



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : V2(ST)14/EA2/North/Appeals/2019-20/14583 to 14587

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-011-2020-21

दिनांक Date : 08.05.2020 जारी करने की तारीख Date of Issue: 05/06/2020

श्री अखिलेश कुमार, आयुक्त (अपील) द्वारा पारित

Passed by Shri Akhilesh Kumar, Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: CGST/A'BAD-NORTH/DIV – VII/ST-AC-01/19-20 Date: 12/07/2019 Issued by: Assistant Commissioner, CGST, Div: VII, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Ahmedabad Urban Development Authority

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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 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.

(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध 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- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 इ.ए-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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 Appellant 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 अधिकारी 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 bear 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.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

The Assistant Commissioner, CGST, Division-VII, Ahmedabad-North Commissionerate, [herein after referred to as 'appellant'] has filed the present appeal against the Order-In-Original No. CGST/A'bad-North/Div-VII/S.Tax-AC-01-19-20 dated 12.07.2019 passed in the matter of M/s. Ahmedabad Urban Development Authority, Ahmedabad. [herein after referred to as 'respondent'].

2. Briefly stated, the facts of the case are that it was observed during the course of CERA audit of the record of the respondent that they had not paid service tax as per Point of Taxation Rules, 2011 on rent income received in advance during the period from 2012-13 to 2016-17. Show Cause Notice dated 13.03.2018 was issued in this regard for recovery of Service Tax amounting to Rs. 44,20,000/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under section 75 of the Act. It was also proposed to impose penalty under section 76 and 78 the Finance Act, 1994. The Show Cause Notice was decided vide impugned order and the proceedings initiated was dropped holding that rent income received in advance have been accounted for and appropriate service tax was already paid by the respondent.

3. Thereafter, the impugned order was reviewed by the Commissioner, CGST & C.Ex., Ahmedabad-North Commissionerate vide Review Order No.013/2019-20 issued From F.No.IV/16-46/OIO/19-20 dated 01.10.2019 resulting in this appeal. The grounds of appeal stated in Appeal Memorandum is that adjudicating authority has erred in determining service tax correctly under Rule 3 of the Point of Taxation Rules, 2011, that Determination of Point of Taxation as per said Rules will be (i) The time when the invoice for the service provided or agreed to be provided is raised, (ii) When the payment is received before the time as specified in (a) above, then, the time when such payment is received by the service provider, will be point of taxation; that there are two types of incomes exhibited in rent category reflected in their Financial statements i.e. (i) Rent income exhibited in income & expenditure account and (ii) Rent Received in advance, exhibited in schedule 4(E)- Provision for other liability. However, they are paying service tax on "Rent income" only and not paying on "Rent received in advance"; that the rent received in advance is taxable as per Point of Taxation Rules, 2011.

4. Personal hearing in the case was held on 13.02.2020. Shri Kiran Parikh, CA, appeared for the Respondent and filed written submission by way of cross-objection dated 13.02.2020 and reiterated the submissions made therein.



4.1 In the written submission, it was mainly stated that the respondent has been depositing service tax on rental income on receipt basis; that opening balance of "rent received in advance" as on 01.04.2012 amounting to Rs.90,39,679 and closing balance carried forward in the Financial Years were Rs.75.53 lakh, 63.90 lakh,34.54 lakh, 26.49 lakh and 19.04 lakh respectively for the Financial Years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and provided the following details stating as to how opening balance of Rs. 90,39,679 were carried forward to subsequent Financial Years:

Here, there has been opening balance of Rs. 90,39,679 (Rupees 90.39 Lacs) as on 1st April, 2012.

The following is the summary as to how the aggregate rent received in advance prior to Financial Year 2012-13 having opening balance as on 1.4.2012, Rs. 90,39,679 has been carried forward to subsequent financial years;

Rent Received in Adv.

1-04-2012 to 31-03-2013

Particulars	Opening Balance	Debit	Credit	Closing Balance
Name of Party	90,39,679 CR	16,27,837	1,41,213	75,53,055 CR

Rent Received in Adv.

1-04-2013 to 31-03-2014

Particulars	Opening Balance	Debit	Credit	Closing Balance
Name of Party	75,53,055 CR	15,91,588	4,28,463	63,89,930 CR

Rent Received in Adv.

1-04-2014 to 31-03-2015

Particulars	Opening Balance	Debit	Credit	Closing Balance
Name of Party	63,89,930 CR	29,38,838	2,517	34,53,609 CR

Rent Received in Adv.

1-04-2015 to 31-03-2016

Particulars	Opening Balance	Debit	Credit	Closing Balance
Name of Party	34,53,609 CR	12,05,230	4,00,151	26,48,530 CR

Rent Received in Adv.

1-04-2016 to 31-03-2017

Particulars	Opening Balance	Debit	Credit	Closing Balance
Name of Party	26,48,530 CR	7,43,955	0	19,04,575 CR

Defense Reply in Compliance to the Show Cause Notice;

We are herewith enclosing the following replies submitted before the Deputy Commissioner in compliance to the Show Cause Notice:

4.2 They stated that the SCN proposes to levy service tax on outstanding closing balance of 31st March every year and submitted summary of replies filed by them with the adjudicating authority wherein also it was argued that:

"as could be discerned from above, the closing balance of Advance received has been carried forward from before 1st April, 2012. It is not Advance Received during the year under consideration. The same only reflect the accumulated amount of advances carried forward from earlier Financial Years and the



same has no impact on transactions carried during the year under consideration.

Further, as mentioned out here-in-before, the AUDA has duly deposited service tax on amount of advance received during the year under consideration.

4.3 Appropriate reconciliation statement was duly submitted to the CERA Audit Party.

4.4 GST Department has not given any specific observation as to how service tax has not been deposited on the Rental Received in Advance in the Appeal Memo.

5. I have gone through the facts of the case, the impugned Order-in-Original, the grounds raised in the Appeal Memorandum and the oral averments made by the respondent during the course of personal hearing. I find that based on scrutiny of returns and verification of revenue details in balance sheet, it was revealed to the CERA audit team that service tax required to be determined and paid in term of Rule 3 of Point of Taxation Rules, 2011 was not paid by the respondent on the amount of rent received in advance, for which a show cause notice was issued to them for recovery of outstanding demand. However, it was observed by the adjudicating authority under impugned order that rent incomes received in advance has been accounted by the respondent and appropriate service tax were already paid them. Accordingly, the demand was dropped. Therefore, the only issue to be decided is whether the impugned order was correct in its observation that there was no short payment of service tax on reconciliation or otherwise?

6. I find that the adjudicating authority has considered the summary of advance rent received prior to Financial Year 2012-13 as Rs. 90,39,679/- which was subsequently carried forwarded to subsequent financial year as Rs.75.53 Lakh, Rs.63.90 Lakh, Rs.34.54 Lakh, Rs.26.49 Lakh & Rs.19.04 Lakh respectively for the year 2012-13 to 2016-17 which are also stands mentioned as "Closing Balance" of the summary. Based on this the adjudicating authority has observed as under:



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

Akhil Kumar
8 May, 2020.
(Akhil Kumar)

Commissioner, CGST, Appeals.

Date:



Attested

(Signature)
(D.A. Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad.

By R.P.A.D.

To,

M/s. Ahmedabad Urban Development Authority,
Sardar. Valabhbhai Patel Bhavan, Ushmanpura, Ashram Road.
Ahmedabad- 380014.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional/Joint Commissioner, Central Tax (System), Ahmedabad-North.
4. The Assistant Commissioner, CGST Division-VII, Ahmedabad-North.
- ✓ 5. Guard File.
6. P.A. File

