CE, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Anish Buildcon, 2/85, Asodiyavas, Azad Chowk, At- Maktupur, Taluka-Unjha, Mehsana, Gujarat-384170.

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

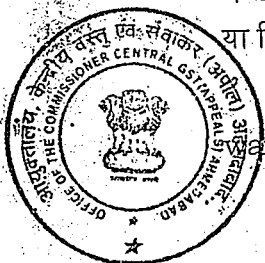
Revision application to Government of India:

(1) 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 :-

(क) 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.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 छाता 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होती 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.

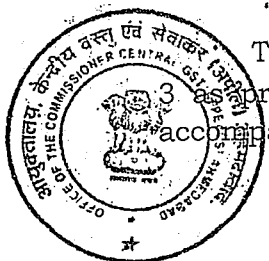
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) 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."

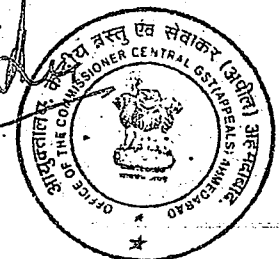


अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Anish Buildcon, 2/85, Asodiyavas, Azad Chowk, At- Maktupur, Tal- Unjha, Dist. Mehsana, Gujarat-384170 (hereinafter referred to as the appellant) against Order in Original No. 29/AC/DEMAND/2021-22 dated 15.02.2022 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Central GST, Division - Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case is that the appellant were engaged in providing 'Contractors [Others Services]' and were holding Service Tax Registration No. AVOPG9016HSD001 for the same. The data pertaining to 'Sales/Gross Receipts from Services (Value from ITR), the Total Amount paid/Credited under section 194C, 194H, 194I, 194J' of the Income Tax Act and 'Gross Value of Services Provided' was provided by the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, and on its analysis, it was noticed that the appellant had shown less amount of the 'Gross Value of Services Provided' in ST-3 Returns compared to those filed with the Income Tax Department. In order to verify the discrepancies, the appellant were requested vide letters/e-mails dated 04.05.2020, 12.06.2020, and 01.07.2020 to provide details of Service provided during the F.Y. 2016-17. However, the appellant did not respond.

2.1 It was observed that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and, their services were not covered under the 'Negative List' as per Section 66D of the FA,1994. It was also observed that, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 (as amended). Further, the appellants had not filed their Service Tax Returns (ST-3) for the period F.Y.2016-17, accordingly, their Service Tax liability was determined, on the basis of value of 'Sales of Services under Sales/Gross Receipts from Services (value from ITR)' or 'Total Amount paid/credited under Section 194C, 194I, 194H, 194J of the Income Tax Act, 1961' as provided by the Income Tax department as per details below :



Table

Sr. No	Details	Year – 2016-17 (Amount in Rs.)
1	Taxable value as per Income Tax Data	2,82,13,177 /-
2	Taxable Value declared as per ST-3 Return	0 /-
3	Difference of Value (1-2)	2,82,13,177 /-
4	Amount of Service Tax alongwith Cess (15%) not paid /short paid	42,31,977/-

3. The appellant was issued a Show Cause Notice No. V.ST/11A-248/Anish Buildcon/2020-21 dated 07.09.2020 (in short SCN) proposing :

- demand and recover Service Tax amounting to Rs.42,31,977/- under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act.
- imposition of penalty under Sections 77(2), 77C and 78 of the Finance Act, 1994.
- Imposition of penalty under section 70 of the Finance Act, 1994

4. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein :

- (i) The demand of service tax amounting to Rs.42,31,977/- was confirmed under proviso to sub-section (2) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 with option for reduced penalty in terms of clause (ii) of Section 78 (1) of the Finance Act, 1994.
- (ii) Penalty amounting to Rs. 20,000/- was imposed under Section 70 of the Finance Act, 1994
- (iii) Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- (iv) Penalty @ 200/- per day till the date of compliance or Rs.10,000/- whichever is higher was imposed under Section 77C of the Finance Act, 1994.
- (v) Penalty amounting to Rs. 42,31,977/- was imposed under Section 78 of the Finance Act, 1994.



5. Being aggrieved with the impugned order, the appellant have filed the present appeal on merits alongwith application for condonation of delay.

6. Personal Hearing in the case was held on 08.12.2022, Shri Punit Prajapati, Chartered Accountant, appeared on behalf of the appellant for the hearing. He stated that they had appeared for filing appeal on 30.05.2022, preceeding days being closed holidays.

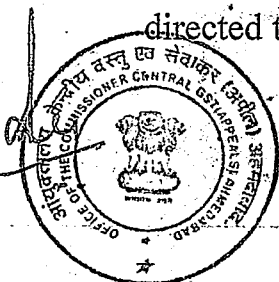
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. It is observed from the records that, the present appeal was filed by the appellant on 02.06.2022 against the impugned order dated 15.02.2022, which the appellant have claimed to have received on 25.02.2022. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

7.1 In the instant case, the impugned order is dated 15.02.2022 and the appellant have admittedly received it on 25.02.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 25.04.2022. The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal also ended on 25.05.2022.

8. Considering the prevailing Covid-19 pandemic, the Hon'ble Supreme Court of India vide Order dated 23.03.2020 extended the period of limitation in all proceedings w.e.f. 15.03.2020. The relaxation of the period of limitation was subsequently extended till 02.10.2021 vide Order dated 23.09.2021. Subsequently, the Hon'ble Supreme Court of India vide Order dated 10.01.2022 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for



the purposes of limitation. It was further directed by the Hon'ble Supreme Court that where the limitation would have expired during the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

8.1 In the instant case, the period of limitation for filing of appeal by the appellant expired on 25.04.2022 and the further condonable period of one month also expired on 25.05.2022. Therefore, in terms of the Order of the Hon'ble Supreme Court, the appellant was having a period 90 days from 01.03.2022 for filing of appeal against the impugned order dated 15.02.2022 and the 90 days period of limitation for filing appeal expired on 29.05.2022. The present appeal filed by the appellant on 02.06.2022 is, therefore, clearly beyond the period of limitation allowed in terms of the Order dated 10.01.2022 of the Hon'ble Supreme Court of India.

9. It is further observed that the Hon'ble Supreme Court of India had in their Order dated 10.01.2022 directed that period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed and the outer limits within which the delay can be condoned.

10. In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

10.1 By excluding the period from 15.03.2020 till 01.03.2022, in terms of the Order dated 10.01.2022 of the Hon'ble Supreme Court, the appellant was required to file the appeal on or before 30.04.2022 i.e. two months computed from 01.03.2022. Further, the condonable period of one month, in terms of Section 85 (3A) of the Finance Act, 1994 ended on 31.05.2022. The present appeal filed on 02.06.2022, is, therefore, clearly barred by limitation. Since the appeal in the instant case has been filed beyond this further period of one month,



this authority is not empowered to condone delay in filing of appeal beyond the period of one months as per the proviso to Section 85 (3A) of the Finance Act, 1994.

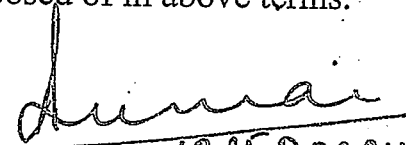
10.2 My above view also finds support from the judgment of the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad - 2014 (12) TMI 1215 - CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal had held that :

“5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to condone the delay for a further period of one month. The Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that Commissioner (Appeals) has no power to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant.”


11. In view of the facts discussed herein above and considering the order dated 10.01.2022 of the Hon'ble Supreme Court and the judgment of the Hon'ble Tribunal, supra, I reject the appeal filed by the appellant on the grounds of limitation.

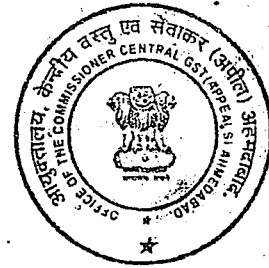
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 12th December, 2022

Attested:


 (Somnath Chaudhary)
 Superintendent (Appeals),
 CGST, Ahmedabad.



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 2/85, Asodiyavas, Azad Chowk,
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Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division - Mehsana, Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.



