



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-20210564SW000000B2E7

12/05/2021

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/250/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad 140210
1412
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-006/2021-22**
दिनांक Date : **17.05.2021** जारी करने की तारीख Date of Issue : **24.05.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST/A'bad North/ Div. VII/ST/AC/01/2020-21** dated **07.08.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise Div-VII Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant-. - M/s HCP Design Planning & Management Pvt. Ltd.

Respondent- Deputy Commissioner, Central GST & Central Excise, 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 :

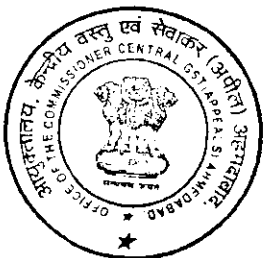
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा का 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, 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 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 मामले 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 दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियां ज. सं. 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 जाएगी और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाएगी।

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.

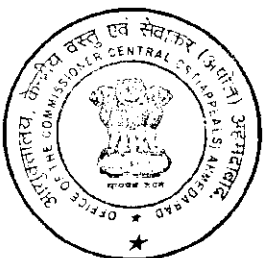
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 अलग-अलग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपील 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 अनुसूचि-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 रु.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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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।

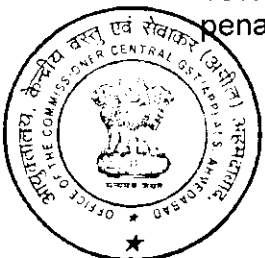
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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

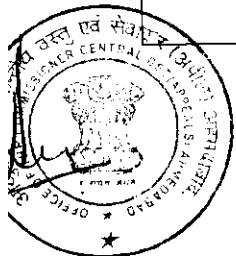
M/s. HCP Design Planning & Management Pvt. Ltd. having premises at Paritosh, Usmanpura, Ahmedabad (henceforth, referred as "appellant") has filed the present appeal against the Order-In-Original No. CGST/A'bad North/ Div.VII/ST/AC/01/2020-21 dated 07.08.2020 (henceforth, the "impugned order") passed by the Assistant Commissioner, Central GST & Central Excise, Division-VII, Ahmedabad-North (henceforth referred as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant is engaged in providing taxable service under the category of "Architect Services" and holding Service Tax Registration No.AABCH1843AST002.

2.1. It was observed during the course of audit conducted on the records of the appellant by the departmental officers that they had not fully discharged their Service Tax liability during the period F.Y. 2011-12, F.Y. 2012-13 and F.Y. 2013-14 for which Final Audit Report No. 281/2015-16 was issued on 31.08.2015. It was contended under said Final Audit Report that during reconciliation of the figures of taxable income as appearing in their Balance Sheets/ P & L Accounts vis-à-vis taxable value declared in their ST-3 returns, short payment of service tax after giving effect of service tax paid through additional challns noticed details of which are as under:

(Amount in Rs.)

Period/ Year	Taxable Value as per Books of A/c	Taxable Value as per ST-3 Returns	Difference of Taxable Value (=2-3)	Service Tax payable as per reconciliation	Additional Service Tax challns paid not shown in ST-3	Net Short paid Service Tax payable (=5-6)
1	2	3	4	5	6	7
2011- 12	273164186	209354661	63809525	5958641	4746902	1211739
2012- 13	254012971	249444644	4568327	502532	0	502532
2013- 14	285708057	254391519	31316538	3444931	179104	3265827
				9906104	4926006	4980098



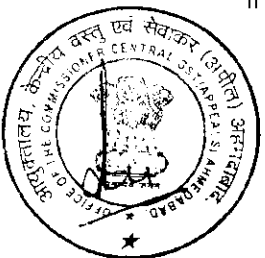
2.2. Accordingly, a show cause notice under F.No. ST/15-61/C-IV/AP-XII(New)/FAR-281/R.P.01/2015-16 dated 21.07.2016 was issued by the Joint Commissioner, erstwhile Central Excise & Service Tax, Audit-II Commissionerate, Ahmedabad to the appellant demanding service tax amount of Rs. 49,80,098/- under the provisions of Section 73(1) read with Section 68 of the Finance Act, 1944 as amended by invoking extended period along with interest under Section 75 of the Finance Act, 1944. It was also proposed to impose penalty under Section 76, Section 77 and Section 78 of the Finance Act, 1944. The said SCN was decided by the Deputy Commissioner, Central GST, Division-III, Ahmednagar North (hereinafter referred as original adjudicating authority) vide Order-In-Original No. CGST/A'bad North/ Div.VIII/S. Tax-DC-007-18-19 dated 29.06.2018 confirming the demand of tax along with interest and also imposed penalty under Section 78 of the Finance Act, 1994 on the appellant.

2.3 Being aggrieved with the order dated 29.06.2018 of original adjudicating authority, the appellant filed appeal before the Commissioner (Appeal), Central Excise, Ahmedabad which was decided vide Order-In-Appeal No. AHM-EXCUS-002-APP-88-18-19 dated 23.10.2018 remanding the matter back to original adjudicating authority for scrutiny of the defense reply of the appellant. The appellant were also directed to present all sort of assistance to the adjudicating authority by providing all the genuine documents available with them.

3. Acting on the direction of the Commissioner (Appeals), CGST, Ahmedabad under OIA dated 23.10.2018, the adjudicating authority, vide impugned order confirmed the demand of Rs. 49,80,098/- alongwith interest under the provisions Section 73(1) read with Section 68 of the Finance Act, 1944 and imposed penalty of Rs. 49,80,098/- under the provisions Section 78 of the Finance Act, 1944.

4. Being aggrieved with the impugned order, the appellant filed the instant appeal on the grounds that:

- Appellant deny all the allegations and averments made in SCN;

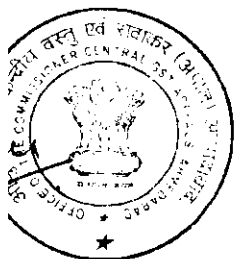


- The reconciliation was done without taking facts;
- The reconciliation was not done correctly as the departmental authority did not consider the value of credit note adjusted in service value in view of their submission;
- The adjustment in service value due to credit note, as per Rule 6(4A) of the Service Tax Rules, 2002 is allowable even if it has not been shown in the ST-3 return in the relevant period;
- They followed the practice of showing the net income of the particular month in the ST-3 return i.e. gross billing during the month less credit note issued during the relevant month, taking credit i.e. total Service Tax payable by the appellant less Service Tax recredit available vide Rule 6(4A) of the Service Tax Rules, 2002, in the ST-3 return;
- They re-iterated the reconciliation statement submitted before the adjudicating authority.

4. Personal hearing in the matter was held on 18.03.2021 through virtual mode. Shri Vipul Khandhar, CA appeared on behalf of the appellant for hearing. He re-iterated the submissions made in Appeal Memorandum.

4.1. The appellant vide their letter dated 18.03.2021 submitted copies of relevant annual accounts and all the ledger duly certified by the chartered accountant who state that it has been correlated with the books of account and stated that the denial of the certification & rejection of the claim of the notice was not justifiable and tenable.

5. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum as well as oral and written submissions made at the time of personal hearing. I have also gone through written submission made by them vide letter dated 18.03.2021 and documents submitted along with the same. I find that the issues to be decided in the case is whether there is short payment of service tax amounting to Rs.49,80,098/- on account of non-declaration of certain income in the ST-3 returns which was noticed on reconciliation of



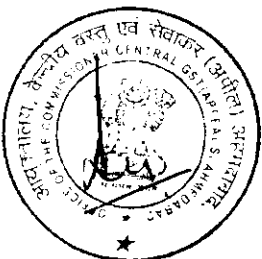
income as per books of account with those declared in service tax returns filed by them.

5.1 It is observed that the matter was remanded back to the adjudicating authority under OIA dated 23.10.2018 with the following specific observations by the Commissioner Appeal:

"6. In view of above, I find that there are lots of ambiguity in the argument of the appellants. Further, whatever contentions they have submitted, are all too away from the actual fact. The appellants have very astutely avoided all those issues that could expose their mala fide. However, the appellants have submitted certain supporting documents which the adjudicating authority rightly rejected without going to their merit. These documents need to be verified once again and the adjudicating authority, along with the JRO, is the best suited person to do justice to the claim of the appellants. Accordingly, I remand the case back to the adjudicating authority for scrutiny of the defense reply of the appellants, once again. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all the genuine documents, which are presently available with them, during the proceeding for which the case is remanded back. "

6. It is observed from the SCN that the audit officers of the department had, on reconciliation of taxable income appearing in their Balance Sheet/P&L Account vis-à-vis the taxable value declared in their ST-3 returns, noticed short-payment of service tax amounting to Rs. 49,80,098/- during the F.Y. 2011-12 to F.Y. 2013-14. It is the contention of the appellant that it is due to two reasons:

- i) The short payment of service tax of Rs. 8,33,415/- for F.Y. 2011-12 and of Rs. 19,30,540/- for F.Y. 2013-14 is because of cenvat credit utilized but not shown in ST-3; and
- ii) They had issued credit notes for service tax amounting to Rs. 9,92,064/- for F.Y. 2011-12, Rs. 6,57,574/- for F.Y. 2012-13 and



Rs.17,61,080/- for F.Y. 2013-14 which was subsequently taken as re-credit under Rule 6(4A) of the Service Tax Rules, 2002.

These amounts are admittedly not shown in their ST-3 returns and the relevant documents were not produced before the audit officers also. This had resulted into issuance of SCN and subsequent confirmation of demand in first round of litigation. The matter was remanded back to the adjudicating authority for examination of documents to be presented by the appellant.

6.1. Acting on the directions of Commissioner (Appeals) as above, the adjudicating authority dealt with and considered all the submissions and documents including the reconciliation statement at para 25 of the impugned order. Further, on perusal of enclosures submitted by the appellant under additional submission dated 18.03.2021, it is observed that the same statement, which were already considered earlier by the adjudicating authority, has been provided again by the appellant. There is no mention/counter in the grounds of appeal as to which observation of the impugned order is challenged based on said reconciliation statement. It is observed that simply by providing same reconciliation statement again and again without countering the same with documentary evidence, the filling of appeal cannot serve the purpose in real sense. On the contrary, such vague submissions add duplication of work to the authority who deals it. On the other end, I observe that the adjudicating authority has completely followed the directions of the OIA dated 23.10.2018 of Commissioner, Appeal and has dealt with the submissions made by the appellant and made suitable observations in para 25 to 31 of the impugned order. I find said observations completely sustainable, more particularly when no any counter argument with documentary evidence against the same has been made by the appellant.

6.2. It is observed that in ere of self-assessment, the onus is on the appellant to assess their service tax liability correctly and make its disclosure to the department by filling ST-3 returns. It is an admitted fact

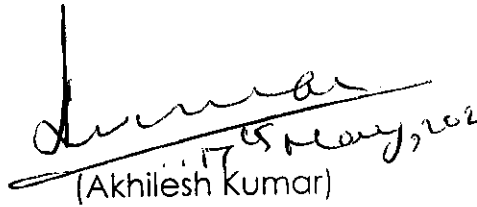
that the amounts of credit notes as well as cenvat utilization have not



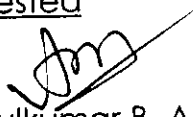
been declared in ST-3 returns. Even at the appellate stage, they are not in a position to submit a reconciliation based on audit observation. Hence, the contention of the appellant is liable for rejection.

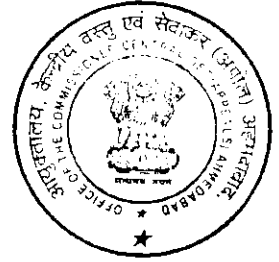
7. In view of the discussion above, I do not find merit in the grounds raised by the appellant. Accordingly, I reject the appeal filed by the appellant and uphold the impugned order.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner, CGST (Appeals)
Date: .05.2021

Attested


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



By R.P.A.D.

To,
M/s. HCP Design Planning & Management Pvt. Ltd.
Paritosh, Usmanpura, Ahmedabad

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-VII, Ahd-North.
- ✓ 6. Guard File.
7. P.A. File