



सत्यमेव जयते

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:20230264SW000000E482

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/169/2022-APPEAL / 385 - 90
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-157/2022-23  
दिनांक Date : 15-02-2023 जारी करने की तारीख Date of Issue 16.02.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 15/AC/Dem/AP/2021-22 दिनांक: 28.02.2022, issued by Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Guala Closures(I) Pvt. Ltd.  
Survey No. 4/4, 4/14, National Highway No.8,  
Kerala Bavla, Ahmedabad-382220

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-V, Ahmedabad  
North , 2nd 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 :

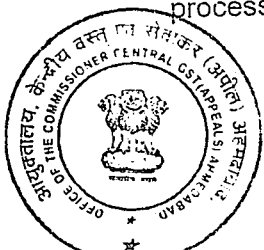
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(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।

(i) 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 :

(ii) 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।

(ii) 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.



(क) 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।

(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 भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात 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 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।

(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 इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो 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.

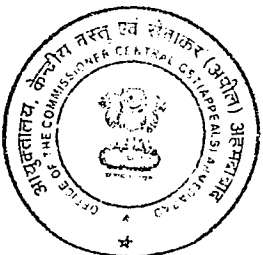
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) 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 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 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 Appellate 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 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 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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 '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.

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."



**ORDER-IN-APPEAL**

The present appeal has been filed by M/s. Guala Closures (I) Pvt. Ltd., Survey No. 4/4, 4/14, National Highway No.8, Kerala Bavla, Ahmedabad-382220 (hereinafter referred to as "*the appellant*") against Order-in-Original No.15/AC/Dem/AP/2021-22 dated 28.02.2022 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division V, Ahmedabad North (hereinafter referred to as "*the adjudicating authority*").

**2.1** Briefly stated the facts of the case are that the appellant are engaged in the manufacturing of goods viz. Bottle Closures and were holding Central Excise Registration No. AAACG4447JXM006. The appellant is having their Head Office at D-1, Sesa Ghor, Patto, Panaji, Goa – 403001 registered as Input Service Distributor and holding Registration No. AAACG4447JSD008 (hereinafter referred to as "*ISD*"). The ISD is engaged in distributing input service credit to their units at Goa, Daman and Ahmedabad as an ISD under Rule 3 of the CENVAT Credit Rules, 2004.

**2.2** During the course of EA-2000, on scrutiny of CENVAT credit documents of the ISD at Goa, it was noticed that the ISD had availed CENVAT credit on General Insurance Service, Consulting Engineer Service, Design Service other than Interior Decoration and Fashion Designing, other than the 119 listed and Transport of Goods by Road / Goods Transport Agency service. The said credit was distributed to their manufacturing units located at various locations in India under ISD registration. It was noticed that ISD unit availed the CENVAT credit of service tax paid on Car Hire and Employees/Director's Insurance and distributed the credit to their manufacturing unit at Ahmedabad. It appeared that the CENVAT credit availed on these services do not qualify as Input service under Rule 2(l) of the CENVAT Credit Rules, 2004.

**2.3** From the above details submitted by the distributor, it was observed that the appellant, during the period October, 2014 to June, 2017, had availed/ utilized the input service credit of the service tax paid on Car Hire, amounting to Rs. 81,282/-. Under, Rule 2(l)(B) of CENVAT Credit Rules, 2004, the service provided by way of renting of a motor vehicle in so far as they relate to a motor vehicle, which was not a capital goods, were excluded from the definition of input service. Therefore, it appeared that the appellant had wrongly availed & utilized the CENVAT credit amounting to Rs.81,282/-.

**2.4** Further, it was also observed that the appellant had availed/ utilized the input service credit of service tax paid on Employee/Director insurance of an amount of Rs.30,399/- as distributed by ISD. In terms of Rule 2(l)(c) of CENVAT Credit Rules, 2004, Life Insurance/Health Insurance were excluded from the definition of input service. Therefore, it appeared that the appellant had wrongly availed the CENVAT credit amounting to Rs.30,399/-.

**2.5** It was also observed that the ISD had not followed the procedure/formula prescribed for the manner of distribution of credit under Rule 7 of CENVAT Credit Rules, 2004. Hence, the amount of Rs.16,31,044/- distributed during October, 2014 -June, 2017, to the appellant was in excess and in violation of the provisions of Rule 7 read with Rule 11 of the CCR 2004.



2.6 A SCN bearing No. A-II/EA-2000/C-VI/41/Guala/G-25/ISD/2019-20 dated 20.05.2020, was issued to the appellant by the Assistant Commissioner, Pune-II Audit Commissionerate, Circle-VI, Goa, proposing the demand of;

- (i) wrongly availed input service credit amounting to Rs.1,11,681/-, distributed by the ISD, under Section 11A(1) of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004 along with interest under Section 11AB/11AA of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004;
- (ii) Excess CENVAT credit distributed by the distributor and availed by the appellant amounting to Rs.16,31,044/-, under Section 11A of the Central Excise Act, 1944 read with Rule 7 and Rule 14 of the CENVAT Credit Rules, 2004 along with interest under Section 11AB/11AA of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004; and proposing penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004.

3. The said SCN was adjudicated vide impugned order, confirming the demands of Rs.1,11,681/- and Rs.16,31,044/- along with interest. Penalty equal to demand confirmed was also imposed on the appellant under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004.

4. Being aggrieved by the impugned order, the appellant have preferred the present appeal contesting the demand, primarily on following grounds:-

- The notice issued in the present case was issued by Goa Commissionerate, whereas the appellant has been made answerable before A.C. having jurisdiction within Ahmedabad. The ISD is located at Goa and is separately registered with Goa Commissionerate. The credit was distributed by the ISD at Goa to the appellant located at Ahmedabad under the cover of invoice. Moreover, the credit availed has been reflected by the appellant, at the respective ST-3 Returns filed. In terms of Rule 3 of the Service Tax Rules, 1994, the Central Excise officer is appointed for exercising the power under Chapter-V of the Finance Act, 1994 and can exercise the power within the local limit assigned to them. Further, Para 12.1 and Para 12.2 of Master Circular No.96/1/2017-CX.1 dated 17.01.2017 also states that the notice has to be issued by the officer having the jurisdiction as defined in the Act. They placed reliance on catena of decisions some of the case laws are listed below:-
  - Ranadey Miconutrients-1996 (87) ELT 19
  - Dhiren Chemical Industries-2002 (139) ELT 3
  - Helios Food Additive Pvt. Ltd.- 2011 (24) STR 721
  - Trade and Industries – 2001 (136) ELT 767
- The reliance placed by the adjudicating authority in the case of Larsen & Toubro Ltd-2019(26) GSTL (84) (Tri-Del) is distinguishable on facts as the in the present credit was transferred by the ISD registered with Goa Commissionerate, therefore, the notice should have been issued to ISD by their jurisdictional authorities and not to the appellant as they have merely received the credit distributed by ISD. They placed reliance on the case law reported at 2008 (229) ELT 485 (MDS



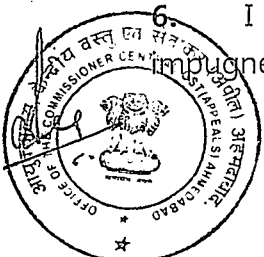
Switchgear Ltd). The Goa Commissionerate has no jurisdiction to issue such notice hence the notice is null and void ab initio.

- The receipt of service by ISD was under the cover of invoice, payment of same to the supplier etc, were never disputed in the notice and the impugned order. The credit was subsequently transferred under the cover of invoice which does not reflect the details of the service the credit of which is transferred. For any mistake committed by ISD the demand should have been issued to them and not to the recipient of credit.
- The allegation regarding not following the prescribed formula for distributing pro-rata credit is vague as the notice mentioning the amount to be distributed (in Annexure –C) does not mention the ratio based on which the amount was arrived. The burden of proof is on the revenue and mere assertion is of no avail. Further, the notice has worked out the demand by reducing excess credit from the less credit transferred during the financial year in dispute. Hence, the demand is not sustainable. Reliance placed on Garware Nylons Ltd-1996 (87) ELT 12 (SC); Champdany Industries Ltd- 2009 (241) ELT 481 (SC).
- When the demand is not sustainable interest and penalty is also not sustainable.
- The ST-3 returns were filed on monthly basis, therefore, the demand for the period October 2014 to March, 2015 is time barred as the notice was issued on 20.05.2020 and beyond limitation. Thus, the demand which is time barred should be reduced and the differential duty, if any works out to Rs.3,84,789/- (Rs.11,34,022/- minus Rs.7,49,232/-).
- Mere non-indication of formula adopted for distribution of CENVAT credit does not amount to suppression of facts when there is no liability to disclose such information. They placed reliance on Brindavan Beverages-2007(213) ELT 487, Uniworth Textiles Ltd- 2013 (288) ELT 161 (SC); Pahwa Chemicals P. Ltd. – 2005 (189) ELT 257 (SC).
- The notice does not specify the grounds to impose penalty. Also the allegation was not of non-eligibility of credit or credit being availed twice but of improper distribution, hence the issue is of revenue neutrality where penalty cannot be imposed.

4.1 The appellant also filed additional written submission dated 06.02.2023, wherein they informed that a similar notice was issued to Daman location and the issue was decided by the Commissioner (Appeals), CGST, Surat in their favour, which was accepted by the revenue. They reiterated the grounds of appeal and stated that as the notice is served to ISD also, the present demand is legally not sustainable.

5. Personal hearing in the matter was held on 08.02.2023. Shri Rajiva Srivastava, Advocate, appeared on behalf of the appellant. He re-iterated the submissions made in the appeal memorandum as well as the submissions made in the additional written submission dated 06.02.2023.

6. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal



memorandum, the submissions made at the time of personal hearing as well as the submissions made in the additional written submission. The issue to be decided in the present case is as to whether the service tax demand of Rs.17,42,725/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

7. It is observed that the SCN in the case has been issued by the Assistant Commissioner, Pune-II Audit Commissionerate, Circle-VI, Goa to the appellant based in Ahmedabad and have been made answerable to the Assistant /Deputy Commissioner of Central Excise & CGST, Division-V, Ahmedabad North, Ahmedabad. The main allegation in the SCN is that the head office of the appellant registered as ISD is located in Goa. This ISD unit has passed the credit of service tax paid on Car Hire and Employee/Director Insurance to their various other units located at Goa, Daman and Ahmedabad. Further, it is also alleged that the credit transferred was not in terms of the formula or procedure prescribed under Rule 7 of the CENVAT Credit Rules, 2004.

7.1 Before taking up the issue on merits, I will first examine the issue whether the SCN issued to the appellant sustains on the limited grounds of jurisdiction, as has been contested by the appellant. It is observed that after service tax was brought into force in 1994, an Order No. 1/1/94, dated 29-6-1994 was issued by the Board under Rule 3 of the Service Tax Rules, 1994, appointing the Central Excise Officers for purpose of assessment and collection of service tax. The said Rule 3 reads as under:-

*"Rule 3. Appointment of officials. - The Central Board of Excise and Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers."*

7.2 This Rule empowers the Board to appoint such Central Excise officers for exercising the powers under the Service Tax law within such local limits as it may assign and also to specify the taxable service in relation to which such officers shall exercise their powers. Thus, a Central Excise Officer can be appointed for the purpose of levy and collection of Service Tax. The purpose and object of appointment of officer under Rule 3 of the Service Tax Rules, 1994, is to implement the provisions of Chapter V of the Finance Act, 1994 which relates to levy and collection of Service Tax. The Order issued under Rule 3 of the Service Tax Rules, 1994, specifies the jurisdiction with reference to the 'assessee' within the territorial jurisdiction, thus, the location of the registered office of a service tax payer is crucial to determine the jurisdiction of the Commissioners. Consequently, it follows that irrespective of where the service may be provided, the location of the assessee would determine the jurisdiction of the Central Excise/Service Tax Commissioner to adjudicate service tax cases.

7.3 Board has issued a Master Circular No. 1053/2/2017-CX., dated 10-3-2017, wherein the jurisdiction of the Central Excise officer is defined. In terms of Para 12.1 & 12.2 of Master Circular No. 1053/2/2017-CX., dated 10-3-2017, the officers of Central Excise can issue a SCN falling within their jurisdiction of the Commissionerate and such cases shall be adjudicated by the officers of the Executive Commissionerate. And Central Excise Officers of all ranks in the Audit Commissionerate shall also have powers to adjudicate Show Cause Notice in Zones. Thus, the jurisdiction is specifically defined. A



proper officer cannot issue the SCN of other Executive Commissionerates unless specifically assigned. The relevant text of the circular is re-produced below:-

**12.1 Jurisdiction of Executive Commissionerate :** Officers of Central Excise within the jurisdiction of a Commissionerate normally issue a SCN for demands of duty pertaining to assesseees or units falling within the jurisdiction of the Commissionerate and such cases are adjudicated by the Officers of the Executive Commissionerate. Officers of Executive Commissionerate also adjudicate SCNs issued by the Audit Commissionerates under normal circumstances.

**12.2 Adjudication by officers of Audit Commissionerate :** Central Excise Officers of all ranks in the Audit Commissionerate shall also have powers to adjudicate Show Cause Notice in Zones where the pendency position warrants adjudication by Audit Commissionerates Officers. Power has been accorded to the Chief Commissioners to distribute the cases for adjudication within the Zone, including to the officers of various ranks of the Audit Commissionerate. In case of Service Tax Zones, the cases would have to be transferred across the Zones. The Zonal Member in-charge shall take stock of pending cases at the Commissioner level, and in exercise of powers conferred to the Board, earmark these cases to Commissioner (Audit) and Commissioners of Central Excise across Zones if there is a need to do so. The function of review, appeal, etc. even for cases adjudicated by the officers of the Audit Commissionerate shall continue with the Executive Commissionerate as adjudication by officers of Audit Commissionerate shall continue be an exception rather than as a rule.

**12.3 Cases investigated by DGCEI :** DGCEI after investigation issues show cause notice which may be answerable to either ADG (Adjudication) or to Executive Commissioner as the case may be. Board has issued detailed circulars regarding adjudication of cases booked by DGCEI vide Circular no 994/01/2015-CX dated 10-2-2015 and Circular No. 1000/7/2015-CX., dated the 3rd March, 2015. The salient points of the instruction given are as follows.

**12.4 To assign cases for adjudication amongst the Additional Director General (Adjudication) and the field Commissioners, following general guidelines may be followed :-**

(i) Cases including cases pertaining to the jurisdiction of multiple Commissionerates, where the duty involved is more than Rs. 5 crore shall be adjudicated by the ADG (Adjudication). However in case of large pendency of cases or there being a vacancy in the rank of ADG (Adjudication), Director General, CEI may assign cases involving duty of more than Rs. 5 crore to the field Commissioners following clauses (iv) and (v) of the guidelines.

(ii) Director General, CEI may issue general orders assigning the show cause notices involving duty of more than Rs. 5 crore issued by the specified Zonal Units and/or the DGCEI Headquarters to a particular ADG (Adjudication).

(iii) Where ADG (Adjudication) is the adjudicating authority in one of the cases involving identical issue or common evidences, the Director General, CEI may assign all such cases to that ADG (Adjudication).

(iv) Cases to be adjudicated by the executive Commissioner, when pertaining to jurisdiction of one executive Commissioner of Central Excise, shall be adjudicated by the said executive Commissioner of the Central Excise.

(v) Cases to be adjudicated by the executive Commissioners, when pertaining to jurisdiction of multiple Commissionerates, shall be adjudicated by the Commissioner in whose jurisdiction, the noticee from whom the highest demand of duty has been made, falls. In these cases, an order shall be issued by the Director General, CEI exercising the powers of the Board, assigning appropriate jurisdiction to the executive Commissioner for the purposes of adjudication of the identified case.

(vi) Show Cause Notices issued prior to 1st March, 2015 shall continue to be adjudicated by the Commissioner before whom the adjudication proceedings are continuing unless the Director General, CEI issues orders appointing a new adjudicating authority in terms of the guidelines above or where Board appoints a new adjudicating authority on the basis of proposal of DGCEI.

(vii) Where DGCEI proposes appointment of an adjudicating authority not in conformity with the above guidelines, DGCEI shall forward such proposal to the Board.





(viii) *Cases to be adjudicated by the officers below the rank of Commissioner may be adjudicated only by the field officers in the executive Commissionerates and the above guidelines shall apply mutatis mutandis."*

*Above 12.5 guidelines shall also apply mutatis mutandis to the Service Tax cases booked by DGCEI. Notification No. 2/15-Service Tax, dated 10-2-2015 has been issued to provide necessary jurisdiction to the DG, CEI over the Principal Commissioners and Commissioners of Service Tax in this regard.*

7.4 In view of above provisions, I find that the SCN issued by the Assistant Commissioner of Circle-VI, Pune-II Audit Commissionerate, Goa, is without any jurisdiction as the noticee/appellant does not fall within their jurisdiction. As per the wordings of the Circular, the power assigned in Chapter V of the Act, has to be assigned to the officer having jurisdictional control over the assessee or unit. In the present case, the appellant are located in Ahmedabad and, therefore, the jurisdictional control of the appellant shall be with the jurisdictional Ahmedabad Commissionerate. Hence, the SCN should have been issued by the jurisdictional officer of Ahmedabad Commissionerate. The Pune Audit Commissionerate has the jurisdictional control over the ISD unit located in Goa and not on the appellant located in Ahmedabad. Therefore, the SCN issued by the Pune Audit Commissionerate to the appellant, is without any jurisdiction and is liable to be the set-aside.

7.5 Further, it also observed that the adjudicating authority by deciding the SCN issued by Pune Audit Commissionerate has also violated the guidelines issued by Board vide Circular No. 1056/05/2017-C.X., dated 29-6-2017, in more so, because he is not appointed as a common adjudicating authority. Relevant Para 3.2, is re-produced below:-

*"3.2 In case of Service Tax SCNs, there would not be any difficulty where SCNs are issued to assessee having single service tax registrations or ISD registration. As far as Show Cause Notices issued to the assessee having Centralised registration is concerned, the jurisdictional authority in the re-organised CGST/Central Excise Commissionerate exercising control over the business location which had taken Centralised Registration (in the previous regime) may take up the adjudication of the legacy notice irrespective of the fact that Show Cause Notice issued to a particular location or to multiple locations covered under such Centralised Registrations after his appointment as common adjudicating authority. Proposal for appointment of common adjudicating authority may be forwarded to Board or DGCEI in terms of the said Master Circular dated 10th March, 2017 which has been made applicable for Service Tax SCNs also to this extent."*

7.6 It is observed that Hon'ble Tribunal in the case of *Ores India (P) Ltd-* reported in 2008 (12) S.T.R. 513 (Tribunal), has clearly held that as per Rule 3 of Service Tax Rules, 1994 read with Board's order No. 1/94, dated 29-6-1994, it is the Commissioner in whose territorial jurisdiction, the registered office of the service provider is located, has the jurisdiction over him irrespective of the place where service is provided. In the instant case, the ISD is registered with the Goa Commissionerate and credit has been distributed to various factories located outside Goa. Therefore, the Assistant Commissioner (Audit), Goa has no jurisdiction over the activities undertaken by the appellant in Ahmedabad nor does he has the right to issue a demand notice. Therefore, the proceeding initiated by the Assistant Commissioner (Audit), Pune, in this case is not sustainable in law.

8. In view of above discussion, I refrain from expressing any opinion on the merits of the case considering that the demand notice as *ab initio* void and non est. Accordingly, the impugned order is set-aside and the appeal filed by the appellant is allowed.



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

*Aruna*  
15 Feb 2023  
(अखिलेश कुमार) *work.*  
आयुक्त (अपील्स)

Date: 15.02.2023

Attested

*Rekha Nair*  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad



**By RPAD/SPEED POST**

To,  
M/s. Gaula Closures (I) Pvt. Ltd.,  
Survey No. 4/4, 4/14, National Highway No.8,  
Kerala Bavla,  
Ahmedabad-382220

**Appellant**

The Assistant Commissioner,  
Central GST, Division V,  
Ahmedabad North

**Respondent**

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.