



## 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  
07926305065- टेलीफैक्स 07926305136



DIN: 20220964SW000000DF65

### स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1265/2022-APPEAL / 3467 - 3472

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-35/2022-23  
दिनांक Date : 16-09-2022 जारी करने की तारीख Date of Issue 21.09.2022

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/111/2021-22  
दिनांक: 07.02.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII,  
Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

#### 1. Appellant

M/s Krishna Buildcon.  
F P 54, Krishna Heights, Opp. Ganesh Gineses  
Off. S.G. Highway, Jagatpur, Ahmedabad - 380051

#### 2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad  
North, 4<sup>th</sup> Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल 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।

(iii) 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 मागलें 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 विल्ट 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.

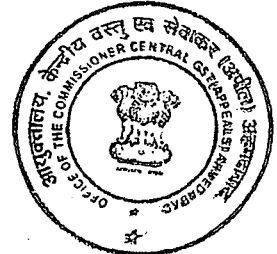
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 हैं।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) 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.

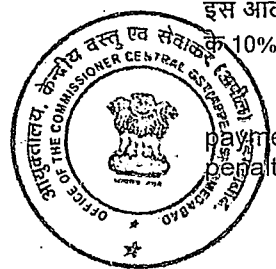
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Krishna Buildcon, 1213, Pehel Lakeview, Near Vaishnodevi Circle, S.P.Ring Road, Ahmedabad-382470 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/111/2021-22 dated 07.02.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST and Central Excise, Division-VII, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant is engaged in providing services of Construction Services and was holding Service Tax Registration Number AALFK744GSD001.

2. During the course of audit, it was observed that the appellant were engaged in the activity of construction services of residential / commercial units and were availing cenvat credit of service tax paid on the input services received for above construction activities. At the time of obtaining B.U. permission on 26.05.2016, certain residential units remained unsold. It appeared that sale of such units after receipt of B.U. permission did not attract service tax and were considered as exempted service under Rule 2(e)(2) of the CCR, 2002. Hence, the proportionate cenvat credit of input services amounting to Rs.5,58,639/- utilized on such flats in which no service element is involved shall not be admissible after 01.04.2016. The appellant were, therefore, liable to reverse the Cenvat credit availed on such exempted services in terms of Explanation-3 inserted to Rule 6(1) of the CCR.

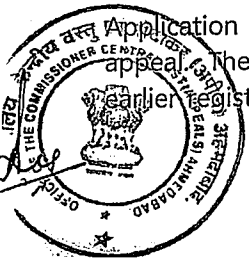
2.1 A Show Cause Notice (SCN) No.CTA/04-384/CIR-VII/AP-46/2019-20 dated 18.02.2021, was issued proposing recovery of wrongly taken Cenvat credit amount of Rs.5,58,639/- alongwith interest and penalty. The said SCN was adjudicated vide impugned order wherein the demand was confirmed alongwith interest and penalty.

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 Hem Chhajer, Chartered Accountant, appeared and represented the case on behalf of the appellant. He stated that the order was served on their site, where the construction was already completed. He, therefore, requested to condone the delay.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 07.02.2022 and the same was received by the appellant on 15.03.2022. The present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 25.05.2022. Thereafter, the appellant on 28.07.2022 filed the submissions seeking condonation of delay on the grounds that the impugned order was sent on their old address and was received by the society office of the scheme constructed by the appellant hence they could not file the appeal in time. They also relied on judgments passed by Hon'ble Apex Court in the case of Collector, Land Acquisition Anantnag & Another V/s Mst. Katiji & Others-reported at 1987 (28) ELT 185 (SC) and in the case of N. Balakrishnan V/s M. Krishnamurthy- 2008 (228) E.L.T. 162 (S.C.)

6. Before going into the merits of the case, I will first deal with the Miscellaneous Application filed by the appellant seeking condonation of delay in filing the present appeal. They claim the delay was on the grounds that the order was delivered to their earlier registered address, which is society office of a project constructed by them. As



this office was closed down, the order was effectively handed over to them on 31.03.2020, hence the delay.

**6.1** 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 [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 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 14<sup>th</sup> May, 2022 as the impugned order was received by them on 15.03.2022. However, the appeal was filed on 26.05.2022, after a delay of 12 days that too without showing sufficient cause for such delay. Further the submission for delay in filing the appeal was filed on 28.07.2021 i.e. after two months of filing the appeal and without showing any reasonable cause for such delay.

**6.3** Considering, the legal provisions under Section 85(3A) of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay of only one month provided he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. However, on going through the grounds of delay, I do not find any merit in their argument because the appellant is engaged in providing Construction Services and after completion of their project they claimed to have shifted their office to some other construction project. There is no evidence on record that they have intimated the department about the change in address. It is a fact that the impugned order was served to the appellant on 15.03.2022. I place my reliance on the decision passed by Hon'ble CESTAT, Principal Bench, New Delhi, in the case of Smaaash Leisure Ltd- 2020 (38) G.S.T.L. 47 (Tri. - Del.) wherein the delay in filing appeal was not condoned as no letter in writing was submitted by assessee to Department regarding change of address. It was held that



mere submission of certificate of registration cannot also be made a ground that Department should have changed assessee's address. In absence of any specific communication regarding change of address, Department justified in sending order at recorded address. Applying the ratio of above decision, I find that, change in office address due to change in project cannot be considered a reasonable or sufficient cause for delay. Moreover, the appellant never communicated their present or new address to the department. I, therefore, reject the miscellaneous application as no sufficient cause was shown.

6.4 Appellant have relied on the Hon'ble Apex Court's decision passed in the case of Mst. Katiji & Others and in the case of N. Balakrishnan, which I find are distinguishable on facts. In the case of *N. Balakrishnan v. M. Krishnamurthy* (supra) [2008 (228) E.L.T. 162 (S.C.)], the Apex Court reversed an order in revision of the High Court and restored the order of the trial court which had condoned the delay of 883 days in moving an application for restoring an adverse decree passed ex-parte. The appellant therein was not found wanting in diligently pursuing the relief but his advocate had been negligent in pursuing the appeal. He had been irresponsible and had left the profession. Whereas, in the present case, the appellant themselves have failed to pursue the appeal and miscellaneous application in time. Further, the decision of the Supreme Court in *Collector, Land Acquisition as reported in 1987 (28) E.L.T. 185 (S.C.)*, would not be of any help to the appellant as there the delay was merely of 4 days. Making a justice oriented approach the Hon'ble Supreme Court held that there was sufficient cause in condoning the delay. This decision cannot be pressed into service in a case whether the delay may either be deliberate or on account of negligence.

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.

*[Signature]*  
16th September,  
(अखिलेश कुमार) 2022  
आयुक्त (अपील्स)

Date: 9.2022

Attested

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

By RPAD/SPEED POST

To,  
M/s. Krishna Buildcon,  
F P 54, Krishna Heights,  
Opposite Ganesh Gineses,  
Off. S.G.Highway, Jagatpur,  
Ahmedabad-380051

OR

M/s. Krishna Buildcon,  
1213, Pehel Lakeview,  
Near Vaishnodevi Circles,  
S.P.Ring Road,

Appellant



Ahmedabad-382470

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.



