



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- टेलीफैक्स 07926305136



DIN:20230264SW000000AF14

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1264/2022-APPEAL /8982-58
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-167/2022-23  
 दिनांक Date : 22-02-2023 जारी करने की तारीख Date of Issue 28.02.2023  
 आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST/D-VI/O&A/27/Aakash/AM/2021-22 दिनांक: 26.11.2021, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Aakash Infrastructure,  
 Shop No. 248, Shukan Mall,  
 Near CIMS Hospital, Science City Road,  
 Ahmedabad-380060

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad  
 North, 7<sup>th</sup> Floor, B D Patel House, Nr. Sardar Patel Statue ; Naranpura,  
 Ahmedabad - 380014

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 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.



(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.

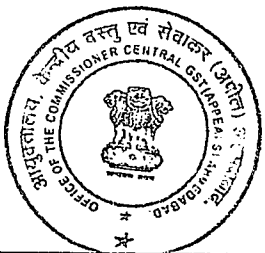
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अनुसूचि-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।

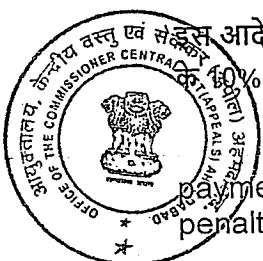
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Aakash Infrastructure, Shop No. 248, Shukan Mall, Near CIMS Hospital, Science City Road, Ahmedabad - 380060 (hereinafter referred to as "the appellant") against Order-in-Original No. GST/D-VI/O&A/27/Aakash/AM/2021-22 dated 26.11.2021 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are engaged in business of providing Construction of Residential Complex Services and is holding Service Tax Registration No. ABAFA7502JSD001. During the audit of the financial records of the appellant, for the period from October-2015 to June-2017, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the following observations were raised in the Final Audit Report No. CE/ST-729/2020-21 dated 05.04.2021:

**Revenue Para 1: Short payment of S.Tax on Revenue Reconciliation:** During the course of audit and reconciliation of financial records, it has been noticed that during the audit period the appellant had short paid service tax on differential value of Rs. 4,50,000/- in FY 2016-17. Thus, short payment of Service Tax to the tune of Rs. 20,250/- was noticed in FY 2016-17. The appellant is required to pay total Service Tax of Rs. 20,250/- under Rule 6(1) of the Service Tax Rules, 1994 read with Section 68 and Section 73 of the Finance Act, 1994 along with interest and penalty under Section 75 & Section 78 of the Finance Act, 1994. On being pointed out, the appellant agreed with the audit objection and voluntarily paid Duty of Rs. 20,250/- vide GST Challan dated 05.01.2021 and filed DRC-03 for the same (Debit Entry No. DC2401210031600) and paid Penalty of 3038/- vide GST Challan dated 09.01.2021 and filed DRC-03 for the same (Debit Entry No. DC2401210065399). However, the appellant had not paid Interest on the Service Tax amount.

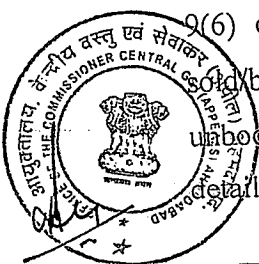
**Revenue Para 2: Short payment of S.Tax under RCM on GTA service:** During the course of audit and reconciliation of financial records, it has been noticed that during the audit period the appellant had short paid service tax on differential value of Rs. 43,28,928/- in FY 2015-16, Rs. 40,544/- in FY 2016-17 and Rs. 29,38,106/- in FY 2017-18 Q1 on GTA Service under Reverse Charge Mechanism. Thus, short payment of Service Tax to the tune of Rs. 1,88,308/- was noticed in FY 2015-16, Rs. 2,004/- in FY 2016-17 and Rs. 1,32,215/- in FY 2017-18 Q1. The appellant is required to pay Service Tax of Rs. 3,22,528/- under Rule 6(1) of the Service Tax Rules, 1994 read with Section 68 and Section 73 of the Finance Act, 1994 along with interest and penalty under Section 75 & Section 78 of the Finance Act, 1994. On being pointed out, the appellant agreed with the audit objection and voluntarily paid service tax amount of Rs. 3,22,528/- vide GST Challan dated 05.01.2021 and filed DRC-03 for the same (Debit Entry No. DC2401210031600) and paid Penalty of 48,379/- vide GST Challan dated 09.01.2021 and filed



DRC-03 for the same (Debit Entry No. DC2401210065399). However, the appellant had not paid Interest on the Service Tax amount.

**Revenue Para 4: Non-payment of Interest on wrong availment of Cenvat credit:** During the course of audit and reconciliation of financial records, it has been noticed that during the audit period, the appellant has availed Cenvat Credit to the tune of Rs. 39,84,401/- in respect of various Input Service Invoices issued by M/s. DJ Corporation, M/s. Jay Ambe Construction and M/s. Shree Khodiyar Construction. As per Rule 4(7) of the Cenvat Credit Rules 2004, in order to avail the Cenvat credit, the appellant was required to make payment within prescribed time limit of 90 days. However, they have failed to make the payment within the prescribed time. Though, the appellant has made full payment of the basic amount of invoice along with Service Tax in due course, however, they have not paid interest for the period of wrong availment of Cenvat Credit. Therefore, Interest of Rs. 3,75,033/- is required to be recovered from the appellant under the provision of Rule 14 of the Cenvat Credit Rules, 2004 read with the Section 75 of the Finance Act, 1994. On being pointed out, the appellant has agreed with the audit objection, however, till date of issuance of notice, they have not paid the interest.

**Revenue Para 5: Wrong availment of Cenvat credit on ineligible Input Services:** During the course of audit and reconciliation of financial records, it was noticed that the appellant has availed Cenvat Credit for the whole project for being the provider of output service of Construction of Residential Complex Service and Construction of other than Residential Complex Service, in respect of their scheme Avadh City, Viramgam comprising Row House/Bungalow, Flats and Commercial Shops. The completion certificate or Building Use (BU Permission) certificate for the said scheme was issued on 28.06.2017. It was noticed that as on date of obtaining the BU certificate, certain units remained unbooked. On receipt of BU Certificate, their unbooked units as on BU date were not output service while the appellant has utilized input services of tax paid under RCM in construction of unbooked units as on date of B.U., and have already availed Cenvat credit of the said input services in respect of those unbooked units also. Therefore, Cenvat credit availed on the units remained unbooked as on BU Date was required to be reversed by the appellant. As per Rule 3 of the Cenvat Credit Rules, 2004, the appellant was eligible to avail Cenvat credit only in respect of input services which were utilized for providing Output Service only. Hence, there appears to be contravention of Rule 3 of the Cenvat Credit Rules, 2004, as they were required to take Cenvat credit of input services which have been used for providing output services only whereas they have availed Cenvat credit in respect of the units remained unbooked as on BU date which are not an output service at all. The units remained unbooked as on BU date are not at all output service but outright sale, while they have already availed input services Cenvat credit in respect of these unsold/unbooked units also. Thus, the appellant has contravened the provisions of Rule 3 & Rule 9(6) of the Cenvat Credit Rules, 2004 by availing ineligible Cenvat credit on the units unbooked or to be sold /booked after BU permission. Therefore, Cenvat credit in respect of unbooked units as on BU date was wrongly availed by them and is required to be reversed. The details of area of all the units sold/booked before BU and unsold as on the date of BU was



submitted by the appellant. On the basis of same, proportionate ineligible Cenvat credit calculated on the basis of area of sold/booked units before BU and unsold/unbooked units as on BU date is calculated as Rs. 35,47,751/- which is required to be recovered from the appellant along with interest under the provision of Rule 14 of the Cenvat Credit Rules, 2004 read with the Section 75 of the Finance Act, 1994 and penalty under the provision of Rule 15 of the Cenvat Credit Rules, 2004 read with the provision of the Section 78(1) of the Finance Act, 1994. On being pointed out, the appellant has not agreed with the audit objection and not paid the duty along with applicable Interest and Penalty.

2.1 As these para remain unsettled, hence a SCN bearing No. CTA/04-664/AP-47/Cir-VII/2020-21 dated 15.04.2021, was issued to them proposing:

- (i) demand of Service Tax amount of Rs. 3,42,778/- in terms of proviso to Section 73(1) of the Finance Act, 1994 and proposing penalty under Section 78 of the Finance Act, 1994;
- (ii) appropriation of Service Tax of Rs. 3,42,778/- and penalty of Rs. 51,417/- already paid by the appellant;
- (iii) recovery of interest of Rs. 2,28,961/- [Rs. 18,322/- (Revenue Para-1) + Rs. 2,10,639/- (Revenue Para-2)] under Section 75 of the Finance Act, 1994;
- (iv) recovery of interest of Rs. 3,75,033/- (Revenue Para-4) under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules 2004;
- (v) recovery of the wrongly availed/utilised cenvat credit amounting to Rs 35,47,751/- under the proviso to Section 73(1) of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules 2004 along with interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules 2004 and proposing penalty under Section 78 of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules 2004.

2.2 The said SCN was adjudicated by the adjudicating authority, ex-parte, vide impugned order wherein he has ordered as under:

- (i) confirmed demand of Service Tax amount of Rs. 3,42,778/- in terms of proviso to Section 73(1) of the Finance Act, 1994 along with interest of Rs. 2,28,961/- [Rs. 18,322/- (Revenue Para-1) + Rs. 2,10,639/- (Revenue Para-2)] under Section 75 of the Finance Act, 1994 and imposed penalty of Rs. 3,42,778/- under Section 78 of the Finance Act, 1994;
- (ii) appropriated Service Tax amount of Rs. 3,42,778/- and penalty of Rs. 51,417/- already paid by the appellant against the aforesaid liability;
- (iii) confirmed demand of interest of Rs. 3,75,033/- (Revenue Para-4) under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules 2004;
- (iv) confirmed demand of wrongly availed/utilised cenvat credit amounting to Rs 35,47,751/- under the proviso to Section 73(1) of the Finance Act, 1994 read with



the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules 2004 along with applicable interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules 2004 and imposed penalty of Rs. 35,47,551/- under Section 78 of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules 2004.

3. Being aggrieved with impugned order, the appellant have filed the present appeal under Section 85 of the Finance Act, 1994 along with the application seeking condonation of delay.

4. Personal hearing in the matter of application for condonation of delay was held on 15.02.2023. Shri Kamlesh Patel and Shri Kunal Vyas, authorized representatives, appeared on behalf of the appellant for personal hearing. They reiterated the submission made in his application for condonation of delay.

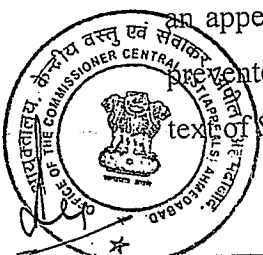
5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 26.11.2021 and the same was received by the appellant on 26.11.2021. The present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 24.05.2022. The appellant, vide their application of condonation of delay in filing appeal in Form ST-4, inter alia, submitted as under:

(i) Senior Accountant who was handling all these activities was severely infected with COVID-19 in the month November 2021 because of which management could not take any action regarding final order receipt. During the January 2021 order has been taken for payment. Accountant infected with COVID-19 was not able to joint again even after strong followups.

(ii) Thereafter new accountant was found appointed in March 2022 and gathered the documents which was required in filing the appeal.

(iii) While audit was conducted and SCN was issued on 15.04.2021, Accountant, who was handling all this work, was infected with COVID-19 in second waive during May 2021 and thereafter had left the job and shifted to Canada. Due to which activities of the organization was disturbed in the absence of accountant. And new accountant joined was again infected during November 2021 as mentioned in Para 1 supra.

5.1 It is observed that the relevant Section 85 of the Finance Act, 1994, provides that the appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Further, under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal with in the period of two months. Relevant text of Section 85 is reproduced below:



*“SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).—*

*(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).*

*(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.*

*(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012, receives the assent of the President:*

*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 three months, allow it to be presented within a further period of three months.*

*(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 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :*

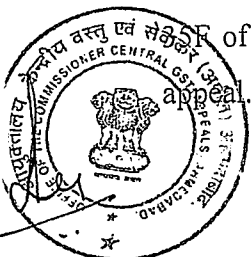
*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”*

5.2 It is also observed that while deciding the M.A. 29 of 2022 in M.A. No. 665/2021 in SMW(C) No. 3 of 2020, the Hon'ble Supreme Court of India has vide Order dated 10.01.2022 directed, that the order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is observed that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

5.3 I find that in terms of Section 85 of the Finance Act, 1994 and in view of the aforesaid order dated 10.01.2022 of the Hon'ble Supreme Court of India, the limitation period of two months for filing the appeal in the present cases starts from 01.03.2022 and the appellant were required to file the appeal on or before 30.04.2022. However, the appeal was filed on 24.05.2022, thus there is a delay of 24 days in filing appeal beyond the time-limit of two months.

5.4 I find that the appellant, in the facts and circumstances discussed above, has not explained the sufficient cause for condoning the delay in filing appeal. Accordingly, I reject the application seeking condonation of delay. Hence, the appeal has also required to be rejected.

6. It is also observed that the appellant have submitted Form GST DRC-03 dated 27.05.2022 for the amount @ 7.5% of Service Tax confirmed as pre-deposit in terms of Section 85 of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994 along with their





6.1 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 1<sup>st</sup> 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.

6.2 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.

6.3 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)"*.

6.4 Therefore, the appellant, vide letter dated 21.11.2022, 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 received from the appellant in response to the aforesaid letter dated 21.11.2022, 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.

6.5 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 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, also find that the appeal filed by the



appellant is required to be 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.

7. 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 as well as also on the grounds of limitation under Section 85(3A) of the Finance Act, 1994.

8. 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*  
22nd February, 2023..  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date 22.02.2023



Attested

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

**By RPAD / SPEED POST**

To,  
M/s. Aakash Infrastructure,  
Shop No. 248, Shukan Mall,  
Near CIMS Hospital, Science City Road,  
Ahmedabad – 380060

Appellant

The Assistant Commissioner,  
CGST, Division-VI,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

- 5) Guard File
- 6) PA file