



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- टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)84 to 89/Ahd-South/2019-20 / 13631 To 13635

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-039 to 044-2019-20
दिनांक Date : 09-01-2020 जारी करने की तारीख Date of Issue 23/01/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mukesh Rathore, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST/WS07/Ref-54 to 59/MK/AC/2019-20/903 दिनांक:
04.06.2019 issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s MIFA systems Pvt Ltd
Ahmedabad

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 issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

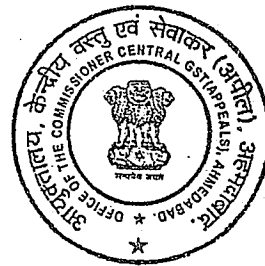
भारत सरकार का पुनरीक्षण आवेदन
Revision application to Government of India :

(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, 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 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 जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 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 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 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 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 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।

- 6(l) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

Following six appeals have been filed by M/s MIFA System Pvt Ltd, 703, Akik, S.G.Highway, Opp. Rajpath Club, Bodakdev, Ahmedabad [hereinafter referred to as "appellant"] against Orders in Original [for short-OIOs] passed by the Assistant Commissioner of CGST, Division-VII, Ahmedabad [hereinafter referred to as "the adjudicating authority"].

S No	Appeal No.	OIO No. & date	Amount of Refund-Rs.
1	84/Ahd-South/19-20	CGST/WS07/Ref-54/MK/AC/2019-20 dated 04.06.2019	104665/-
2	85/Ahd-South/19-20	CGST/WS07/Ref-55/MK/AC/2019-20 dated 04.06.2019	77967/-
3	86/Ahd-South/19-20	CGST/WS07/Ref-56/MK/AC/2019-20 dated 04.06.2019	56290
4	87/Ahd-South/19-20	CGST/WS07/Ref-57/MK/AC/2019-20 dated 04.06.2019	72965/-
5	88/Ahd-South/19-20	CGST/WS07/Ref-58/MK/AC/2019-20 dated 04.06.2019	60025/-
6	89/Ahd-South/19-20	CGST/WS07/Ref-59/MK/AC/2019-20 dated 04.06.2019	147004/-

2. The facts of the cases in brief are that the appellant has filed refund claims on 13.03.2019, as mentioned above, before the adjudicating authority in respect of tax paid on account of supplies made to SEZ unit/SEZ Developer during November 2017 to February 2018. As it is found that certain required documents were not furnished by the appellant along with the claim, a deficiency memo dated 25.03.2019 was issued to the appellant in cases and since no reply was received show cause notices dated 22.05.2019 were issued for rejecting the claims. Later on, the adjudicating authority has rejected all the refunds claims, vide OIOs.

3. Aggrieved with the OIOs, the appellant has filed instant appeals on the grounds that the adjudicating authority has not given sufficient time, as prescribed under Rule 92 (3) of CGTST Act to the appellant for replying the show cause notices; that no opportunity of principle of natural justice was given in the matter while deciding refund claims; that no speaking order was passed while issuing RFD 06.

4. Personal hearing in the matter was held on 04.11.2019. Shri Priyam R Shah, Chartered Accountant appeared for the same on behalf of the appellant and reiterated the submissions made in the appeals memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeals memorandum as well at the time of personal hearing. The limited point to be decided in the matter is whether the refund claims rejected by the adjudicating authority is correct or otherwise.



6. At the outset, I find that the adjudicating authority has rejected all refund claims mentioned above on the grounds of non-submission of requisite documents pertaining to refund amount. The provisions related to refund under CGST Rule, 2017 is as under:

RULE 89. Application for refund of tax, interest, penalty, fees or any other amount. — (1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in **FORM GST RFD-01*** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner

Rule 90(3). "Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03*** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies".

RULE 92. Order sanctioning refund. — (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in **FORM GST RFD-06*** sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable :

Provided that.....

(2)

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08*** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09*** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06*** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, *mutatis mutandis*, apply to the extent refund is allowed :

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard

7. In the instant cases, I find that the appellant had filed the refund claims on 13.03.2019 before the adjudicating authority and deficiency memos were issued on 25.03.2019. As per Section 90(3) supra, on receipt of deficiency memo, the appellant was required to rectify the mistake and upon examination of such rectified claim, by treating as fresh claim, the adjudicating authority, if satisfied that the refund claims are in order, shall make an order in GST RFD-06. If the refund is not admissible, the authority shall issue show cause notice, requiring the appellant to furnish reply within 15 days of the receipt of notice and considering the reply, the adjudicating authority shall pass GST RFD -06.

8. In these cases, I find that the appellant had not replied to the deficiency memo before the adjudicating authority. As per circular No. 17/17/2017-Central Tax dated 15.11.2017, application after deficiency memo shall be treated as a fresh application. It nowhere provides issuance of an order in



Form RFD-06 in a case where Deficiency Memo RFD-03 has been issued. It is presumed that once Deficiency Memo complete in all aspect has been issued, it becomes mandatory for the claimant to re-submit the application after rectifying the deficiencies pointed out therein and if the application is not filed afresh by the claimant within thirty days of the communication of the Deficiency Memo, the proper officer shall pass an order in FORM GST PMT-03 and re-credit the amount claimed as refund through FORM GST RFD-01B if claim pertains to ITC unutilized due to zero rated supplies. Issuance of the order RFD-06 for rejection of refund claim was not required at the stage for the reasons that no fresh application of refund after rectifying the deficiencies pointed out has been filed by the claimant and no show cause notice was issued. Thus, the method prescribed mandates that one deficiency memo is issued, the claimant has to apply a fresh within thirty days in absence of which as a conclusiveness of the refund claim, the amount claimed shall be re-credited in electronic credit ledger of the claimant by the refund sanctioning authority without passing any formal rejection order. Though the refund has been denied, by issuing speaking order on account of non compliance of query memo, it would not be proper to consider that it has been rejected wrongfully. The action of issuance of RFD-06 order which was not required at that stage is nothing but an additional communication to the appellant which can be considered as procedural lapse.

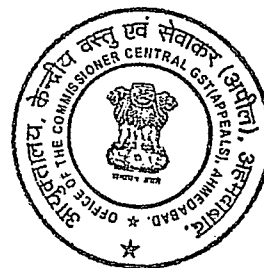
9. In view of the above observations, I do not find any merit to interfere to the order passed by the adjudicating authority. Accordingly, I reject all the six appeals mentioned above.

9. The appeals filed by the appellant stand disposed of accordingly.

(Mukesh Rathore)

Joint Commissioner (Appeals)

Date: /01/2020



Attested

Mohan V.V.
(Mohan V.V.)
Superintendent (Appeals)
CGST, Ahmedabad.

To
MIFA System Pvt Ltd, 703,
Akik, S.G.Highway, Opp. Rajpath Club,
Bodakdev, Ahmedabad

Copy to: The Principal Chief Commissioner of CGST, Ahmedabad Zone
The Principal Commissioner of CGST, Ahmedabad South
The Assistant Commissioner of CGST, System, Ahmedabad South
The Assistant Commissioner of CGST, Div-VII, Ahmedabad South

✓ Guard file

P A File.

