



**आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलिफैक्स 07926305136**



DIN: 20230264SW00008189E6

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/853/2022-APPEAL/8021 - 45
- ख अपील आदेश संख्या Order-In-Appeal Noe. AHM-EXCUS-002-APP-136/2022-23
दिनांक Date : 01-02-2023 जारी करने की तारीख Date of Issue 03.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/76/2021-22
दिनांक: 29.10.2021, issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Aastha Infra, Aastha Emerald,
B/h New Saurabh School, Rannapark,
Ghatodia, Ahmedabad-380061

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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 :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1984 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्योक्त 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।

(ii) 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 :

(iii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(iv) 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.



- (फ) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्वाहित 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 निर्वाहित है।
- (A) 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.
- (ख) यदि शुल्क का मुग्तान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्वात किया गया माल हो।

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

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

- (c) 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.

- (1) 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 डू. का मुख्यसीर्य के अंतर्गत धारा 36-इ में निर्वाहित की के मुग्तान के समूह के साथ टीआर-8 चलान 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.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस मुग्तान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस मुग्तान 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 सेवाकर 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 :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (शिफ्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2^म माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girnar Nagar, Ahmedabad : 380004, in case of appeals other than as mentioned in para-2(i) (a) above.



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 पत्र 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 तथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (शिफ्टेट), के प्रति अपीलों के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'संश्लिष्ट अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व धार्य 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.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग किए गए शुल्क का 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.*



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Aashtha Infra, Aashtha Emerald, B/h. New Saurabh School, Rannapark, Ghatlodia, Ahmedabad - 380061 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/76/2021-22 dated 29.10.2021 and issued on 02.11.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2.1 Briefly stated the facts of the case are that the appellant are mainly providing Works Contract Services and are holding Service Tax Registration No. ABAFA5324QSD001. During the course of audit of the financial records of the appellant, for the period from October-2014 to June-2017, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the observation as elaborated in subsequent paragraphs No. 2.1.1 was raised in Final Audit Report.

2.1.1 **Revenue Para 2: Short Payment of Service Tax on reconciliation:** The appellant has entered into a Development Agreement with Sharneshwar Co. Op. Housing Society, Vadaj for the construction of the residential complex namely Aashtha Emerald and discharged Service Tax liability under Works Contract Service on 40% of the value after claiming abatement of 60%. Further, the appellant has also claimed exemption from Service Tax on taxable value of Rs. 5,35,09,900/- in respect of units which were sold after BU date i.e. 17.03.2019, which was not allowed in Works Contract Service. Thus, the appellant has wrongly availed exemption of Rs. 5,35,09,900/- and short paid Service Tax liability as below:

(Amount in Rs.)

FY	Taxable value as per Ledger	Value as per ST-3 on which S.Tax Paid	Differential Value	Abatement	Taxable Value	Service Tax Payable
2017-18 Q1	8,00,45,269/-	2,65,35,369/-	5,35,09,900/-	3,21,05,940/-	2,14,03,960/-	32,10,594/-

2.2 The appellant were issue a query memo dated 05.09.2019 about the above objection. The appellant has not submitted any compliance to the aforesaid query memo till the date of issuance of the SCN. Thereafter, Show Cause Notice bearing No. CTA/04-38/AP-47/CIR-VII/2019-20 dated 13.02.2020 was issued to the appellant proposing demand of Service Tax amount of Rs. 32,10,594/- in terms of proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposing penalty under Section 78 of the Finance Act, 1994.

2.3 The said SCN was adjudicated vide impugned order wherein the demand of Rs. 32,10,594/- proposed in SCN was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalty of Rs. 594/- was also imposed on the appellant under Section 78 of the Finance Act, 1994.



3. Being aggrieved with the impugned order, the appellant have filed their appeal under Section 85 of the Finance Act, 1994 on 29.04.2022. However, it is observed that they have submitted Form GST DRC-03 dated 09.03.2022 for the amount @ 7.5% of Service Tax confirmed as pre-deposit in terms of Section 35F of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994 along with their appeal.

3.1 The CBIC, consequent to the rollout the integrated CBIC-GST Portal, vide Circular No. 1070/3/2019-CX dated 24.06.2019 directed that from 1st July, 2019 onwards, a new revised procedure has to be followed by the taxpayers for making arrears of Central Excise & Service Tax payments through portal "CBIC (ICEGATE) E-payment". Thereafter, CBIC, vide Instruction dated 28.10.2022, issued from F.No.CBIC-240137/14/2022-Service Tax Section-CBEC, also instructed that the payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under Section 35F of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994.

4. Further, I find that in terms of Section 35F of the Central Excise Act, 1944, *"the Tribunal or Commissioner (Appeals), as the case may be, shall not entertain any appeal (i) under sub-section (1) of Section 35, unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute"*. These provisions have been made applicable to appeals under Section 85 of the Finance Act, 1994.

5. Further, I find that as per the provisions of sub-section (5) of Section 85 of the Finance Act, 1994, *"Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944)"*.

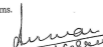
6. Therefore, the appellant, vide letter dated 16.11.2022, was requested to make the pre-deposit in the above appeal, in terms of Board's Circular No.1070/3/2019-CX dated 24.06.2019 and submit the document evidencing payment within 10 days of the receipt of the said letter. It was also informed to the appellant vide the said letter that failure to submit evidence of pre-deposit would result in dismissal of the appeal for non-compliance in terms of Section 35F of the Central Excise Act, 1944. As no reply was received from the appellant in response to the aforesaid letter dated 16.11.2022, vide another letter dated 12.12.2022, the appellant was again informed to submit the proof of pre-deposit paid in the above appeal within a week time and also informed that failure to submit evidence of pre-deposit would result in dismissal of the appeal for non-compliance in terms of Section 35F of the Central Excise Act, 1944. However, till date, the appellant has not submitted any intimation or proof of the payment of the said pre-deposit, if any, made by them. Hence, the appellant have failed to comply with the requirement of payment of pre-deposit.



7. The Commissioner (A) shall not entertain any appeal unless the appellant has deposited 7.5% of the duty (where duty or duty and penalty are in dispute) or 7.5% of penalty (where the penalty is in dispute) under Section 35F of the Central Excise Act, 1944. In terms of Board's Instruction dated 28.10.2022, I find that the pre-deposit made vide DRC-03 was invalid payment. Though sufficient time was granted to the appellant to make the revised payment in terms of Circular No. 1070/3/2019-CX dated 24.06.2019, they failed to furnish proof of revised payment of pre-deposit of 7.5% of the duty made. I, therefore, dismiss the appeal filed by the appellant for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide sub-section (5) of Section 85 of the Finance Act, 1994.

8. In view of the above, the appeal filed by the appellant is dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide sub-section (5) of Section 85 of the Finance Act, 1994.

9. 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.


(Akhilesh Kumar)
Commissioner (Appeals)

Date : 01.02.2023

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



Appellant

By RPAD / SPEED POST

To,
M/s. Aashtha Infra,
Aashtha Emerald,
B/h. New Saurabh School,
Rannapark, Ghatlodia,
Ahmedabad - 380061

The Deputy Commissioner,
CGST, Division-VII,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North



- 3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File
6) PA file

