



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:- 20230864SW000031843E

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2907/2022-APPEAL / 11678 - 82
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-077/2023-24 and 25.08.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	28.08.2023
(ङ)	Arising out of Order-In-Original No. '57/AC/DEM/MEH/ST/Shailja Buildcone/2022-23 dated 13.06.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shailja Buildcon, F/7, Parekh Point, Nr. Radhanpur Char Rasta, Mehana, Gujarat-384002.

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, 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 प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 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 / 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।

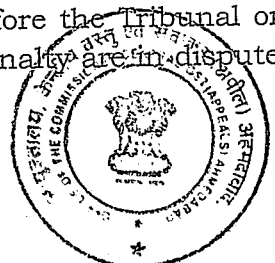
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This Order arises out of an appeal filed by M/s Shailja Buildcon, F/7-Parekh Point, Radhanpur Char Rasta, Mehsana, Gujarat-384002 [hereinafter referred to as the appellant] against OIO No. 57/AC/DEM/MEH/ST/Shailja Buildcone/2022-23 dated 13.06.2022 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, Division: Mahsana, Commissionerate: Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant are registered with Service Tax under Registration No. ABQFS9500GSD001 and are engaged in providing taxable services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their ST-3 Returns when compared with their Income Tax Return (ITR-5) and details of Form 26 AS for the period F.Y. 2014-15. Accordingly, email dated 19.06.2020 was forwarded to the appellant calling for the details of services provided during the period F.Y. 2014-15. The appellant did not submit any reply. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2014-15 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Table

Sr.No	Details	F.Y. – 2014 - 15 (in Rs.)
1	Taxable value as per Income Tax data i.e Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J or Sales/Gross Receipts from Services (From ITR)	3,01,35,874/-
2	Taxable Value declared in ST-3 Returns	72,99,879/-
3	Differential Taxable Value (S.No-1-2)	2,28,35,995/-
4	Amount of Service Tax including cess (@ 12.36%)	28,22,528/-

2.1 Show Cause Notice F.No. IV/16-13/TPI/PI/Batch 3C/2018-19/Gr.II dated 25.06.2020 (SCN in short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 28,22,528/- for the period F.Y. 2014-15 under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was proposed under Section 77(2), 77C and 78 of the Finance Act, 1994.



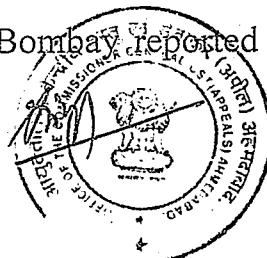
2.2 The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs. 11,29,011/- (in respect of 'Works Contract Service' as detailed at para-25 of the impugned order) was confirmed along with interest. Penalty amounting to Rs.11,29,011/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty in terms of clause (ii). Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994 and Penalty @ Rs.200/- per day till the date of compliance or Rs. 10, 000/- whichever is higher under the provisions of Section 77c(1)(c) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant have filed the instant appeal alongwith application for condonation of delay on following grounds :

(i) They are a partnership firm carrying out businesss in relation to Residential Complex Construction. They are registered with Service Tax department, filed their Service Tax Returns (ST-3) during the period F.Y. 2014-15 and also paid Service Tax as assessed. During the period they have earned income from sale of residential units. These facts were presented by them before the adjudicating authority and also during personal hearing, but were considered partly. The demand was confirmed on the basis of Income tax department data.

(ii) The SCN was issued entirely on the basis of data received from Income Tax department and without verification of facts. They have promptly paid Service Ta and filed their Returns, hence there is no suppression of facts or misinformation on their part.

(iii) The adjudicating authority have confirmed the demand under Section 73 of the Finance Act., invoking extended period of time limitation. Whereas, there was no suppression of facts or malafide intention on part of the appellant. Moreover, the department have failed to fulfil their burden to prove and justify the validity of invoking the extended period of limitation. In absence of the same the SCN becomes invalid and incorrect. In support of their contention they cited the decision of the Hon'ble Supreme Court of India in the case of M/s Cosmic Dye Chemical Vs Collector of Central Excise, Bombay reported as 1995 (75) ELT 721 (SC).



(iv) They had carried out construction of residential scheme. As per the provision of the Act, the tax is payable on receipt of advance money. During the relevant period they have [aid service tax as per service classified as 'Declared Services' under the provisions of Section 66E of the Finance Act, 1994 and after considering abatement vide Notification No. 26/2012-ST, dated 20.06.2012.

(v) During the relevant period F.Y. 2014-15 they have paid a total Service Tax amounting to Rs. 10,40,655/- considering the taxable value as Rs. 2,59,35,283/-. They also submitted that Service Tax is paid on the basis of 'Booking' of a unit and Income Tax is paid on the basis of 'Sale' of the unit, hence, both cannot be compared.

(vi) As per their submissions, since no demand of Service Tax is sustainable, therefore, imposition of penalty stands infructuous. In support they cited that decision of the Hon'ble Supreme Court in the case of Hindustan Steel Vs State of Orissa reported as 1978 ELT (J159).

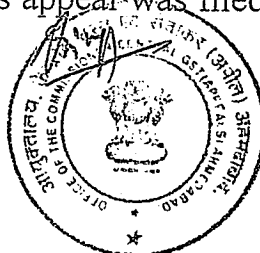
4. It is observed from the records that the present appeal was filed by the appellant on 17.10.2022 against the impugned order dated 13.06.2022, which was reportedly received by the appellant on 10.08.2022.

4.1 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."*

4.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 10.10.2022 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 10.11.2022. This appeal was filed on 17.10.2022,



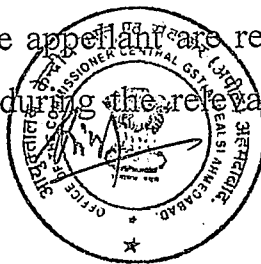
i.e after a delay of 07 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

4.3 In their application for Condonation of delay in filing the appeal, they submitted that the office/firm of the appellant was closed to festival and therefore the delay of 07 days in filing the appeal has occurred. 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.

5. Personal hearing in the case was held on 30.06.2023. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that they have not received the impugned order which was said to be dispatched on 22.06.2022. They had approached the adjudicating authority and obtained a copy of the same on 10.08.2022. He also submitted a copy of the letter dated 16.05.2023 of the Assistant Commissioner, CGST, Mehsana Division addressed to this office. They also explained the reason for delay of 07 days in filing the appeal and requested for condonation of delay and decide the case on merits. They further submitted that as mentioned in Para-15.1 of the impugned order, they have paid an amount of Rs. 10,78,565/- vide challan numbers mentioned therein. The adjudicating authority have confirmed the demand on the entire value without extending the cum-tax benefit. Upon considering the said cum-duty benefit, the demand stands fully discharged.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, and materials available on records. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 11,29,011/- confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15.

7. It is observed from the case records that the appellant are registered under Service Tax and as per their ST-3 Returns filed during the relevant period they



were engaged in providing taxable services falling under the category of 'Construction of Residential Complex service'. These facts are undisputed. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant.

7.1 I find it relevant here, to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

*Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,*

*Dated- 21<sup>st</sup> October, 2021*

*To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.  
Director General DGGI*

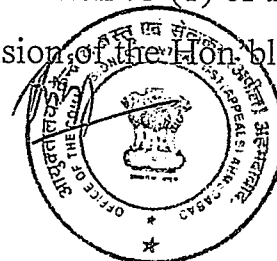
*Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.*

*Madam/ Sir,*

*...*  
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  
*...*

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and mechanically and is vague, issued in clear violation of the instructions of the CBIC discussed above.

8. It is further observed that the appellants have filed their ST-3 Returns for the relevant period and the ST-3 Return for the second half year term i.e October-March-2015 was filed on 23.04.2015. This implies that the appellant have made complete disclosures before the department and the department was aware about the activities being carried out by the appellant and these were never disputed. However, SCN dated 25.06.2020 was issued to the appellant and the demand of Service Tax amounting to Rs. ~~28,22,528/-~~ <sup>1129021-</sup> was confirmed vide the impugned order invoking the extended period of limitation in terms of Section 73 (1) of the Finance Act, 1994. In this regard it is relevant to refer the decision of the Hon'ble Supreme





Court of India in the case of *Commissioner v. Scott Wilson Kirkpatrick (I) Pvt. Ltd. - 2017 (47) S.T.R. J214 (S.C.)*], wherein the Hon'ble Court held that "...ST-3 Returns filed by the appellant wherein they .... Under these circumstances, longer period of limitation was not invocable".

8.1 The Hon'ble High Court of Gujarat in the case of *Commissioner v. Meghmani Dyes & Intermediates Ltd. reported as 2013 (288) ELT 514 (Guj.)* ruled that "if, prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".

• I also rely upon the decision of various Hon'ble Tribunals in following cases :

- (a) *Aneja Construction (India) Limited v. Commissioner of Service Tax, Vadodara [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]*
- (b) *Bhansali Engg. Polymers Limited. v. CCE, Bhopal [2008 (232) E.L.T. 561 (Tri.-Del.)]*
- (c) *Johnson Matthey Chemical India P. Limited v. CCE, Kanpur [2014 (34) S.T.R. 458 (Tri.-Del.)]*

8.2 I also find that the impugned order has been issued in violation of the CBIC Circular No. 1053/2/2017-CX., dated 10-3-2017. Relevant portion is reproduced below :

Circular No. 1053/2/2017-CX., dated 10-3-2017  
F.No. 96/1/2017-CX.I

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

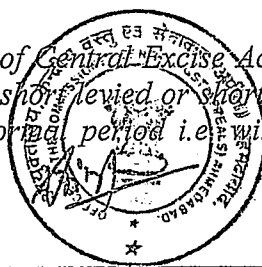
**Subject :** Master Circular on Show Cause Notice, Adjudication and Recovery - Regarding.

Kind attention is invited to Ninety two Circulars and Instructions on Show Cause Notices and Adjudication issued by the Board from time to time, placed at the Annexures to this Master Circular. These circulars address references from trade and field formations and provide clarity and uniformity on the issues raised. Board undertakes exercise of consolidating these circulars from time to time so as to ensure clarity and ease of reference. This master circular on the subject of show cause notices, adjudication proceedings and recovery is an effort to compile relevant legal and statutory provisions, circulars of the past and to rescind circulars which have lost relevance. Annexure-I to the circular provides list of the eighty nine circulars which stand rescinded. Three circulars listed in Annexure-II have not been rescinded as they contain comprehensive instructions on the subject they address.

2 The master circular is divided into four parts. Part I deals with Show Cause Notice related issues, Part II deals with issues related to Adjudication proceedings, Part III deals with closure of proceedings and recovery of duty and Part IV deals with miscellaneous issues.

3. The provisions of the Master Circular shall have overriding effect on the CBEC's Excise Manual of Supplementary Instructions to the extent they are in conflict.

2.7 **Discussion on Limitation :** As per the provisions of General Excise Act, 1944, the duty which has not been levied or paid or has been short levied or short paid or erroneously refunded can be demanded only within normal period i.e. within two



years from the relevant date. However, in specific case, where any duty of excise has been not paid or short paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or rules made thereunder with intent to evade payment of duty, then the duty can be demanded within a period of five years from the relevant date. The SCN should clearly spell out the ingredients for invoking the extended period of five years with evidence on record. A more detailed discussion on the subject is contained in paragraph 3.1 to 3.6.

3.6 Power to invoke extended period is conditional : Power to issue notice for extended period is restricted by presence of active ingredients which indicate an intent to evade duty as explained above. Indiscriminate use of such restricted powers leads to fruitless adjudications, appeals and reviews, inflates the figures of outstanding demands and above all causes unnecessary harassment of the assesseees. Therefore, before invoking extended period, it must be ensured that the necessary and sufficient conditions to invoke extended period exists.

9. Respectfully following the above judicial pronouncements and Instructions of the CBIC and comparing them with the facts and circumstances of the case, I find that the impugned order have been issued indiscriminately, without application of mind and in clear violation of the settled principles of law and in clear violations of the specific instructions of the CBIC. Therefore, the impugned order is legally incorrect, unsustainable and liable to be set aside on these grounds alone.

10. In view of the above discussions, the impugned order being legally incorrect and unsustainable is set aside. Appeal filed by the appellant is allowed.

11. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*(Signature)*

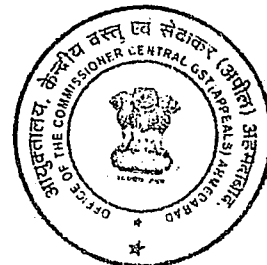
(Shiv Pratap Singh)

Commissioner (Appeals)

Dated: \_\_\_ August, 2023

Attested:

(Somnath Chaudhary)  
Superintendent, CGST,  
Appeals, Ahmedabad



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To

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Copy to:

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

