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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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST
DIN:- 20230564SW000041944A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1861/2022-APPEAL / 1852-56
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-028/2023-24 ; dated 26.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.05.2023
(ङ)	Arising out of Order-In-Original No. 10/ADJ/GNR/PMT/2021-22, dated 25.01.2022 passed by the Deputy Commissioner, CGST & C.Ex., Division – Gandhinagar, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	**M/s Madhav Restaurant,** Partner :- Shri Kirti Dangar, 58, Hetmani Park Society, Adalaj, Gandhinagar- 382421

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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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 अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
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 2ndfloor, 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. Registar 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 ओदश 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 हैं।

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 संषोधित 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 in 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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

M/s Madhav Restaurant, Partner :- Shri Kirti Dangar, 58, Hetmani Park Society, Adalaj, Gandhinagar- 382421 [Business Premises :-Dev Business Hub, Shop No. 3 , First Floor, Nr. Vitthal Hall, Village : Chandkheda, Taluka : Gandhinagar, Pin - 382424] (hereinafter referred to as the *"appellant"*) have filed the present appeal against Order-In-Original No. 10/ADJ/GNR/PMT/2021-22, dated 25.01.2022 (hereinafter referred to as the *"impugned order"*), issued by 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. ABBFM5027BSD001 for providing taxable services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns/26AS, when compared with Service Tax Returns of the appellant for the period F.Y. 2015-16. In order to verify the said discrepancies as well as to ascertain the correct discharge of Service Tax liabilities by the appellant during the F.Y. 2015-16, letters dated 04.06.2020 and 03.07.2020 were issued to them by the department. The appellant failed to file any reply to the query. It was also observed that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65B(44) of the Finance Act, 1994, and their services were not covered under the 'Negative List' as per Section 66D of the Finance Act, 1994. Further, their services were not exempted vide the Mega Exemption Notification No. 25/2012-S.T., dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y. 2015-16 was determined on the basis of value of difference between 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department and the 'Taxable Value' shown in the Service Tax Returns for the relevant period as per details below:

TABLE (Amount in Rs.)

F.Y.	Total Income as per ITR	Income on which Service Tax paid	Difference of Value	Service Tax alongwith Cess	Demand of Service Tax
2015-16	16,86,540	0	16,86,540	14.5%	**2,44,548**

4. The appellant were issued a Show Cause Notice vide F.No. V/04-67/O&A/SCN/Madhav/20-21, dated 20.07.2020, wherein it was proposed to:

- Demand and recover Service Tax amount of Rs. 2,44,548/- 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 76, 77(2), 77(3)(C) and 78 of the Finance Act, 1994.

5. The said Show Cause Notice was adjudicated, ex-parte, vide the impugned order wherein:

- Demand of Service Tax amount of Rs. 2,44,548/- was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994;
- Interest was ordered to be recovered under section 75 of the Finance Act, 1994;
- Penalty amounting to Rs. 2,44,548/- was imposed under Section 78 of the Finance Act, 1994 ;
- A penalty Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 was also imposed.
- A penalty Rs. 10,000/- under Section 77(3)(c) of the Finance Act, 1994 was also imposed.

6. Being aggrieved with the impugned order, the appellant have filed this appeal on merit alongwith application for condonation of delay wherein they, *inter alia,* contended as under:-

- They received the OIO dated 25.01.2022 on 03.04.2022. Period was lapsed as appellant was out of town for business work.
- They were providing restaurant service at the place of business which they had closed from May, 2018 due to loss in business. Premises was rented, hence, they had vacated the same. They did not receive any letter from the department asking for information. Hence, no reply submitted by them. They also not received any show cause notice. Hence, no reply to the SCN was submitted by them.
- They also did not receive any letter of hearing as business operation was already closed by them.
- Thereafter, vide letter dated 28.03.2022 posted to residence address of partner, they received the original OIO on 03.04.2022.
- They also referred the Clause (i) of Section 66E which specifies service portion in an activity where in goods, being foods or any other article of human

consumption, are supplied as per activity, as a declared service. Clause (i) of Section 66E is as follow :-

"SECTION 66E. Declared services.

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity."

- They also referred the Para No. 6.9.1 of CBEC's Education Guide which clarified the scope of declared service as follows:-

  "6.9.1 What are the activities covered in this declared list entry?

  The following activities are illustration of activities covered in this entry-

  - *Supply of food or drinks in a restaurant;*
  - *Supply of foods and drinks by an outdoor caterer."*

The definition of "service" given in Section 65B (44) covers any activity provided by any person to any other person for certain consideration. Thus, the service portion by restaurant is also be covered under definition of service, though it is declare service under Section 66 E(i).

- They further referred Sr. No. 19 of the Mega Exemption Notification No. 25/2012-ST, dated 20.06.2012 , which is as under :-

"19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year."

They contended that Sr. No. 19 of the Mega Exemption Notification No. 25/2012-ST, dated 20.06.2012 provides the taxability to service provided by specified restaurant only.

- As per Para 2(viii) of Notification No. 33/2012- ST, dated 20.06.2012, the aggregate value of taxable service in preceding financial year shall not exceed Rs. 10 Lakhs. The definition of "aggregate value" thereunder specifically excludes amounts raised towards wholly exempt services. Therefore, the value of services exempted under Sr. No. 19 of the Notification supra will not form the part of aggregate value.
- They also referred Rule 2C of Service Tax (Determination of Value) Rules, 2006 and claimed exemption of Rs. 10 lakhs as per Notification No. 33/2012- ST, dated 20.06.2012 by claiming 40% as service portion of gross receipts for the relevant period. They contended that as per the impugned order, taxable supply

is computed for the F.Y. 2015-16 for amount of Rs. 16,86,540/- based on the Income Tax Return without considering Rule 2C supra. As per Rule 2C taxable value should be Rs. 7,54,616/- [40% of Rs. 16,86,540/-] which is below the threshold limit of Rs. 10 lakhs as per Notification No. 33/2012- ST, dated 20.06.2012.

- They contended that in view of the above submission there is no tax liability upon them.

7. Personal hearing on condonation of delay application was held on 15.02.2023. Shri Ajeetsingh Shekhawat, Chartered Accountant, appeared as authorized representative of the appellant. He stated that the appellant did not receive SCN and that the first communication received was the Order-In-Original on 03.04.2022. He requested to condone the delay, as they had to arrange for various documents for filing appeal.

8. Personal hearing in the matter was held on 18.05.2023. Shri Ajeetsingh Shekhawat, Chartered Accountant, appeared as authorized representative of the appellant. He re-iterated the submissions made in the appeal memorandum. He also submitted a written submission during hearing.

9. In their further written submission, the appellant have contended as under:-

- SCN was issued invoking extended period of five years as per first proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- Extended period of limitation is not applicable in the present matter in terms of Section 73 of the Finance Act, 1994 as the situations of fraud, collusion, wilful mis-statement, suppression of facts are not involved. In support they relied upon the decision in case of *M/s Cosmic Dye Chemical Vs Collector of C.Ex., Bombay [1995(75) ELT 721 (SC)]* and also CBIC Circular No. 1053/02/2017-CX, dated 10.03.2017 laying guidelines for issuance of SCN.
- Merely comparing the IT Returns and 26AS Returns with Service Tax Returns will not be an instance, as decided in case of *M/s Kush Constructions Vs CGST, NACIN [ST/71307/2018-CU(DB)].*
- They further re-iterated the contention s made in the appeal memorandum and contended that in view of these submissions there is no tax liability upon them.

10. At the first and foremost, while dealing with the issue of condonation of delay, it is observed that the impugned order was issued on 25.01.2022 and appellant had

claimed its receipt/ date of communication on 03.04.2022. The appellant have filed the present appeal on 30.06.2022 and vide letter dated 29.06.2022, they have requested for condonation of delay of 28 days stating the reason that they received the OIO only on 03.04.2022 and appeal filing was delayed as appellant was out of town for business work. Thus, a delay of twenty eight (28) days occurred in filing the present appeal beyond the prescribed time limit of two months as per the provisions of Section 85 of the Finance Act, 1994.

10.1 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 were prevented by sufficient cause from presenting the appeal within the aforesaid period of two months.

10.2. On going through the submissions, I find that the appellant have claimed that they received the OIO only on 03.04.2022 and appeal filing was delayed as appellant was out of town for business work. They stated that the appellant firm is closed since 2018 and hence, no communications were received by them. Therefore, delay of 28 days occurred in filing the present appeal. I find that the reason for the delay stated by the appellant is genuine and acceptable. Therefore, I am inclined to consider the request of the appellant and condone the delay in filing appeal.

11. As regards merit of the case, I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the materials available on the record. The issue before me for decision is as to whether the impugned order confirming the demand of Service Tax amounting to Rs. 2,44,548/-, along with interest and penalty, in the facts and circumstances of the case, is legal and proper *or* otherwise. The demand pertains to the period to F.Y. 2015-16.

12. It is observed that the appellant were registered with the department for providing supply of taxable services. They were issued SCN on the basis of the data received from the Income Tax Department. The appellant were called upon to submit documents / required details of services provided during the F.Y. 2015-16. However, the appellant failed to submit the required details. Therefore, the appellant were issued SCN demanding Service Tax considering the income earned from providing

taxable services as declared in the Income Tax Returns. The adjudicating authority had confirmed the demand of Service Tax, along with interest and penalty, ex-parte, vide the impugned order.

12.1. I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

> *"2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 1-4-2021 and 23-4-2021 issued vide F.No. 137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*
>
> *3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*

12.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken by the adjudicating authority, and the impugned order has been issued only on the basis of the data received from the Income Tax department. The appellant were admittedly registered with the department. Further, the appellant have claimed that they were eligible for value based threshold exemption limit as per Notification No. 33/2012-S.T., dated 20.06.2012, as amended, in view of Rule 2C of Service Tax (Determination of Value) Rules, 2006. They claimed only 40% of gross receipts as service portion for the relevant period. They claimed that as per Rule 2C taxable value should be Rs. 7,54,616/- [i.e. 40% of Rs. 16,86,540/- Gross Income], which is below the threshold limit of Rs. 10 lakhs as per Notification No. 33/2012-S.T. All these facts claimed by the appellant were required to be examined in the case which was not done. Therefore, I find that the impugned order has been passed without following the directions issued by the CBIC.

13. I further find that at Para 19 of the impugned order, it has been recorded that the opportunity of personal hearing was granted on 08.12.2021, 05.01.2022 and 24.01.2022 but the appellant had neither appeared for hearing nor asked for any

extension and even not filed any written submission. The adjudicating authority had, thereafter, decided the case ex-parte.

13.1 In terms of Section 33A (1) of the Central Excise Act, 1944, the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that in the instant case, three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. I find it relevant to refer to the judgment of the *Hon'ble High Court of Gujarat* in the case of *Regent Overseas Pvt. Ltd. Vs. UOI - 2017(6) GSTL 15 (Guj)* wherein it was held that:

> *12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing."*

Therefore, the impugned order has been passed in violation of principles of natural justice and is not legally sustainable.

13.2 It is further observed that the appellant have made submissions in their appeal memorandum, which were not made before the adjudicating authority. I find that the adjudicating authority did not have the opportunity of considering these submissions of the appellant before passing the impugned order what they have represented before this appellate authority. The matter needs reconciliation with relevant documents for which the adjudicating authority is best placed to conduct necessary verification. In view of the above, I am of the considered view that in the interest of the principles of natural justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of personal hearing.

14. In view of the above, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh, after following principles of natural justice. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant is also directed to appear before the adjudicating authority as and when personal hearing is fixed by the adjudicating authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.

15. 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.

26th May, 2023.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 26.05.2023

Attested

31/5/23

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

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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.