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



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद 380015.   
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**स्पीड पोस्ट**

- क फाइल संख्या : File No : V2(GST)30/EA2/North/Appeal/2020-21 / 1526 TO 1530
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-008/2021-22**   
 दिनांक Date : **28.05.2021** जारी करने की तारीख Date of Issue : **04.06.2021**   
 आयुक्त (अपील) द्वारा पारित   
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/01/Ref/20-21/NKS** dated **04.05.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise, Div-II, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** - Deputy Commissioner, CGST & Central Excise, Div-II, Ahmedabad-North.

**Respondent-** M/s JAS Infraspac Pvt. Ltd.

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 अंतर्गत 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 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 पढ़ी कार्य से बचने के लिए यथार्थि 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थि 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) -

- (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।

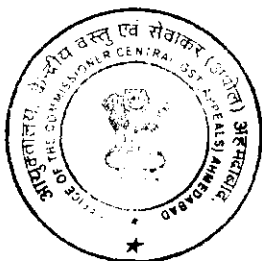
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The Department, through the Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North, has filed this appeal, as per Review Order No. 029/2020-21 dated 02.07.2020 passed against Order-in-Original No. MP/01/Ref/20-21/NKS dated 04.05.2020 [hereinafter referred to as "impugned order"] passed by Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North [hereinafter referred to as "adjudicating authority"] in the case of M/s JAS Infraspac Pvt. Ltd., City Centre, Idgah Circle, Ahmedabad [hereinafter referred to as "Respondent"]].

2.1. The facts of the case, in brief, are that the respondent is engaged in providing construction service having Registration No.AACCJ7331ESD002 under erstwhile Service Tax and also having Registration No. 24AACCJ7331E1ZX under Good and Service Tax under Good & Service Tax Act 2017.

2.2. The respondent had filed refund claim on 28.11.2019 for an amount of Rs.76,98,994/- on the ground that they had paid Service Tax on the advance receipt of the booking of project namely "City Centre" and "Platinum Heights" from clients, as detailed in impugned order, and who subsequently cancelled their booking. The said refund claim was decided by the adjudicating authority vide impugned order wherein he sanctioned the refund claim of the respondent on following grounds:

- (i) That as per ST-3 returns, there is no advance receipts during the period 2011 to 2017-18 (upto 30.06.2017);
- (ii) That the relevant records viz. ST-3 returns, Books of Accounts have been verified by the departmental audit during audit, verified by the DGCEI during investigation and also verified by the jurisdictional assessing officer;
- (iii) As regards verification of challans, all the records pertaining to Service Tax Refund for the period involved have been duly verified by the departmental audit, DGCEI and jurisdictional assessing officer and no discrepancy about non payment of tax mentioned in their report;



- (iv) That it is not compulsory for the claimant to produce written agreements with buyers for which relied upon OIA No. AHM-SVTAX-000-APP-023-17-18 dated 20.06.2017;
- (v) That doctrine of unjust enrichment is not applicable in this case as the respondent had submitted the certificate issued by Chartered Accountant that the incidence has not been passed on;
- (vi) That no government dues/ arrears pending against the respondent as reported by Range Superintendent;
- (vii) That bookings transactions after cancellation became no-taxable i.e nothing but monetary transaction and as such the respondent are eligible for refund of the tax paid;

3. Being aggrieved with the impugned order, the department has filed the instant appeal on the grounds that:

- The order dated 04.05.2020 is bad in law and is liable to be set aside;
- The refund cannot be sanctioned on the pretext that the other agencies like Departmental Audit, DGCEI and Jurisdictional assessing officer have duly verified the documents;
- The adjudicating authority has failed to scrutinize the documents, ledgers and reconciliation of Income in Books of Accounts with ST-3 Returns before sanction the refund claim of Rs. 76,98,994/-;
- The adjudicating authority has wrongly interpreted that the respondent records have been audited by Departmental Audit as the instant refund has been arisen due to cancellation of booking started from June-2016 for the project "City Centre" and December-2017 for the project "Palladium Heights";
- The adjudicating authority has not discussed in the impugned order that the un-accounted receipts as detected by the Income Tax Department is different from the list of booking cancellation given in the Annexure A and Annexure B of the impugned order;
- The adjudicating authority have not discussed the details of date-wise and clients-wise receipt of advance towards the booking and cancellation and its reconciliation;
- The adjudicating authority failed to appreciate the reversal of CENVAT Credit under Rule 6(3)(i) of Cenvat Credit Rules;
- The adjudicating authority has sanctioned the refund claim without considering the observations raised by Audit Cell, CGST & CX, Ahmedabad-North;



- The adjudicating authority wrongly relied upon the OIA No. AHM-SVTAX-000-APP-023-17-18 dated 20.06.2017 as in the present case no such written agreement is found to be submitted by the respondent, neither any affidavit is found nor any discussion towards this aspects in the impugned order;
- The adjudicating authority neither verified the challans for which refund claim filed by the respondent nor discussed the details of challans in the impugned order;

4. Opportunity for personal hearing in the matter were granted on 22.12.2020, 12.01.2021, 19.02.2021, 28.04.2021 and 27.05.2021. However, nobody appeared on the given date for personal hearing. Since sufficient opportunities for hearing has been given, I proceed to decide the case based on materials available on record.

5. I have carefully gone through the facts of the case and ground of appeals in the Appeal Memorandum. It is observed that the issue to be decided in this case is whether the appellant is eligible for refund of service tax which was paid after 01.07.2017 in respect of booking towards sale of residential premises which were subsequently cancelled by prospective buyers to whom the amount was refunded under Section 142(5) of the Goods & Service Tax Act, 2017 read with Section 11B of the Central Excise Act, 1994 made applicable to service tax matter by Section 83 of the Finance Act, 1994 or otherwise.

6. It is observed from case records and the appeal memorandum that the main contention in grounds of appeal is that the adjudicating authority had sanctioned the refund claim without verification of the documents, ledgers and without reconciliation of income in Books of Account with ST-3 returns. It was also contended that the adjudicating authority neither verified the TR-06 challans nor discussed the details in the impugned order and sanctioned the refund claim of the respondent on the sole ground that the other agencies like Departmental Audit, DGCEI and Jurisdictional assessing officer have duly verified the documents.

7. It is observed from impugned order and appeal memorandum that, the adjudicating authority has not done verification of the ledgers and also did not do reconciliation of income in Books of Account with ST-3 returns. Further, it is observed that the adjudicating authority failed to verify the amount of refund




claim paid vide TR-6 challans and also without going into the details of Service Tax paid vide challans and without discussion the challans details in the impugned order. He has sanctioned the refund claim of respondent. Therefore, I find that impugned order has been passed without verification of relevant documents and without any discussion in details on admissibility of refund under provisions of Section 142(5) of the Goods & Service Tax Act 2017 read with Section 11B of the Central Excise Act 1944 made applicable vide Section 83 of the Finance Act 1994.

8. In view of above observations, without going into merit, I set aside the impugned order and remand the case back to the adjudicating authority to decide it afresh after examining the issues on merit and conducting verification of relevant documents. The appeal is accordingly allowed by way of remand.

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.

Attested

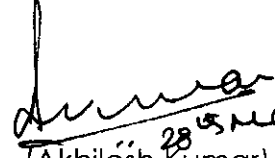
  
(Atul B Amin)  
Superintendent (Appeals)  
CGST, Ahmedabad

By R.P.A.D.

To,  
M/s JAS Infraspac Pvt. Ltd.,  
City Centre, Idgah Circle,  
Ahmedabad.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.EX, Ahmedabad-North.
3. The Additional Commissioner, CGST & C.EX, Ahmedabad-North.
4. The Additional Commissioner, CGST & C.EX, Ahmedabad-North.
5. The Assistant Commissioner, CGST & C.EX, Division-II, Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File.

  
(Akhilesh Kumar)  
Commissioner, CGST (Appeals)  
Date: 05.05.2021

