



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.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015  
☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :  
Email- commrappl1-cexamd@nic.in



DIN-20211264SW000000BD86

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1367/2020-Appeal /5195 70 5199
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-47/2021-22**  
दिनांक Date : **13.12.2021** जारी करने की तारीख Date of Issue : **17.12.2021**  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **Div-VII/North/10/Refund/Riddhi Shukla/19-20 dated 19.09.2019**, passed by the Assistant Commissioner, Central GST & C. Ex., Div-VII, Ahmedabad North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** M/s. Riddhi Ketan Shukla, Shree Nivas 4, Mamta Park, B/h Navgujarat College, Usmanpura, Ahmedabad-380014.

**Respondent-** Assistant Commissioner, Central GST & C. Ex., Div-VII, 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 :

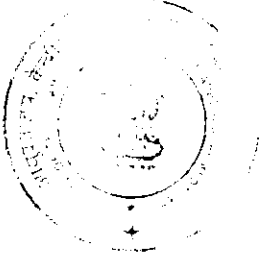
**Revision application to Government of India :**

(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 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.



(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.

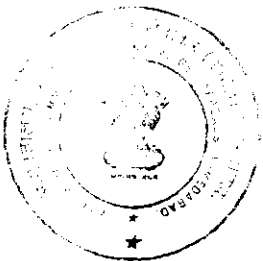
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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 पढी कार्य से बचने के लिए यथार्थिती 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 यथार्थिती 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।

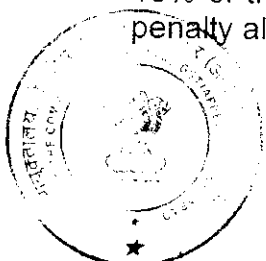
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This order arises out of an appeal filed by Ms. Riddhi Ketan Shukla, Shree Nivas 4, Mamta Park, Behind Navgujarat College, Usmanpura, Ahmedabad-380 014 (hereinafter referred to as 'Appellant') against Order-in-Original No. Div-VII/North/10/Refund/Riddhi Shukla/19-20 dated 19.09.2019 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST & C.Ex., Division-VII, Commissionerate-Ahmedabad North (hereinafter referred to as 'adjudicating authority').

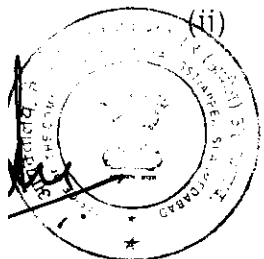
2. The facts of the case, in brief, are that the appellant had filed a refund claim for an amount of Rs. 11,33,252/- on 14.06.2019 with the adjudicating authority. The said refund claim was mainly on the ground of cancellation of unit booked by her with M/s. Ahmedabad East Infrastructure LLP, 24, Govt. Servant Society, Near Municipality Market, Off C.G. Road, Ahmedabad-380009(hereinafter referred to as 'Service Provider'), who was registered with the Service Tax Department under the category of 'Construction Service in respect of Construction of Residential Complex' falling under Section 65(105)(zzzh) of the Finance Act, 1994 and was holding Service Tax Registration No. AASFA0420CSD001. The appellant had booked one unit in the Scheme Ruby on 24.05.2015 undertaken by the 'Service Provider' and the said booking has been subsequently cancelled on 9.11.2018. On cancellation, the 'Service Provider' had refunded the booking amount to the appellant, after deducting an amount of Rs. 11,33,258/- towards Service Tax, which he claimed to have been already paid to the department.

2.1 The adjudicating authority vide impugned order rejected the refund claim filed by the appellant on the grounds that "the claimant in their grounds of refund has referred the provisions of Rule 6(3) of the Service Tax Rules, 1994 as well as of Section 142(5) of the CGST Act, 2017. However, as the claimant is not registered either under Service Tax or GST, the provisions contained under Finance Act, 1994 and Rules made thereunder and CGST Act, 2017 and Rules made thereunder are not applicable to them".

3. Being aggrieved, the Appellant has preferred the present appeal on following grounds, *inter-alia*, contending:-

(i) In terms of the provisions of Section 142(5) of the CGST Act, 2017, the refund claim of Service Tax paid earlier for which Service was not eventually provided or deficient provision of Service need to be filed in accordance with the provisions of Service Tax law. Therefore, the appellant claimed the refund on the said lines.

(ii) The claim for refund is made under the provisions of Section 142(5) of the



CGST Act, 2017. The said provision says that notwithstanding anything to contrary contained under the provisions of existing law, except the provisions of sub section (2) of Section 11B of the Central Excise Act, 1944. To emphasize exactly, Section 142(5) of CGST Act, 2017 overrides anything and everything under the erstwhile law but not Section 11B(2) of Central Excise Act, 1944. Accordingly, the time limit specified under Section 11B(1) of Central Excise Act, 1944 is not applicable to refund claimed under the transitional provision viz. Section 142 (5) of the CGST Act, 2017.

- (iii) Further, the time limit to claim refund under Section 11B is applicable only when the amount is a payment of duty/tax/interest. In the present case, the refund application filed is pertaining to amount of tax paid for which the provision of service was deficient, hence the tax deposited by the developer i.e. Service Provider (collected from the appellant) will be merely in the nature of deposit.
- (iv) As regards the bar of unjust enrichment under Section 11B(2) of the Central Excise Act, 1944 made applicable to the Service Tax under Section 83 of the Finance Act, 1994, the appellant submitted that as per the copy of ledger account, bank statement and cancellation agreement produced by the her it is proved that the amount returned by the developer does not include the amount of Service Tax portion and accordingly, the incidence of tax has not been passed to any other person and actually borne by the appellant.
- (v) Hon'ble CESTAT in case of Ch. Ramaraju Versus Versus Commissioner of C.Excise, Chennai issued vide Final Order No. 941/2005 dated 06.07.2005 and also in case of Dr. Sarvjeet Kaur Versus Commissioner of Central Excise, Guragaon vide Final Order No. A/93/2004-NB (SM) dated 13.01.2004, allowed the refund application by the Service Receiver who has borne the incidence of duty/tax.
- (vi) The refund of Service Tax paid on cancellation of flat where service is not provided shall be allowed without limitation of time as prescribed in the Section 11B of the Central Excise Act, 1944. The appellant has also relied upon decision of Commissioner (Appeal) in case of M/s. Panchratna Corporation, Ahmedabad vide OIA No. AHM-SVTAX-000-APP-023-17-18 dated 29.05.2017 and also judgement of Hon'ble High Court of Gujarat in case of Addition Advertising Versus Union of India [1998 (98) ELT 14 (Guj)] in support of their contention.
- (vii) The adjudicating authority has denied the existence of any provision for refund claim by Service Receiver in such cases. In the present case, the Service Tax was collected by the Service Provider from the appellant and the same was not refunded to the appellant on cancellation, thus it is clear that incidence of tax has been borne by the appellant itself. Thus, the point is to grant the refund to the person who has borne the incidence of tax. There is no restriction as such that the refund couldn't be granted to Service Receiver.

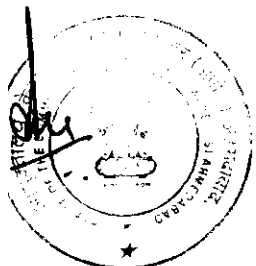


4. The appellant has also filed an application for condonation of delay in filing the present appeal, for a delay of 383 days from the last date prescribed for filing appeal. As regards the said application for condonation of delay, the appellant has submitted that:

- The applicant received that impugned order on 19.09.2019 and therefore, the last date for filing the Appeal was 18.11.2019. The appeal is filed on 10.11.2020, therefore there is a delay of 357 days in filing the appeal.
- The impugned order was received by the Developer that is Ahmedabad East Infrastructure LLP which was accidentally misplaced by them. However, the applicant were able to find it out in the month of March, 2020. Due to COVID-19, the CBIC has issued "THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020" read with Notification extending the due dates of certain compliances under different acts for which applicant has requested to not consider the period that was relaxed by CBIC for the calculation of number of delayed days in filing appeal.
- The applicant also submitted that the delay is accidental which was not intentional. The applicant has strong case in merit. Therefore, in the interest of justice, the applicant prays for condoning the delay.

5. Personal hearing in the matter was held on 13.10.2021 through virtual mode. Shri Rashmin Vaja, Chartered Accountant, and Ms. Bhagyashree Dave, Chartered Accountant, attended the hearing as authorized representatives of the appellant. She reiterated the submissions made in appeal memorandum. She further stated that she would submit a copy of order passed by jurisdictional office in similar set of facts allowing refund as part of additional submission. Subsequently, the appellant has also submitted through e-mail a copy of OIO No. CGST/WS07/Ref-09/MK/AC/2020-21 dated 14.09.2020 passed by the Assistant Commissioner, Div-VII, CGST, Commissionerate-Ahmedabad South in a similar case, wherein the refund claim filed by the respective appellant has been sanctioned.

6. I have gone through the records of the case, the impugned order and the grounds of appeal as well as oral submission of the appellant. I find that the impugned order was issued on 19.09.2019 by the adjudicating authority. As per the details submitted in the Form ST-4 by the Appellant, the said order was also communicated to them on the same day of 19.09.2019. It is further observed that the Appellant has filed this present appeal on 07.12.2020, which is after a period of more than 440 days from the date of communication of the impugned order.



6.1 I further find it relevant to go through the statutory provisions of Section 85 of Chapter V of the Finance Act, 1994 which is reproduced below:

*SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).—*

*(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).*

*(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.*

*(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012, receives the assent of the President:*

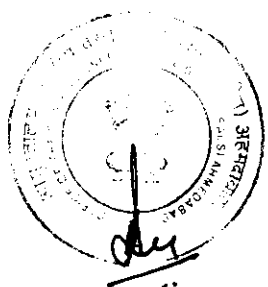
*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.*

*(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.*

6.2 Further, I find that the appellant has submitted that “the impugned order was received by the Developer i.e. Ahmedabad East Infrastructure LLP, which was accidentally misplaced by them. However, the applicant were able to find it out in the month of March, 2020”. However, the appellant has not produced any documentary evidence substantiating their said submission. As regards the said submission of the appellant, I find that as per the details submitted by the appellant in Form ST-4, the date of communication of the impugned order is 19.09.2019 i.e. the date of issuance of impugned order only. Further, it is observed that the impugned order has been issued by the adjudicating authority in the name and address of the appellant only. Accordingly, I find that the submission of the appellant that “the impugned order was received by the Developer and the appellant were able to find it out in the month of March, 2020” is neither justifiable nor backed by any documentary evidences. Hence, I find that the said submission of the appellant cannot be taken into consideration.

6.3 Accordingly, it is observed that the Appellant was required to file appeal within 2 months from the receipt of the said order i.e. on or before 18.11.2019,



as stipulated under Section 85(3A) of the Finance Act, 1994. However, the Appellant has filed the present appeal on 07.12.2020, i.e. after a period of more than one year from the due date. Further, I also find that in terms of the proviso under Section 85(3A) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of two months as mentioned above, if sufficient cause is shown. Accordingly, I find that there is a delay of more than one year in filing the appeal over and above the normal period of 2 months, which is not covered under the purview of proviso under Section 85(3A) *ibid*. Thus, the appeal filed beyond the time limit prescribed under Section 85(3A) of the Finance Act, 1994 *ibid* cannot be allowed.

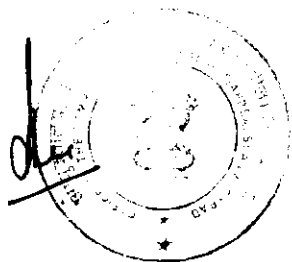
6.4 Further, as regards the submission of the appellant referring 'The Taxation and other Laws (Relaxation of certain Provisions) Ordinance, 2020, it is observed that provisions for relaxation of time limit under certain Indirect Tax Laws were made by the government due to COVID19 by virtue of the provisions of Section 6 of the Taxation and other Laws (Relaxation of certain Provisions) Ordinance, 2020, which is reproduced here under:

*"6. Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41, 41A46 and 47), the Customs Tariff Act, 1975 or Chapter V of the Finance Act, 1994, as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July, 2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20<sup>th</sup> day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as-*

*(a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or*

*(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called, shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf:*

*Provided that the Central Government may specify different dates for completion or compliance of different actions under clause (a) or clause (b)".*





However, I find in the present case that the period of limitation of total 3 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 85 of the Finance Act, 1994 was already completed on 18.12.2019 and hence, the present case would not be eligible for the relaxation/extention granted in terms of the Taxation and other Laws (Relaxation of certain Provisions) Ordinance, 2020 in respect of period(s) of limitation as mentioned above. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in Section 85(3A) the Finance Act, 1994.

7. It is also observed that the appellant has filed an application for condonation of delay. However, filing of a COD application is not going to change the factual position in the present case. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the Finance Act, 1994. This appellate authority, therefore, cannot condone delay beyond the period permissible under the Finance Act, 1994. 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



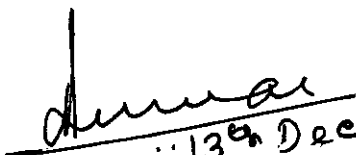
jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

8. I find that the provisions of Section 85 of the Finance Act, 1994 are *pari materia* with the provisions of Section 35 of the Central Excise Act, 1944 and Section 128 of the Customs Act, 1962. Hence, the above judgements would be squarely applicable to the present appeal also.

9. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month prescribed under proviso to Section 85 (3A) of the Finance Act, 1994. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 85 of the Finance Act, 1994. I, accordingly, dismiss the present appeal.

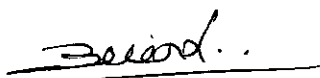
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant are disposed of as above.

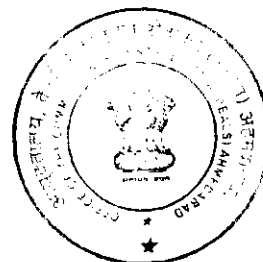
  
 13<sup>th</sup> December, 2021  
 (Akhilesh Kumar)  
 Commissioner (Appeals)

Date: 13<sup>th</sup> December, 2021

Attested

  
 (M.P. Sisodiya)

Superintendent (Appeals)  
 Central Excise, Ahmedabad



By Regd. Post A. D

Ms. Riddhi Ketan Shukla,  
 Shree Nivas 4, Mamta Park,  
 Behind Navgujarat College,  
 Usmanpura, Ahmedabad-380 014

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate: Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-VII, Commissionerate: Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate: Ahmedabad-North.
5. ✓ Guard file
6. PA File