



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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DIN NO.: 20231264SW000000E685

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2678/2023 / H13-18
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-120/2023-24 and 27.12.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.12.2023
(ङ)	Arising out of Order-In-Original No. 26/AC/Dem/NA/2022-23 dated 30.11.2022 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Prakash Steel Corporation (GSTIN: 24AAFPS6053C1ZX), 405, GIDC Estate, Kerala, Bavla, Ahmedabad, Gujarat-382220

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Prakash Steel Corporation, 405, GIDC Estate, Kerala, Bavla, Ahmedabad, Gujarat – 382220 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. 26/AC/Dem/NA/2022-23 dated 30.11.2022 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division – IV-Changodar, Ahmedabad North (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the facts of the case are that the appellant is engaged in manufacture of Bright Bars falling under Chapter-72 of the First Schedule to the Central Excise Act, 1985. The said appellant was having Central Excise registration bearing No. ABFPO927CXM001 (CE-Medium) and Service tax registration bearing No. ABFPO927CST001. Now i.e. from 01.07.2017, they registered with CGST and holding GST registration bearing number 24AAFPS6053C1ZX.

2(ii). During the course of Tran-1 verification by the Audit, it was observed by the audit vide Final Audit Report No. 721 /2019-20 (EX/ST) dated 28.11.2019 that the closing balance of CENVAT credit as on 30.06.2017 was Rs. 8,77,820/- in the ER-1 return but the said appellant had transferred Rs. 18,77,820/- through TRANS-1 declaration as per section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. It was observed that the said assessee had wrongly transferred in excess amount of Rs. 10,00,000/- to TRANS-1. The jurisdictional Range officer vide his letters dated 01.03.2021, 13.07.2021, 29.07.2021, 12.08.2021, 25.08.2021, informed the said appellant to reverse/ pay the said excess amount wrongly transferred to the GST Account through TRANS-1 Declaration. However, the appellant has neither produced any documents regarding availing/ transfer of the said balance to GST Account nor paid/reverse the said amount.

3. In response to said TRAN-1, a SCN was issued to the appellant on 21.09.2021 and further the Adjudicating Authority has passed the impugned order on 30.11.2022 and confirmed the demand of Rs. 10,00,000/- under Section 74(1) of the CGST Act, 2017 alongwith interest and penalty.

4. Being aggrieved with the *impugned order* the *appellant* has filed the present appeal on 19.10.2023 on the following grounds –

- that the *Impugned Order* has been passed in ignorance and/or without fully appreciative of the facts, relevant to the present proceedings and



contrary to the applicable legal provisions and the settled law on the legal issues involved and is in violation of principle of natural justice. The Impugned Order is therefore, bad in law and deserves to be set aside;

- that the appellant came to know about issuance of impugned Order In Original No. 26/AC/Dem/NA/2022-23 dated 30.11.2022 only when they have received letter No AR-V/GST/TRC/Prakash Steel/22-23/401 dated 13.07.2023 for recovery of the amount referred in the impugned order. Accordingly vide their letter dated 31.07-2023 requested to the department for copy of the same which was received by them only on 31-07-2023. The appellant is aggrieved by the impugned order and now has filed an appeal within two month of receipt of the said order. Therefore, there is no delay in filing appeal;
- that personal hearing was granted on 06-09- 6 2022, 19-09-2022 and on 18-10-2022; no one has attended the personal hearing on the scheduled date. In this regard the appellant would like to submit that their factory premises were remaining closed due to dispute with bank and generally a watch man was staying there. However, had the order delivered to him the same would have been received. However, the appellant have not received any of the said letters scheduling the hearing;
- that they have purchased capital goods from Shri Chamunda Industries, Ahmedabad. Further they were under the bona-fide belief that during Central Excise regime, they have availed 50% of Cenvat credit on the capital goods acquired in the year 2013-14 and 2014-15, however balance 50% of the ITC could not availed. At the time of filing Tran-1 and record being old was not handy, and therefore in the absence of record, they could not quantified the unveiled Cenvat credit which they are otherwise eligible in terms of Section 140 (2) of CGST Act, 2017. This being the case they have shown Rs.10,00,000 lumpsum in their Tran-1 return-in addition to closing balance of Rs.8,77,820/- Cenvat Credit available in their Last ER-1 return. Additionally it is submitted that the appellant have not claimed depreciation on the Cenvat portion for a which Cenvat credit availed on the capital goods;
- that the exact Un-availed Cenvat credit on the capital goods viz. on 2 CNC Turnmi111 Center Machine 350 mm/ 1000mm' purchased vide Invoice No.003/2014-15 dated 20-03-2014 and Invoice No.3/2014- 15 dated 20-09-2014 from Shri Chamunda Industries each involving total Cenvat Credit of BED Rs.6,50,000/-; E. Cess Rs.13,000; SHE Cess Rs.6,500/-. They have availed 50% of Cenvat Credit to the extent of Rs.3,25,000/- in their ER-1 for the Month of May, 2014 and October,2014 [Exhibit-G - ER-1



enclosed], however balance 50% was remained to be availed in the subsequent year i.e. 2015- 16, 2016-17 and 2017-18(up to June, 2017). In token of their contention the • appellant would like to enclose herewith ER-I returns for the said period [March,2014 to June,2017] which would indicate that they have not availed balance of 50% Cenvat of BED against the aforesaid purchase of Capital goods. Therefore they are still entitled to have balance 50% of BED to the extent of Rs.6,50,000/- to gather for the aforesaid two Invoices remained to be availed. However, due to some punching error the appellant have claimed Rs.10,00,000/- as . unclaimed ITC on account of Capital goods instead of claiming Rs.6,50,000/-.

- the appellant could not substantiated their claim of ITC of Rs.10,00,000/- claimed in their Tran-1 filed in the column in terms of Section 140(1) meant for carried forwarded balance from ER-1 instead of showing the same in the column prescribed for claiming ITC in terms of Section 140(2). These un-availed Cenvat Credit be considered in terms of Section 140(2) of CGST Act, 2017 against the present demand;
- The appellant is in agreement that they have excess availed ITC in their Tran-1 to the extent of Rs.3,50,000/- after considering the unavailed Cenvat Credit of Rs.6,50,000/- are ready to pay balance of Rs.3,50,000/- being excess claim of ITC in Tran-1 along with Interest and penalty;
- The Appellant also submits otherwise provided, this appeal can also be treated as submitted under Repeal and Saving Section 174 of Central Goods & Service Tax Act, 2017 as made effective from 01.07.2017.

Personal Hearing:

5. Personal Hearing in the matter was fixed/held on 01.11.2023 wherein Mr. Vijay N. Thakkar appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the written submission and requested to allow appeal.

Discussion and Findings :

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time- limit and (ii) whether the credit of Rs. 10,00,000/- without having balance in the Cenvat Account transferred to GST Account through Trans-1 is legal and proper or otherwise?



7(i). First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

7(ii). It is observed that in the instant case that as against the impugned order of dated 30.11.2022, the appeal has been filed online on 23.08.2023 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. Though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.




7(iii). In the present matter, the "impugned order" is of 30.11.2022 the normal appeal period of three months was available up to 28.02.2023 whereas, the present appeal is filed on 23.08.2023. However, considering 90 days from 30.11.2022, the last date for filing of appeal comes to 30.02.2023. In the present matter the appeal is filed on 23.08.2023. Accordingly, in view of foregoing it is observed that the present appeal is filed beyond the time limit as prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the condonation of delay request of Appellant, it is observed that even after condoning delay of filing of appeal for a further period of one month as per provisions of sub section (4) of Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 31.03.2023, whereas the present appeal is filed on 23.08.2023. In view of foregoing, it is observed that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017.

8(i). In view of the above the appellant in the grounds of appeal contended that the date of communication of the decision or order appealed against is 31.07.2023. They further stated that they came to know about issuance of impugned Order-in- Original No. 26/AC/Dem/NA/2022-23 dated 30.11.2022 only when they have received letter No AR-V/GST/TRC/Prakash Steel/22-23/401 dated 13.07.2023 for recovery of the amount referred in the impugned order. Accordingly vide their letter dated 31.07-2023 requested to the department for copy of the same which was received by them only on 31-07-2023. The appellant is aggrieved by the impugned order and now has filed an appeal within two month of receipt of the said order. Therefore, there is no delay in filing appeal.

8(ii). In view of the above, it is observed from the letter F. No. AR-V/GST/TRC/Prakash Steel/22-23 dated 13.12.2023 issued by Superintendent, CGST, Range-V, Division-V, Ahmedabad North Commissionerate that the impugned order dated 30.11.2022 was sent to the registered address of the assessee (405, GIDC Estate, Kerala, Bavla, Ahmedabad, Gujarat - 382220) on 01.12.2022 on 01.12.2022 but the said OIO returned from the postal authority with remark "Company is closed". After return of the OIO on 14.12.2022 the same has been mailed to the appellant on registered mail ID (krshav.vat@gmail.com) on 15.12.2022. The soft copy of the mail dated 15.12.2022 issued to the appellant on registered mail ID (krshav.vat@gmail.com) and appellant registered mail address mentioned in CBIC portal are affixed below:



 Gmail

Gst Division5 <gstdiv5.ahd.north@gmail.com>

OIO No. 26/AC/Dem/NA/2022-23 dated 30.11.2022 Iro M/s. Prakash Steel Corporation-m/r.

2 messages


Gst Division5 <gstdiv5.ahd.north@gmail.com>
To: krshah.vat@gmail.com

Thu, Dec 15, 2022 at 1:21 PM

Gentleman

With reference to the subject matter, demand of Rs. 10,00,000/- has been confirmed by the competent authority. Also, penalty of Rs. 10,00,000/- u/s. 122 (1)(x) has also been imposed on M/s. Prakash Steel Corporation. The copy of Order is enclosed herewith for the information and necessary action. The same was also sent through postal authority but it could not be delivered due to unknown reasons. Therefore, the same is being served to you through e-mail at email id provided at the time of registration or as amended from time to time under Section 169 (c) of CGST Act.

Supdt., Division-V
CGST, Ahmedabad-North

 prakash Steel OIO_0001.pdf
5089K

Ketan R. Shah <krshah.vat@gmail.com>
To: Gst Division5 <gstdiv5.ahd.north@gmail.com>

Thu, Dec 15, 2022 at 1:47 PM

KETAN R. SHAH (Advocate)
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WE ARE PROVIDING EXCLUSIVE SERVICE OF GST - Goods & Service Tax (SALES TAX - VAT) IN THE STATE OF GUJARAT SINCE 1981.

[Quoted text hidden]

Taxpayer Jurisdiction Search	
CGST/CE/ST	GSTRIN: 22AAAF569830127
EMPLOYER/DE/ST/LL	
Supervised By	State
Taxpayer Type	Application for Existing Registration
Legal Name	PANKAJ BABULAL SHAH
Address	105 GIDC KERALA BAVLA BAGODARA HIGHWAY BAVLA Ahmedabad
Jurisdiction Code	WT0405
Commissionerate code	WT- AHMEDABAD-NORTH
Division Code	04 DIVISION V BANGOPAR
Range Code	05 RANGE V
Status	SUSPENDED
Authorized Signatory Name	PANKAJ BABULAL SHAH
Authorized Signatory Email	kshah101@gmail.com
Authorized Signatory Mobile No	9712010468
Nature of Goods Business	NG000000

8(iii). In view of the above, it is observed that the adjudicating authority had served the OIO vide email dated 15.12.2022 at the email id provided at the time of registration under Section 169(C) of the CGST Act, 2017. Here, it is imperative that the statutory provisions be gone through, which are reproduced, below:

Section 169. Service of notice in certain circumstances.-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy



thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

8(iv). In view of the above, it is observed that in the instant case the **actual date of communication of the decision or order appealed against is 15.12.2022. So the last date of filing of appeals after condonation of delay is 15.04.2023, whereas the present appeal is filed on 23.08.2023.** In view of the present appeal filed by the appellant is beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

9. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

(i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."



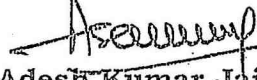
- (ii) In the case of Makjai Laboratories Pvt Ltd reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.
- (iii) The Hon'ble High Court of Delhi in the case of Delta Impex reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

10. I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *parimateria* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgments would be squarely applicable to the present appeal also.

11. By following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the *appellant* is required to be dismissed without going into the merit of the case and only on the grounds of limitation, as appeal not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, reject the present appeal.


अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटारा उपरोक्त तरीके से किया जाता है।

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


(Adesh Kumar Jain) 27/12/2023
Joint Commissioner (Appeals)

Date: 27.12.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
By R.P.A.D.

To,
M/s. Prakash Steel Corporation,
405, GIDC Estate, Kerala, Bavla,
Ahmedabad, Gujarat - 382220.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Dy./Asstt. Commissioner, CGST, Division-IV-Changodar, Ahmedabad North.
5. The Superintendent (Systems); CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.



