



# आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



DIN: 20220864SW00008188E3

## स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1292/2022-APPEAL/3205 - 3209

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-25/2022-23**  
दिनांक Date : 22.08.2022 जारी करने की तारीख Date of Issue 26.08.2022

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/DC/96/2021-22** दिनांक: 14-12-2021, issued by Deputy Commissioner, CGST, Division-VII, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

**M/s Jade Mining**

**304, Banker House, Opp. Golden Triangle,**

**Stadium Road, Navrangpura, Ahmedabad - 380014**

2. Respondent

**The Deputy Commissioner**

**CGST, Division-VII, Ahmedabad North**

**4<sup>th</sup> Floor, Sahjanand Arcade, Nr. Helmet Circle,**

**Memnagar, Ahmedabad -52**

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 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 Appellate 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.

- (18) 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.

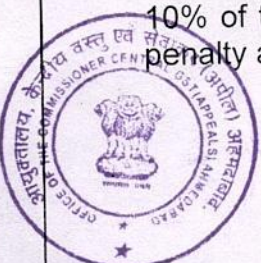
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xxxvii) amount determined under Section 11 D;
- (xxxviii) amount of erroneous Cenvat Credit taken;
- (xxxix) 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 present appeal has been filed by M/s. Jade Mining, 304, Banker House, Opp. Golden Triangle, Stadium Road, Navrangpura, Ahmedabad-380014 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/96/2021-22 dated 14.12.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST and Central Excise, Division-VII, Ahmedabad North (hereinafter referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the during verification of Form 26AS and Income Tax Return filed by the appellant before Income Tax Department, it was noticed that the appellant had earned service income by way of providing taxable services, but they neither obtained Service Tax Registration nor paid service tax during the F.Y 2015-16, 2016-17 and 2017-18 (upto July, 2017). Letters were issued to the appellant on 29.09.2020, 05.11.2020 & 09.12.2020 to submit the data of VAT/Sales Tax Returns, Annual Bank Accounts Statements, Contract/Agreements entered into with the persons for provision of services, Balance Sheet, P&L Account, Reconciliation Statement of service Income reflected with the Income Tax & VAT authorities etc but the same was not provided by them. Therefore, on the basis of the income reflected in the ITR and Form 26 AS, the service tax liability of Rs.10,44,000/- was worked out.

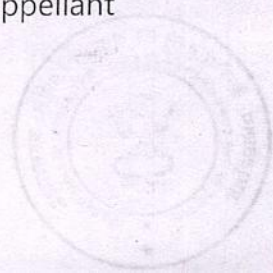
2.1 A SCN bearing no. CGST/AR-1/Div-VII/A'bad-North/Unreg-15-16/7/20-21 dated 17.12.2020 was issued to the appellant proposing service tax recovery amounting to Rs.10,44,000/- not paid during F.Y. 2015-16 and also quantified service tax liability not paid during F.Y. 2016-17, 2017-18 (upto June 2017) u/s 73(1); interest u/s 75 and penalty u/s 77 and 78 of the Finance Act,1994. The said SCN was adjudicated vide the impugned order wherein the service tax liability was re-calculated to Rs.13,52,674/- for the period October, 2014 to June, 2017. The said tax liability was confirmed alongwith interest. Equivalent penalty u/s 78 and penalties of Rs.10,000/- each was also imposed u/s 77 (1) & 77(2)

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred appeal alongwith the application seeking condonation of delay.

4. Personal hearing in the matter was granted on 26.07.2022 in virtual mode. Shri Arjun Akruwala, Chartered Accountant and Ms. Nisha Parekh appeared and represented the case on behalf of the appellant. Ms. Nisha reiterated the difficulties faced by the appellant as explained in written submission and requested to condone the delay.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 14.12.2021 and the same was received by the appellant on 31.01.2022. The present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 30.05.2022. Thereafter, the appellant on 28.06.2022 vide Miscellaneous Application, filed an application seeking condonation of delay on the grounds that in terms of Hon'ble Supreme Court judgment, the period starting from 15.03.2020 to 28.02.2022 shall be excluded while calculating the limitation period. They, therefore, contended that 60 days period for filing appeal shall start from 01.03.2022 and ends on 30.05.2022. Further, they claim that there was some management and financial crisis in the partnership firm due to which the authorized signatory was not available to sign the appeal hence the delay was caused which they requested to condone.

6. Before going into the merit of the case, I will first deal with the Miscellaneous Application filed by the appellant seeking condonation of delay in filing the present appeal. Appellant have relied on the Hon'ble Apex Court's decision passed vide Order dated 27.04.2021. I find that in terms of Section 85 of the Finance Act, 1994 and Chapter V, Section 6 of Relaxation of Time Limit under Certain Indirect Tax Laws 2020, the appellant



were required to file the present appeal on or before 31<sup>st</sup> March, 2022 as the impugned order was received by them on 31.01.2022. However, the appeal was filed on 30.05.2022, after a delay of 61 days. Hon'ble Supreme Court, keeping in view the difficulties faced by litigants due to restrictions on movement and in an attempt to reduce the transmission of the deadly virus, extended the limitation period under the general law of limitation or under any special laws (both Central and/or State) on the filing of all appeals, suits, petitions, applications and all other quasi proceedings vide its Order dated 23<sup>th</sup> March, 2020, from March 15, 2020 till further orders. Subsequently, vide Orders dated March 08, 2021, April 27, 2021, September 23, 2021 and January 10, 2022, Hon'ble Apex Court held that the period from March 15, 2020 till February 28, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

**6.1** Further, Section 85 of the Finance Act, 1994, provides that the appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Relevant text of Section 85 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 <sup>5</sup>[Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal.....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** I find that in terms of Section 85, the limitation period of two months for filing the appeal in the present case shall start from 1<sup>st</sup> February, 2022 and the appellant were required to file the appeal on or before by 31<sup>st</sup> March, 2022. However, the appeal was filed on 30.05.2022. As the appeal period did not expire during the time line given by the Hon'ble Apex Court in the above Order, the same has to be treated as filed beyond the period of limitation prescribed. The instant appeal was filed on 30.05.2022 without application for condonation of delay. It is also noticed that the Miscellaneous Application seeking condonation of delay was filed after almost one month of filing the appeal that too without showing any reasonable cause for such delay.

**6.3** Considering, Section 85(3A) of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay of only one month. I can condone the delay for sufficient reasons up to 30.04.2022. In the present case, appeal was filed only on 30-5-2022 i.e. beyond the condonable period of one additional month after the allowed two months



of filing the appeal, and therefore, I reject the said appeal considering Section 85(3A) of the Finance Act, 1994, as I have no jurisdiction to condone the delay beyond the condonable period of one month.

**6.4** It is observed that Hon'ble Supreme Court Bench on 6-5-2014, **dismissed** the Petition for Special Leave to Appeal (Civil) Nos. 8658-8660 of 2012 filed by Nirantar Security Pvt. Ltd. against the Judgment and Order dated 13-10-2011 of Gujarat High Court in SCA No. 14085 of 2011, dated 13-1-2012 in SCA No. 14085 of 2011, MCA No. 122 of 2012, SCA No. 233 of 2012. The Gujarat High Court in its impugned order had held that since the Commissioner (Appeals) was not empowered to condone the delay, if appeal filed beyond six months from date of receipt of order, his dismissal of appeal as time-barred though valid ground existed for condonation of such delay was justified. Hon'ble Apex Court vide Order dated 13-10-2011 in SCA No. 14085 of 2011 as reported in 2017 (5) G.S.T.L. 365 (Guj.) while dismissing the petitions, held that: "We find no reason to entertain these Special Leave Petitions, which are, accordingly, dismissed." Further, the said issue also stands settled by the decision of Hon'ble Supreme Court in the case of *M/s. Singh Enterprises v. CCE Jamshedpur* reported at 2008 (221) E.L.T. 163 (S.C.).

**6.5** In view of the above discussion and well settled law, without expressing any opinion on the merits of the case, I reject the appeal filed by the appellant on the grounds of limitation.

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

*Aruna*  
22 August, 2022  
(अखिलेश कुमार)  
आयुक्त (अपील्स)

Date: 8.2022

Attested

*Rekha Nair*  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

**By RPAD/SPEED POST**

To,  
M/s. Jade Mining,  
304, Banker House,  
Opp. Golden Triangle,  
Stadium Road, Navrangpura,  
Ahmedabad-380014

**Appellant**

The Deputy Commissioner,  
CGST and Central Excise, Division-VII,  
Ahmedabad North  
Ahmedabad

**Respondent**

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. Guard File.