



सत्यमेव जयते

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

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DIN No.: 20230464SW0000274E22

(क)	फाइल संख्या / File No.	GAPPL/COM/CEXD/32/2022-APPEAL / 557 - 61
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-004/2023-24 and 17.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	21.04.2023
(ङ)	Arising out of Order-In-Original No. 03/AC/CGST/2018-19 dated 29.05.2018 passed by the Assistant Commissioner, CGST & C.Ex., Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate, 2 nd Floor, Janta Super Market, Kalol, Gandhinagar-382715
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Serve Pharmaceuticals, Plot No. 819-A, Rakanpur, Taluka-Kalol, Gandhinagar, Gujarat-382721

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 :-

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 से 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 मामले 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 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 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.

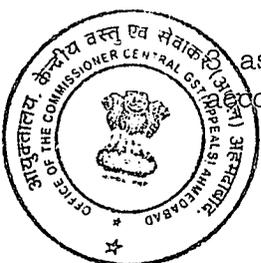
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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- 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 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 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."

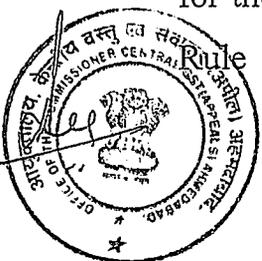


अपीलिय आदेश / ORDER-IN-APPEAL

This appeal has been filed by the Assistant Commissioner , Central GST, Kalol Division, Gandhinagar Commissionerate [hereinafter referred to "the department"] in terms of Review Order No. 11/2018-19 dated 05.09.2018 issued under Section 84 of the Finance Act, 1994 issued from F. No. IV/16-15/OIO/Dem/18-19 by the Commissioner of CGST, Gandhinagar, against Order-in-Original No.03/AC/CGST/2018-19 dated 29.05.2018 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST & CX, Kadi Division, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority] in respect of M/s Serve Pharmaceuticals, 819/A, Rakanpur, Tal -Kalol, Dist.Gandhinagar (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent were holding Central Excise Registration No. AADCS9605BXM001 and engaged in manufacture of P.P. Medicine falling under Chapter No. 30 of Central Excise Tariff Act, 1985 on their own account as well as manufacture of P.P. Medicine for various loan licencees under their brand names. They were availing value based SSI exemption under Notification No. 08/2003 dated 01.03.2003 as amended, during the period F.Y. 2001-02 to F.Y. 2005-06. They were also availing CENVAT credit of duty paid on the inputs used for branded goods manufactured on behalf of loan licencees and on their own goods after crossing the SSI exemption limit of Rs. 100 Lakhs in respective financial years. The respondent was falling within the definition of Rural areas as defined in Para 4 of the said notification which envisaged that "*goods manufactured in 'Rural area' and cleared under others brand name are eligible for inclusion in SSI exemption up to a clearance of Rs.100 lakhs in any financial year*". However, the respondent opted to pay Central Excise duty at full rate (16% advalorem) on the goods bearing the brand name of others.

2.1 During the period F.Y. 2001-02 to F.Y. 2005-06, the respondent did not club the clearance value of goods manufactured for various loan licencees under various brand names with the clearance value of their own goods to calculate the limit of Rs.100/300 Lakhs for availing the benefit of SSI exemption. It appeared to the jurisdictional officers that the respondents have availed value based SSI exemption for their own manufactured goods only and thereby contravened the provisions of Rule 4,6,8,10 and 11 of erstwhile Central Excise (No.2) Rules, 2001/ Central



Excise Rules,2002 read with Para-4 of Notification No. 08/2003 –CE, dated 01.03.2003 by not clubbing the clearance values of the goods manufactured for various loan licensees while availing SSI exemption for the period F.Y. 2001-02 to F.Y. 2005-06. Central Excise duty liability of the respondent was calculated as per the table below :

Financial Year (F.Y.)	Amount of Differential Value (in Rs.)	Amount of Differential Duty Payable (in Rs.)		
		BED	Ed.Cess	Total
2001-02	34,15,013/-	5,46,402/-	0	5,46,402/-
2002-03	47,98,191/-	7,67,711/-	0	7,67,711/-
2003-04	43,82,994/-	7,01,279/-	0	7,01,279/-
2004-05	57,27,328/-	9,16,373/-	18,327/-	9,34,700/-
2005-06	44,11,238/-	7,05,798/-	14,116/-	7,19,914/-
Total	2,27,34,764/-	36,37,563/-	32,443/-	36,70,006/-

Show Cause Notice No. V.30/15-23/Dem/OA/2006-07 dated 14.08.2006 was issued by the Additional Commissioner, erstwhile Central Excise & Customs, Ahmedabad-III (SCN for short) to the respondent proposing demand and recovery of Central Excise Duty amounting to Rs. 36,70,006/- under proviso to sub section (1) of Section 11 A of the Central Excise Act, 1944 along with interest under Section 11 AB of the Central Excise Act, 1944. Penalty was proposed under Section 11 AC of Central Excise Act, 1944.

3. Meanwhile, in an identical matter in respect of M/s Rhombus Pharma Pvt Ltd, the Commissioner, erstwhile Central Excise, Ahmedabad-III, vide Order-in-Original No. 10/Commr/2007 dated 20.04.2007 had dropped the proceedings initiated by show cause notice on grounds of limitation and ingredients of invocation of extended period being not apparent. Being aggrieved, the department had filed an appeal before the CESTAT against the said Order of the Commissioner dated 20.04.2007 vide Appeal No. E/7732007 dated 19.08.2008. Accordingly, the show cause notice dated 14.08.2006 issued to the respondent was transferred to call book on 04.10.2007 alongwith other 18 cases in terms of Board's Circular No. 719/35/2003-CX dated 28.05.2003. The SCN issued to the respondent was retrieved from call book alongwith other SCN's by order of the Commissioner on 28.09.2009.

3.1 The Hon'ble CESTAT, vide Order No. A/11397-11397/2015 dated 08.10.2015, rejected the departmental appeal and concluded that the demand of for the extended period of limitation is not sustainable. However, demand of



duty for normal period of limitation was upheld with interest. This order of the CESTAT was accepted by the department on merits.

3.2 In terms of CBEC Circular No. 1049/37/2016-CX dated 20.09.2016 a corrigendum vide F.No. V.30/15-23/DEM/OA/2006-07 dated 14.08.2016 was issued for the SCN vide which the SCN was made answerable to the Deputy/Asstt. Commissioner, Central Excise, Division- Kadi , Ahmedabad-III. Consequently, in compliance of above referred order of the Hon'ble CESTAT and CESTAT Order No. A/1330134/2009 dated 07.01.2009, in case of Pharmanza India, wherein it was held that *"the duty already paid on branded goods are required to be adjusted against the duty demanded from the assessee and directed for re-quantification of such duty"*, the show cause notice was decided vide impugned order wherein the demand of Rs. 29,50,092/- pertaining to extended period of limitation was dropped as time barred and the demand of Rs. 6,62,798/- was confirmed with interest being within normal period. Penalty of Rs. 50,000/- was imposed against the respondent company.

4. Being aggrieved with the impugned order, the Appellant Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs.

4.1 Following the Hon'ble CESTAT Order No. A/11397-11397/2015 dated 08.10.2015, the adjudicating authority has re-quantified the demand vide Para – 25(12) of the impugned order. However, the re-quantification has been done without any basis and without giving any facts, figures and period. The adjudicating authority has also not mentioned as to how the period of limitation and normal period was arrived at, in as much as he has failed to ascertain the actual date of filing of Returns for the period covered in the SCN, which is relevant for computation of normal period of demand as per explanation 1(b) of Section 11(a) of CEA, 1944. Therefore, these shortcomings of the impugned order has rendered it a non-speaking order.

4.2 The adjudicating authority has failed to mention the duty payment particulars for the period of adjustment and he has not given any detailed calculation for the amount confirmed and adjusted. Hence, the impugned order is cryptic and non speaking being devoid of merits.



4.3 The adjudicating authority has committed gross error in the order portion to the extent that an amount of Rs. 36,70,006/- was proposed as demand in the SCN. Out of the said demand, an amount of Rs.29,50,092/- was dropped and Rs. 6,62,798/- was confirmed, the total amount considered in the impugned order comes to Rs. 36,12,890/-. Therefore, a differential amount of Rs. 57,116/- (Rs. 36,70,006/- minus Rs. 36,12,890/-) was not considered by the adjudicating authority. Hence, the impugned order is a non-speaking order passed in cryptic manner without dealing with the facts and figures correctly.

5. The respondent, vide letter dated 29.10.2018, informed that they have challenged the impugned order vide SCA No. 12542 of 2018 before the Hon'ble High Court of Gujarat and the Hon'ble Court vide Order dated 14.08.2018 has granted stay in the matter. Accordingly, they requested to stay the appeal proceedings. Further, the respondents vide letter dated 04.01.2019, informed that the Hon'ble High Court of Gujarat has decided the matter vide order dated 18.12.2018 and as per the order of the Hon'ble Court, the appeal has become infructuous. Relevant portions of the order of the Hon'ble High Court is reproduced as under :

...

[6.1] *The Department has failed to put forth any justification or show any explanation for delay in adjudicating the show-cause notice even after it had retrieved the case from the Call Book on 28.09.2009 till the passing of the order impugned in this petition. As such, it has to be adjudicated within reasonable time and in absence of any proper explanation thereof, it is unlawful and arbitrary as held by this Court in the case of Siddhi Vinayak Syntex Pvt. Ltd (Supra) and other decisions subsequent thereto. Hence, the show-cause notice and the Order-in-Original passed pursuant thereto cannot be sustained.*

...

[7.0] *For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned Order-in-Original No.03/AC/CGST/2018-19 dated 25.05.2018 issued on 29.05.2018 as well as the show-cause-notice dated 14.08.2006 bearing F.No. V.30/15-23/Dem/OA/2006-07 are hereby quashed and set aside. Rule is made absolute with no order as to costs.*

In view of the above, it was clear that the Hon'ble High Court, has followed the decision in the case of *M/s Siddhi Vinayak Syntex Pvt.Ltd. Vs Union of India* reported as 2017 (352) ELT 455 (Gujarat).

6. A personal hearing in the matter was held on 30.01.2019. Shri Nirav Shah, Advocate, appeared for hearing on behalf of the respondent. He reiterated the facts of the case and pointed out the order of Hon'ble High Court of Gujarat supra.



7. It is observed that Special Leave Petition (Civil) [SLP(C)] No. 7530/2019 was filed by the Department before the Hon'ble Supreme Court of India against the decision of the Hon'ble High Court of Gujarat dated 18.12.2018. This SLP was clubbed with SLP(C) No. 18214/2017 also filed by the department against the decision of the Hon'ble High Court of Gujarat in the case of *M/s Siddhi Vinayak Syntex Pvt. Ltd. Vs Union of India*, which was admitted and pending for final decision. Accordingly, the above appeal, filed by the appellate department was transferred to Call-Book on 19.02.2019.

7.1 The Hon'ble Supreme Court of India has decided the SLP(C) No. 18214/2017 vide Order dated 18.02.2022, wherein the Apex Court has held that :

...
It is brought to our notice that in the main proceedings the demand of tax amount against the respondent was only Rs.1,00,75,528/- (Rupees One Crore Seventy-Five Thousand Five Hundred Twenty-Eight Only). As the adjudicated demand is less than the prescribed amount in terms of Circular No. 17/2019 (F.No.279/Misc.142/2007- ITJ(Pt.) dated 8th August, 2019 issued by the Department of Revenue, Ministry of Finance, the question of maintaining this special leave petition would not arise.

...
 From the above, it is clear that the SLP filed by the Department was disposed on low monetary grounds in terms of CBEC Circular No. 17/2019 dtd. 08.08.2019. It is also observed that the SLP(C) No. 7530/2019 filed in the instant case was categorized under Category-II of the Revised Order dated 25.02.2022 of the Apex Court. These matters were disposed off in the same terms as in Order dated 18.02.2022 passed in SLP (C) No. 18214 of 2017 on the ground that the demand order issued against the respondent is less than Rs. 2 Crores. Therefore, the appeal filed by the department in the instant case was held as dismissed and consequently the order of the Hon'ble Gujarat High Court dated 18.12.2018 in SCA No. 12542 of 2018 prevails. In pursuance, of the said order of the Hon'ble Supreme Court, the instant appeal was retrieved from Call Book and taken up for decision under intimation to the respondents.

8. The respondents vide letter dated 12.01.2023 submitted that OIO No. 03/AC/CGST/18-19 dated 29.05.2018 was challenged by them before the Hon'ble High Court of Gujarat, who had allowed their petition and quashed and set aside the impugned order as well as the SCN. The order of Hon'ble High Court was challenged by the Department vide SLP No. 7530/2019 before the Hon'ble Supreme Court. The Hon'ble Supreme Court have dismissed the departmental



appeal. Therefore, the appeal preferred by the department becomes infructuous and is required to be dismissed. They also submitted copies of the order of Hon'ble High Court dated 18.12.2018 in SCA No. 12542/2018 and order of the Hon'ble Supreme Court in SLP (C) No. 7530/2019.

9. Personal hearing in the matter was held on 13.03.2023. Shri Nirav Shah, Advocate, appeared on behalf of the respondent for hearing. He stated that the Hon'ble High Court has decided the issue in favour of respondent and the department appeal has been set aside by Hon'ble Supreme Court.

10. I have carefully gone through the facts of the case and submissions made by the department in their appeal and also the submissions made by the respondent. It is observed that the Hon'ble Supreme Court has vide Order dated 25.02.2022 has passed order as under :

...

O R D E R

CATEGORY-I : CASES ABOVE RS. 2 CRORES

SLP(C) Nos. 122 of 2018, 7175-7176 of 2021, 18349, 18351, 18344, 22971 of 2018, 5759 and 27638 of 2019, 18334, 18348 of 2018 and D.No. 21633 of 2018

De-linked.

To be heard together on 04.04.2022.

CATEGORY-II : CASES LESS THAN RS. 2 CRORES WHERE DEMAND ORDER PASSED

SLP(C) Nos. 12420, 18332, 16651, 16650, 28247, 18346, 29127, of 2018, 7193, 7530, 14605, 14608, 14599, 14600, 14601, 14598, 15064 and 15070 of 2019, 3268 of 2020 and D. No. 21643 of 2018

These matters are disposed of on the same terms as in order dated 18.02.2022 passed in SLP(C) No. 18214 of 2017. For, it is common ground that the demand order issued against the concerned respondent(s) is less than 2 crore.

CATEGORY-III : SCN ISSUED, KEPT IN CALL BOOK, NO DEMAND ORDER PASSED

...

In terms of the above order of the Hon'ble Supreme Court, the appeal filed by the department vide SLP (C) No.7530 of 2019 against the order of the Hon'ble High Court dated 18.12.2018 falls under Category – II of the cases and is dismissed.



Further, in terms of order of the Hon'ble Supreme Court in the case of SLP (C) No. 18214 of 2017, it was decided as under :

...
It is brought to our notice that in the main proceedings the demand of tax amount against the respondent was only Rs.1,00,75,528/- (Rupees One Crore Seventy-Five Thousand Five Hundred Twenty-Eight Only). As the adjudicated demand is less than the prescribed amount in terms of Circular No. 17/2019 (F.No.279/Misc.142/2007- ITJ(Pt.) dated 8th August, 2019 issued by the Department of Revenue, Ministry of Finance, the question of maintaining this special leave petition would not arise.

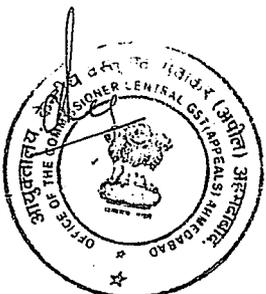
...
 Hence, as on date the order passed by the Hon'ble High Court of Gujarat dated 18.12.2018 in SCA No. 12542 of 2018 prevails.

10.1. In view of the above judicial pronouncements, it is observed that the impugned order as well as the SCN has been quashed and set aside by the Hon'ble High Court of Gujarat, vide Order dated 18.12.2018, in SCA No.12542 of 2018 filed by the respondent before the Hon'ble Court. The relevant portion of the said order is as under:

*"[6.1] The Department has failed to put forth any justification or show any explanation for delay in adjudicating the show-cause notice even after it had retrieved the case from the Call Book on 28.09.2009 till the passing of the order impugned in this petition. As such, it has to be adjudicated within reasonable time and in absence of any proper explanation thereof, it is unlawful and arbitrary as held by this Court in the case of **Siddhi Vinayak Syntex Pvt. Ltd (Supra)** and other decisions subsequent thereto. Hence, the show-cause notice and the Order-in-Original passed pursuant thereto cannot be sustained.*

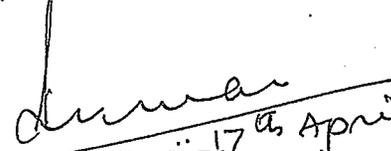
[6.2] So far as issuance of notice as claimed in the affidavit-in-reply by respondent no.2, though disputed by the petitioner, it is desirable that it is not probed further as the order impugned in this petition pursuant to the show-cause notice is required to be quashed and set aside on the ground of delay in adjudication proceedings. Since the impugned order is quashed and set aside on the ground of delay in adjudication proceedings, the argument of alternative remedy raised by the respondent is rejected as the proceedings itself is vitiated for delay in adjudication proceedings. There is no need to relegate the petitioner to the alternative remedy as the order impugned is held to be unreasonable and arbitrary.

[7.0] For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned Order-in-Original No.03/AC/CGST/2018-19 dated 25.05.2018 issued on 29.05.2018 as well as the show-cause notice dated 14.08.2006 bearing F. No.V.30/15-23/Dem/OA/2006-07 are hereby quashed and set aside... "



11. In view of above, and in compliance with the order of the Hon'ble High Court of Gujarat, as the impugned order fails to exist, the instant appeal filed by the department becomes *infructuous*. Accordingly, the appeal filed by the department is dismissed.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant department stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 17th April, 2023

Attested:


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



By Regd. Post A. D

1. The Assistant Commissioner
CGST, Division- Kalol,
Commissionerate – Gandhinagar

APPELLANT

2. M/s Serve Pharmaceuticals,
819/A, Rakanpur, Taluka-Kalol,
Dist. Gandhinagar

RESPONDENT

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy/Asstt. Commissioner, CGST, Division-Kadi, Commissionerate - Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad
(for uploading)

5. Guard file

6. PA File

