



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STP/1777/2022-APPEAL / 6x51-55 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-082/2022-23 and 19.12.2022 |
| (ग) | पारित किया गया / Passed By | श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 23.12.2022 |
| (ङ) | Arising out of Order-In-Original No. 92/AC/DEM/MEH/ST/Smit/2021-22 dated 22.03.2022 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 Smit Communication, 99, Lucky Park Society, Modhera Road, Industrial Estate, Mehsana, Gujarat-382001 |

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:-

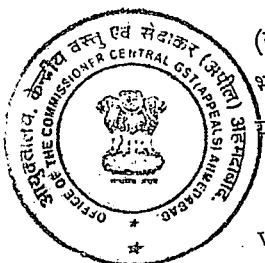
Revision application to Government of India:

(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 प्रक्रिया 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 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.

(3) 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.

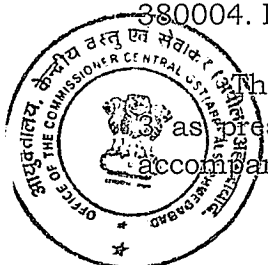
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(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 अपील 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 राशिय;
- (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।

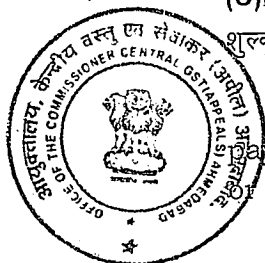
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

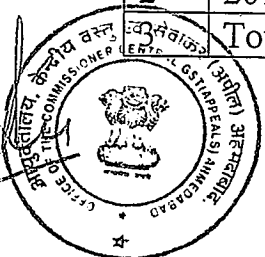
The present appeal has been filed by M/s Smit Communication, 99, Lucky Park Society, Modhera Road, Industrial Estate, Mehsana, Gujarat-384002 (hereinafter referred to as the appellant) against Order in Original No. 92/AC/DEM/MEH/ST/Smit/2021-22 dated 19.03.2022 [hereinafter referred to as "*impugned 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 taxable services and holding Service Tax Registration No.AFVPK7963CST001 for the same. As per information received vide DG Systems Report No.02 & 03 through H.Q Preventive section, discrepancies were observed in total income declared in the Income Tax Return when compared with Service Tax returns of the appellant for the period F.Y.2015-16 and F.Y.2016-17. In order to verify the said discrepancies and the manner of payment of Service Tax letters/emails were issued to the appellant, and they replied vide letter dated 18.06.2020. The submissions of the appellant were examined which had resulted into short payment of Service Tax. They were found to be ineligible for any abatement or exemption.

2.1 The services provided by the appellant were found to be covered under the definition of 'Service' as defined under Section 65 B(44) of the Finance Act, 1994 and not covered under any provisions of Section 66D of the Finance Act,1994 and were also not exempted by virtue of "Mega Exemption Notification No.25/2012-ST dated 20.06.2012". The Service Tax payable was calculated on the basis of differential 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 Income Tax Act,1961"

Accordingly the demand of Service Tax was quantified as under :

| Sr. No | Period | Differential Taxable Avlue as per Income Tax Data (in Rs.) | Rate of Service Tax including Cess | Service tAx liability (in Rs.) |
|--------|---------|--|------------------------------------|--------------------------------|
| 1 | 2015-16 | 0 | 14.5 % | 0 |
| 2 | 2016-17 | 12,24,275/- | 15 % | 1,83,641/- |
| | Total | 12,24,275/- | | 1,83,641/- |



2.1. The appellant was issued a Show Cause Notice vide F.No. V.ST/11A-262/Smit Communication/2020-21 dated 07.09.2020 (in short SCN) for demand and recovery of Service Tax amounting to Rs. 1,83,641/- under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Sections 77(2), 77C and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein :

- Demand of Rs. 1,83,641/- was confirmed alongwith interest.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act,1994.
- Penalty of Rs. Penalty @ Rs.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.
- Penalty of Rs. 1,83,641/- was imposed under Section 78 of the Finance Act,1994. Option for reduced penalty was also given under clause (ii).

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on merits. Further, they have also filed application dated Nil seeking condonation of delay in filing appeal.

5. In their application for condonation of delay for filing their appeal after 60 days, they have cited reasons that there was dispute among their old and new consultants, hence the documents were held up and the filing of appeal was delayed.

6. Personal Hearing in the case was held on 08.12.2022 Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant.

7. It is observed from the records that the present appeal was filed by the appellant on 06.06.2022 against the impugned order dated 19.03.2022, which the appellant claimed to have received on 22.03.2022.



8. It is also 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 :

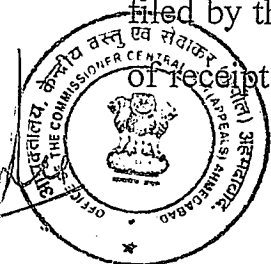
“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

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.”

9. In the instant case, the impugned order is dated 19.03.2022 and the appellant have admittedly received it on 22.03.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 22.05.2022.

9.1 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.

10. In the instant case, the impugned order was issued on 19.03.2022 and appellant had received it on 22.03.2022. Therefore, the relaxation in filing of appeals extended by the Order Hon'ble Supreme Court of India vide Order dated 10.01.2022, would not be applicable to them. Further, the present appeal was filed by the appellant on 06.06.2022 i.e after a period of more than two months of receipt of the impugned order. Moreover, the reasons for delay in filing this



appeal cited by the appellant are not cogent and convincing and do not fall under the category of appropriate cause/reason for condonation. It is observed that the appellant is registered with the department and are expected to be aware of the legal provisions governing filing of appeals and the timelines. The reasons mentioned in the application for condonation of delay appears to be vague.

11. In terms of proviso to Section 85 (3A) of the Finance Act, 1994, the Commissioner (Appeals) is allowed to condone delay and allow a further period of one month, beyond the two month only upon sufficient cause being shown to substantiate the delay, which the appellant have failed to explain in the instant case. The present appeal filed on 06.06.2022, is, therefore, clearly barred by limitation. In the absence of any appropriate/sufficient/cogent/convincing reason of delay, this authority is not able to condone delay in filing of appeal as per the proviso to Section 85 (3A) of the Finance Act, 1994.

12. In view of the facts discussed herein above I reject the appeal filed by the appellant on the grounds of limitation.

13. ~~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.

(Signature)
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 19th December, 2022

Attested:

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



BY RPAD / SPEED POST

To
M/s M/s Smit Communication,
99, Lucky Park Society,
Modhera Road,
Industrial Estate,
Mehsana, Gujarat-384002

Copy to:

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

