



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000412117

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4363/2023-APPEAL / 1937-41
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-188/2023-24 and 29.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.01.2024
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-018-22-23 dated 02.03.2023 passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s GCC Infra Projects & Developers (Prop - Shri Gaurav Nigam), F-2 Bungalow, Sahajanand City, Sukan Silver, Kudasan, Gandhinagar – 382421

कोई व्यक्ति इस अपील-आदेश से असंतोष 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:-

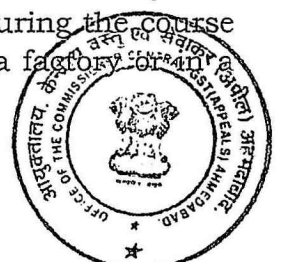
Revision application to Government of India:

(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 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 ईए-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.

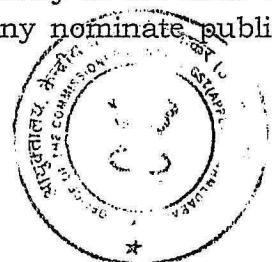
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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-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 पढ़ी 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 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 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।

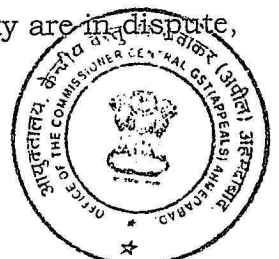
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 GCC Infra Projects & Developers (Prop - Shri Gaurav Nigam), F-2 Bungalow, Sahajanand City, Sukan Silver, Kudasan, Gandhinagar – 382421 [Address mentioned in OIO – 4, Shivalay Bungalows, Sujatpura Road, Kadi, Mehsana - 382715] [hereinafter referred to as “the appellant”] against Order in Original No. AHM-CEX-003-JC-SP-018-22-23 dated 02.03.2023 [hereinafter referred to as “the impugned order”] passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as “the adjudicating authority”].

2. Briefly stated, the facts of the case are that the appellant were holding PAN No. AIVPN8055F and were not registered under Service Tax. As per information received from income tax department, it was observed that during the period F.Y. 2017-18 (upto June-2017), the appellant had earned substantial service income but had neither obtained service tax registration nor paid service tax thereon. Accordingly, in order to verify the said discrepancy, letters dated 06.10.2021, 01.12.2021, 21.12.2021, 24.01.2022 and 08.02.2022 and summons dated 15.03.2022 and 21.03.2022 were issued to the appellant calling for the details of services provided during the period F.Y. 2017-18 (upto June-2017). However no reply was submitted by them. However, the jurisdictional officer considering the services provided by the appellant during the relevant period as taxable under Section 65 B (44) of the Finance Act, 1994 determined the Service Tax liability for the F.Y. 2016-17 on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS as details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax payable but not paid (in Rs.)
1.	2017-18 (upto June-2017)	5,22,74,740/-	15%	78,41,211/-

3. The appellant was issued Show Cause Notice No. GEXCOM/ADJN/ST/ADC/241/2022-ADJN dated 22.04.2022 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.78,41,211/- for the

period F.Y. 2017-18 (upto June-2017), under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Sections 70, Section 77 and Section 78 of the Finance Act, 1994.

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- Service Tax demand of Rs.78,41,211/- was confirmed for the period F.Y. 2017-18 (upto June 2017) under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- Penalty of Rs.78,41,211/- was imposed under Section 78 of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77 (1) (c) of the Finance Act, 1994.
- Penalty of Rs.20,000/- was imposed under Section 70 of the Finance Act, 1994.

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant is a proprietor running proprietorship firm in the name of M/s. GCC Infra Projects & Developers and is duly engaged in providing civil construction services to different state Governments for various government projects.
- They submitted that the impugned order passed by the adjudicating authority is ex-facie untenable and unsustainable in law and is liable to be set aside as it has been passed without considering the nature of services provided by the appellant which are exempted vide mega notification No. 25/2012 ST dated 20.06.2012.
- The appellant submitted that the impugned show cause notice issued by the Department and the impugned OIO passed by the adjudicating is ex facie bad



in law and deserves to be set aside in view of the following submissions made by the appellant.

6. Personal Hearing in the case was held on 24.01.2024. Shri Anil Gidwani, Advocate, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal.

7. It is observed from the records that the present appeal was filed by the appellant on 07.07.2023 against the impugned order dated 02.03.2023, which was reportedly received by the appellant on 11.04.2023.

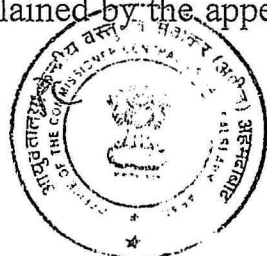
7.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(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.”

7.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 11.06.2023 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 11.07.2023. This appeal was filed on 07.07.2023, i.e after a delay of 26 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

7.3 In their application for Condonation of delay in filing the appeal, they submitted that they could not file the appeal within specified time limit due to financial difficulty. These reasons of delay were also explained by them during the course of personal hearing, the grounds of delay cited and explained by the appellant



appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal was condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

8. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.78,41,211/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y. 2017-18 (upto June-2017).

9. I find that it has been recorded at Para 17 of the impugned order that the opportunity of personal hearing was granted on 01.11.2022, 10.11.2022, 01.12.2022 & 14.12.2022, but the appellant had neither filed defense submission nor availed of the opportunity of personal hearing. Thereafter, the case was adjudicated *ex-parte*.

10. I find that the appellant has in their appeal memorandum submitted details and various documents in their defense. However, these details and documents were not submitted by them before the adjudicating authority and neither were any of the contentions made in the appeal memorandum raised before the adjudicating authority. Since the appellant did not file any written submission before the adjudicating authority and neither did they attend the personal hearing granted, no oral submissions were made by them in their defense. Accordingly, the adjudicating authority did not have the opportunity of considering the submissions of the appellant before passing the impugned order. Therefore, I am of the considered view that it would be in the fitness of things in the interest of natural justice that the matter is to be remanded back to the adjudicating authority to consider the submissions of the appellant, made in the course of the present appeal, and, thereafter, adjudicate the matter.



11. Accordingly, the impugned order is set aside and the matter remanded back to the adjudicating authority for adjudication afresh. The appeal filed by the appellant is allowed by way of remand.

12. अपील कर्ता 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.


ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 29th January, 2024

सत्यापित/Attested :



रेखा नायर
अधीक्षक (अपील्स),
सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,

M/s GCC Infra Projects & Developers
(Prop - Shri Gaurav Nigam),
F-2 Bungalow, Sahajanand City,
Sukan Silver, Kudasan,
Gandhinagar – 382421.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar
3. The Joint Commissioner, CGST & CEX, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.
6. PA File.