



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

DIN:- 20230464SW000000A506

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2716/2022-APPEAL / 132-11
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-013/2023-24 and 24.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	25.04.2023
(ङ)	Arising out of Order-In-Original No. 02/D/GNR/PMT/2022-23 dated 23.05.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Nirav Shah (HUF), Plot No. 908, Sector-21, Gandhinagar, Gujarat

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:-

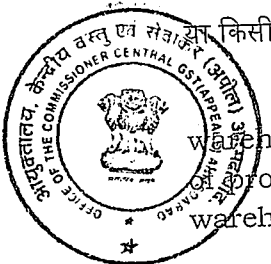
**Revision application to Government of India:**

(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, 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 :-

(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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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-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 / 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 रु 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 और 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 अपीलों 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।

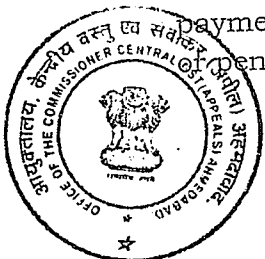
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT: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



अपीलिय आदेश / ORDER-IN-APPEAL

M/s. Nirav Shah (HUF), Plot No. 908, Sector-21, Gandhinagar, Pin-382021 (hereinafter referred to as the "appellant") have filed the present appeal against Order-In-Original No. 02/D/GNR/PMT/2022-23, dated 23.05.2022 (hereinafter referred to as the "impugned order"), issued by the Deputy Commissioner, CGST & C.Ex., Division-Gandhinagar, Commissionerate-Gandhinagar (hereinafter referred to as the "adjudicating authority").

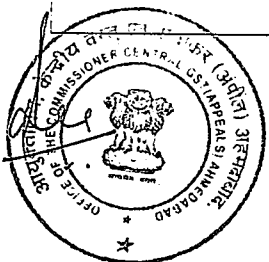
2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAFHN2888ESD001 for providing taxable services. As per the information received from the Income Tax department, it was observed that the appellant had declared the income in Income Tax Returns/Form 26AS for the F.Y. 2015-16 and F.Y. 2016-17; however, they have not filed any service tax returns for the said period. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities during the F.Y. 2015-16 and F.Y. 2016-17, letter / e-mail dated 10.05.2020 and 20.05.2020 were issued to them by the department. The appellant, vide letter/ email dated 14.10.2020, have submitted documents viz. Income Tax Returns, Balance Sheets and Profit & Loss Account. From the documents, it was revealed that the appellant were providing GTA services and received carting income from various customers' i.e. private limited companies, firms, individual persons during the relevant period. The appellant claimed that they were exempted under Notification No. 30/2012-S.T., dated 20.06.2012 (as amended).

3. The Service Tax liability of the appellant for the F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department as well as Balance Sheets and Profit & Loss Account submitted by them. The Service Tax liability calculated and arrived for the relevant period are as per details below:

TABLE

(Amount in "Rs.")

Period	Total Income as per P & L Account	Income on which Service Tax required to be paid by the receiver under RCM [companies]	Difference of Income from Goods Transport Agency Service	Abatement @70% as per Notification No. 26/2012 -S.T.	Taxable Income	Rate of Service Tax [Including Cess]	Service Tax Demand
	(1)	(2)	(1)-(2)=(3)	(4)	(3)-(4)=(5)	(6)	(7)
2015-16	4,81,07,874	37,01,400	4,44,06,474	3,10,84,531	1,33,21,943	14.5 %	19,31,682
2016-17	1,46,50,411	13,84,811	1,32,65,600	92,85,920	39,79,680	15 %	5,96,952
Total							25,28,634



4. The appellant were issued a Show Cause Notice vide F.No.V/04-143/O&A/SCN/Nirav Shah/20-21, dated 20.10.2020, wherein it was proposed to:

- Demand and recover Service Tax amount of Rs. 25,28,634/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77(2), 76 and 78 of the Finance Act, 1994.

5. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- Demand of Service Tax amount of Rs. 25,28,634/- was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994;
- Interest was imposed to be recovered under section 75 of the Finance Act, 1994;
- Penalty amounting to Rs. 25,28,634/- was imposed under Section 78 of the Finance Act, 1994 ;
- A penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 was also imposed.

6. Being aggrieved with the impugned order, the appellant have filed the present appeal on merits. They, however, have not filed any application for condonation of delay claiming the date of receipt / communication of the impugned order on 17.08.2022.

7. Personal hearing in the matter was held on 17.04.2023 to ascertain as to whether the appeal has been filed within the stipulated time limit or otherwise. Shri Rajan B. Shah, Advocate, appeared as authorized representative of the appellant. He reiterated submissions made in the appeal memorandum.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum. In their appeal memorandum, the appellant have contended in length on merit. They, however, have mentioned at Para [k] of the statements of facts that the impugned order dated 23.05.2022 was served upon / communicated to them on 17.08.2022. So, the appeal is preferred within prescribed period of limitation.

9. It is observed from the records that the present appeal was filed by the appellant on 14.09.2022 against the impugned order dated 23.05.2022, which the appellant claimed to have received on 17.08.2022. However, since there is considerable gap of 78 days in date of issue of impugned order and date of receipt of the order, as claimed by the appellant, the adjudicating authority has been requested vide letter dated 02.01.2023 to confirm the date of delivery of the impugned order. The Superintendent, CGST, Division - Gandhinagar, vide their e-mail dated 27.01.2023, has informed that the impugned order



was given to the appellant on 24.05.2022 and dated signature was obtained. It is also mentioned on file that another copy was given on 17.08.2022. They have also submitted the copy of receipt.

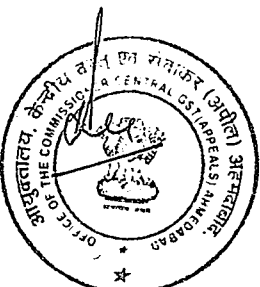
9.1 It is observed from the above communication that the present appeal was filed by the appellant on 14.09.2022 against the impugned order dated 23.05.2022, which the appellant have actually received on 24.05.2022. Thus, there is a delay of fifty two days in filing the present appeal beyond the time-limit as per the provisions of Section 85 of the Finance Act, 1994.

9.2 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, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. 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 month as per the proviso to Section 85 (3A) of the Finance Act, 1994.

10. My above view also finds support from the following judgments:-

- (i) The *Hon'ble Supreme Court* in the case of *Singh Enterprises* reported at 2008 (221) E.L.T.163 (S.C.) has held as under:-

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."



(ii) The decision of the Apex Court Judgment has also been relied upon by 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 has 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. By respectfully following the above judgments and provisions of law, I hold that this appellate authority cannot condone the delay beyond the period as prescribed under Section 85 of the Finance Act, 1994. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit. I do not discuss the issue involved in the appeal on merits of the case and on the decision taken by the *adjudicating authority* vide the *impugned order*.

12. In view of the above discussion and findings, I reject the present appeal filed by the *appellant* as being barred by limitation.

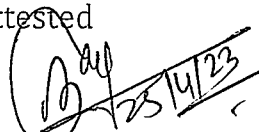
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

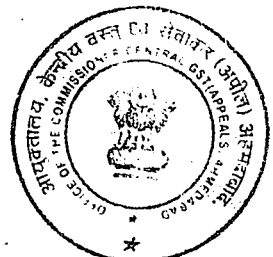
  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date: 24.04.2023.

Attested

  
25/4/23

(Ajay Kumar Agarwal)  
Assistant Commissioner [In-situ] (Appeals)  
Central Tax, Ahmedabad.



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To,  
M/s. Nirav Shah (HUF),  
Plot No. 908, Sector-21,  
Gandhinagar, Pin-382021

**Copy to: -**

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate : Gandhinagar.
3. The Deputy/Assistant Commissioner, CGST & C.Ex., Division-Gandhinagar,  
Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
- ✓ 5. Guard File.
6. P.A. File.

