



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:20230364SW0000666BDF

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1259-1260/2022-APPEAL

19946-50

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-198&199/2022-23
दिनांक Date : 17-03-2023 जारी करने की तारीख Date of Issue 29.03.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 71-72/ADC/GB/2021-22 दिनांक: 09.03.2022, issued
by Additional Commissioner, CGST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Project Force,
812-813, J.B. Tower, Opp. Door Darshan Kendra,
Drive-In Road, Polytechnic, Ahmedabad-380015

2. Respondent

The Additional Commissioner, CGST, Ahmedabad North, Custom House,
1st Floor, Navrangpura, Ahmedabad - 380009

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, 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 :

(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।

(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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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

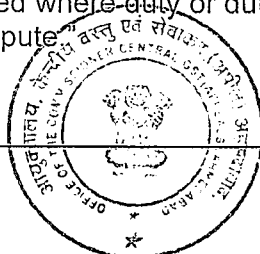
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

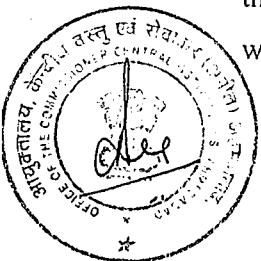
The two appeals have been filed by M/s. Project Force, 812-813, J.B. Tower, Opp. Door Darshan Kendra, Drive-in Road, Polytechnic, Ahmedabad – 380015 (hereinafter referred to as “the appellant”) against Orders-in-Original Nos. 71-72/ADC/GB/2021-22 dated 09.03.2022 (hereinafter referred to as “the impugned orders”) passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. ADDPD1528JST001 and engaged in business of providing Consultant Engineering Service; Manpower Recruitment / Supply Agency Service; Maintenance and Repair Service; and Technical Testing and Analysis Services. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 & FY 2015-16, it was noticed that there is difference of value of service amounting to Rs. 84,42,581/- for the FY 2014-15 and Rs. 6,04,13,423/- for the FY 2015-16 between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2014-15 & FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 The appellant were issued Show Cause Notice No. STC/15-69/OA/2020 dated 29.09.2020 demanding Service Tax amounting to Rs. 98,03,449/- for the period FY 2014-15 and FY 2015-16, under provision of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 70 & Section 78 of the Finance Act, 1994.

2.2 Subsequently, the appellant were issued another Show Cause Notice No. STC/15-138/OA/2020 dated 22.10.2020 demanding Service Tax amounting to Rs. 87,59,946/- for the period FY 2015-16, under provision of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994.

2.3 Both the Show Cause Notices were adjudicated vide the impugned orders passed by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 98,03,449/- was confirmed under provision of Section 73(1) of the Finance Act, 1994 along with Interest



under Section 75 of the Finance Act, 1994 for the period from FY 2014-15 & FY 2015-16. Further, (i) Penalty of Rs. 98,03,449/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994; (iii) Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77(2) of the Finance Act, 1994; and (iv) Penalty of Rs. 18,500/- was also imposed on the appellant under Section 70 of the Finance Act, 1994 for late filing of ST-3 returns.

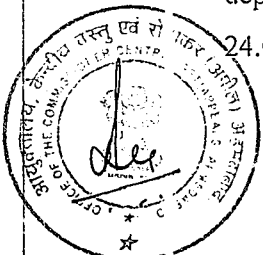
3. Being aggrieved with the impugned order, the appellant have filed their appeals under Section 85 of the Finance Act, 1994 on 26.05.2022. However, it is observed that they have submitted Form GST DRC-03s dated 25.05.2022 for the amount @ 7.5% of Service Tax confirmed as pre-deposit in terms of Section 35F of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994 along with their appeals.

3.1 The CBIC has, 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 15.12.2022, were 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



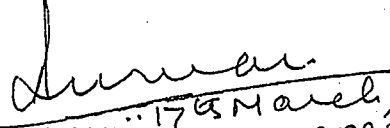
said letter. It was also informed to the appellant vide the said letter that failure to submit evidence of pre-deposit would result in dismissal of the appeals for non-compliance in terms of Section 35F of the Central Excise Act, 1944. As no reply was received from the appellant in response to the aforesaid letter dated 15.12.2022, vide another letter dated 05.01.2023, the appellant were again informed to submit the proof of pre-deposit paid in the above appeals within a week time and also informed that failure to submit evidence of pre-deposit would result in dismissal of the appeals for non-compliance in terms of Section 35F of the Central Excise Act, 1944. However, till date, the appellant have 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 have 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 have failed to furnish proof of revised payment of pre-deposit of 7.5% of the duty made. I, therefore, dismiss both the appeals 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, both the appeals filed by the appellant are 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।

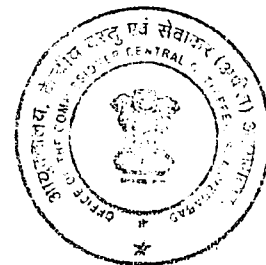
The appeals filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar) 17 March 2023
Commissioner (Appeals)

Attested


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

Date : 17.03.2023



By RPAD / SPEED POST

To,

M/s. Project Force,

Appellant

812-813, J.B. Tower,

Opp. Door Darshan Kendra,

Drive-in Road, Polytechnic,

Ahmedabad – 380015

The Additional Commissioner,

Respondent

CGST & Central Excise,

Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST & C. Excise, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

~~5) Guard File~~

6) PA file



