

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX केंद्रीय उत्पाद शुल्क भवन, 7 th Floor, Central Excise Building, Near Polytechnic, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015	 केंद्रीय उत्पाद शुल्क
 : 079-26305065	 : 079-26305136	

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(STC)87 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-393-17-18

दिनांक (Date): 28-Mar-2018 जारी करने की तारीख (Date of issue):

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VI), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No SD-06/04/AC/P Das/17-18 Dated: 25/05/2017
 issued by: Assistant Commissioner Central Excise (Div-VI), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s P.Das Infrastructure

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार 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

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



- (c) 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।

- (d) 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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



ORDER-IN-APPEAL

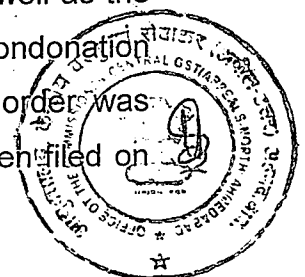
M/s P. Das Infrastructure, B-08, Sardar Patel Mall, Near diamond Mill, Nikol gam Road, Ahmedabad (hereinafter referred to as 'the appellant'), was engaged in providing taxable services classifiable under **"construction service other than residential complex"**; **"Construction of residential complex"**, **"Works Contract"**, **"Goods transport Agency"** and **Other Taxable services**. Inquiry was carried out on the basis of information when it was revealed that the appellant had availed exemption benefit under notification no.25/2012 dated 20/06/2012 that pertained to Works contract service provided to Government Authority i.e to an authority or a board or any other body either set up by an Act or Parliament or a State Legislature or established by government, with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the constitution. As the appellant had not paid proper service tax a show cause notice F.No.SD-06/04-19/O&A/P das/16-17 dated 19/12/2016 (hereinafter 'the SCN') was issued demanding Service Tax amounting to **Rs.33,70,587/-** for the year **2011-12 to 2013-14** under section 73(1) read with Section 68 of the Finance Act, 1994 with proposal to appropriate the amount of Rs.33,70,587/- paid by the appellant; demanding interest under Section 75 of the Finance Act, 1994 with proposal to appropriate the amounts paid by the appellant towards interest and proposing to impose penalty on the appellant under Section 77 and Section 78 of the Finance Act, 1994. The SCN was adjudicated *vide* the impugned order where the demand of Rs.30,15,262/- has been confirmed under section 73(1) of the Finance Act, 1994 along with interest and a penalty of Rs.30,15,262/- under section 78 and a penalty of Rs.72,100/- under section 70 of the Finance Act, 1994 was imposed on the appellant.

2. Aggrieved by the impugned order, the appellant has filed appeal, chiefly, on the grounds that the adjudicating authority had erred in law by invoking extended period as there was no suppression of income; erred in imposing penalty under section 78(10) of the Finance Act, 1994 and erred in keeping contradictory reliance in the case of Megha Engineering & Infrastructure Ltd.

3. The appellant has also filed an application for Condonation of delay citing the main reason as the levy of G.S.T. from 01/07/2017 that resulted in business pressure and that the working partner was suffering from health issues unable to business related tasks.

4. Personal hearing was held on 28/03/2018. Shri Kunal V. Desai, C.A. appeared for personal hearing. The learned C.A. reiterated the grounds of appeal. The delay in filing appeal is of 183 days.

5. I have carefully gone through the contents of the impugned order as well as the grounds of appeal filed by the appellant. At the outset, on considering the condonation of delay application filed by the appellant, it is seen that the impugned order was received by the appellant on 08/06/2017 whereas the instant appeal has been filed on



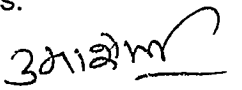
06/02/2018. This is an appeal filed under Section 85 of the Finance Act, 1994. The time period stipulated for filing appeal and the time period allowed to Commissioner (Appeals) for condonation of delay under section 85 (3A) of the Finance Act, 1944 is as follows:

“ Section 85 (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.**”;

Thus under Section 85 (3A) of the Finance Act, 1994, an appeal with Commissioner (Appeals) has to be preferred within 2 months of the communication of an order and the Commissioner (Appeals) is allowed to condone delay of one month. In the present case the delay is of 183 days, i.e. six months, which is clearly beyond the scope of condonation allowed under Section 85 (3A) of the Finance Act, 1994. Accordingly, I am constrained to reject the appeal on limitation without going into the merit of the case. The appeal is rejected on limitation.

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




(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 28 / 03 /2018

Attested


(K.P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

To

M/s P. Das Infrastructure,
B-8, third Floor, Sardar Patel Mall,
Near diamond Mill, Nikol Gam Road,
Nikol, Ahmedabad – 382 350.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: II, (Naroda Road), Ahmedabad (North).
5. Guard File.
6. P.A.



