



आयुक्त का कार्यालय), अपीलस(   
 **Office of the Commissioner,**   
 केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय   
 **Central GST, Appeal Commissionerate-**   
 **Ahmedabad**



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.   
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015   
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DIN-20210464SW000092499D

**स्पीड पोस्ट**

क फाइल संख्या : File No : File No : GAPPL/COM/CEXP/104/2020-Appeal | 1255 701260

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-002/2021-22**   
 दिनांक Date : **20.04.2021** जारी करने की तारीख Date of Issue : **29.04.2021**

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

ग Arising out of Order-in-Original Nos. **01/ADC/2020-21/MS** dated **26.05.2020**, passed by   
 Additional Commissioner, Central GST & Central Excise, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** - M/s Smartech Graphic Pvt. Ltd.

**Respondent-** Additional Commissioner, Central GST & Central Excise, Ahmedabad-North

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 :

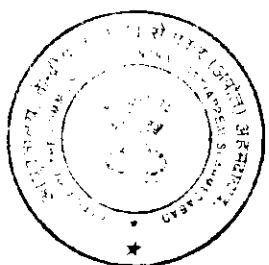
**Revision application to Government of India :**

(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।

(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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक 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.

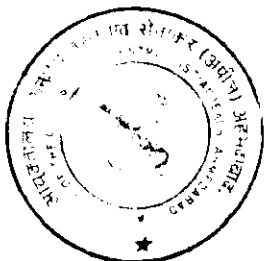
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 पढ़ी 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 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.

- (6) 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।

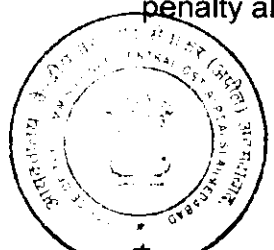
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Smartech Graphic Pvt Ltd., Plot No.85-89 Ajanta Industrial Estate, Vasna(Iyava), Sanand, Ahmedabad (henceforth, referred as "*appellant*") has filed the present appeal against the Order-In-Original No.1/ADC/2020-21/MSD dated 26.05.2020 (henceforth, the "*impugned order*") passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad-North (henceforth referred as "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is engaged in manufacture of Screen Printed Self Adhesive Stickers (PVC Stickers) falling under Chapter Sub Heading No.3919 90 90 of the erstwhile Central Excise Tariff Act, 1985 for M/s. Hero Motocorp Ltd. It was observed during EA-2000 audit conducted on the records of the appellant for the period from April, 2016 to March, 2017 that they had received design and product engineering services from M/s. Classic Retail Imaging Solutions Pvt Ltd, Mumbai and taken Cenvat credit of service tax paid on it. Subsequently, they issued Invoices to M/s. Hero Motocorp Ltd, New Delhi for design development charges which are as under:

Sr. No.	Invoice No.	Invoice Date	Value (in Rs.)	Service Tax including SB Cess and KKC (in Rs.)
1	Com/16-17/0001	01.11.2016	2,50,00,000/-	37,50,000/-
2	Com/16-17/0002	15.11.2016	5,00,00,000/-	75,00,000/-
		<b>TOTAL</b>	<b>7,50,00,000/-</b>	<b>1,12,50,000/-</b>

It was contended under Final Audit Report No. 145/2017-18 dated 26.03.2018 that in view of the provisions contained in Explanation I to Rule 6 of Central Excise (Valuation) Rules, 2000, in such transactions, the value of free supply of design is deemed to be an additional consideration received by the manufacturer and the value of design is required to be included in the assessable value of finished goods by arriving amortization/apportionment cost. Accordingly, show cause notice dated 17.02.2019 was issued for inclusion of value of design amounting to Rs. 7,50,00,000/- in the assessable value of excisable goods manufactured and cleared by the appellant and demanding Central Excise duty of Rs. 93,75,000/- under the provisions of Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944. It was also proposed to impose penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 26 of the Central Excise Rules, 2002. The said SCN was decided under the impugned order confirming demand of duty along with interest and imposition of penalty.



3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that since the impugned order has been issued without giving 3<sup>rd</sup> and 4<sup>th</sup> notice for personal hearing and decided *ex-parte*, reasonable opportunity has not been provided to them and hence it is illegal, non-est and liable to be quashed; that there is no iota of evidence/allegation in the impugned order that the appellant had refrained from appearing before the adjudicating authority even after served with personal hearing notice; that in view of omission w.e.f 16.09.2016 of Entry 92C from List-I (power to levy Excise and Service tax) of the Seventh Schedule of the Constitution, the Show cause Notice demanding duty is bad in law; they relied on case law Mascot Entrade Pvt. Ltd v/s UIO 2018(9) GSTL 5(Gau); that it is settled preposition of law that demand of duty on value of design supplied free of cost by the buyer is to be computed only on the amortized cost of design per unit and payable only on the quantum of goods manufactured and removed and not *ipso facto* on lump-sum value of design which is contrary to the provision of law. The appellant, during impugned period, manufactured and cleared the PVC stickers only bearing code AAHC HF-Dlx and hence the value of only one design, which was used in manufacture of finished goods, was added in the value of goods cleared and not the value of design which were not used in manufacture of goods; that in absence of intention to evade payment of tax, no penalty is imposable; that since demand of duty is not sustainable, charging of interest is not sustainable; that Since Central Excise duty is payable on the value of goods at the time of removal and not otherwise, the demand of duty on the cost of design without deterring the value of the goods at the time of removal, is incorrect and not sustainable; that despite of informing to the department about the usage of only one invoice for manufacturing and clearance during impugned period and also Certificate from Cost accountant, the department ignored the same while computing the demand without establishing usage of the design in the goods manufactured and cleared; the burden to prove short payment of duty on account of undervaluation and determination thereof is on the department and cannot be shifted summarily on the assessee.

4. Opportunity for personal hearing was granted to the appellant on 18.03.2021. Shri Prashant Mishra, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum. He stated that some of the letters for personal hearing was not received by them, therefore, they could not appear before the adjudicating authority. Hence, there was denial of natural justice in passing the



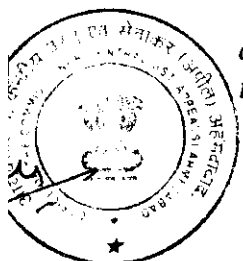
impugned order. He requested the matter to be remanded back to the adjudicating authority.

5. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum as well as submissions made at the time of personal hearing. I find that the issue requiring determination in this case is whether the value of design development, against which invoices were raised by the appellant, were required to be included in the assessable value of finished goods or otherwise.

6. It is observed that the appeal has been preferred mainly on the ground that no opportunity of personal hearing was granted to the appellant before passing the order and hence principles of natural justice have been violated. They further argued that adjudicating authority has not considered various written submissions made by them and that non-appearing in personal hearing by the appellant was due to the fact that they had not received the notice for personal hearing. They further contested that there is no iota of evidence/allegation in the impugned order that the appellant had refrained from appearing before the adjudicating authority even after served with personal hearing notice.

7. I find that the demand of duty under the impugned order were confirmed ex-parte. It is further observed that the appellant were granted opportunities of personal hearing on 24.07.2019, 28.08.2019, 18.10.2019 and 12/13.03.2020. However, they did not appear. They have contended that they did not receive the last two letters of personal hearing. Since the appellants have contested denial of natural justice to present their case personally, I am of the considered opinion that they should be given an opportunity to present their case before the adjudicating authority by observing principles of natural justice. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Once, show cause notice is issued, the notice should be given sufficient opportunity to rebut their case being first and foremost requirement of natural justice. The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

*"If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities*



*and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."*

8. In view of above observations, without going into merit, I remand the case back to the adjudicating authority to decide it afresh ensuring principle of natural justice. The appeal is accordingly is allowed.

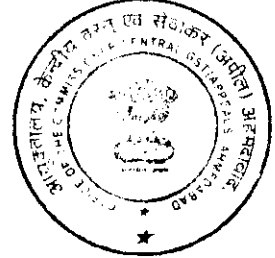
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

*Akhilesh Kumar*  
20 April, 2021

(Akhilesh Kumar)  
Commissioner, CGST (Appeals)  
Date: .04.2021

Attested

*(Signature)*  
(Atulkumar B. Amin)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
M/s. Smartech Graphic Pvt Ltd.,  
Plot No.85-89 Ajnta Industrial Estate,  
Vasna(Iyava), Sanand, Ahmedabad India Pvt Ltd.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional Commissioner, Central Tax (System), Ahd-North.
4. The Additional Commissioner, Central Tax, Ahmedabad-North.
5. The Asstt./Deputy Commissioner, CGST Division-III, Ahd-North.
- ✓ 6. Guard File.
7. P.A. File