

आयुक्त का कार्यालय, अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 26305065-079 टेलीफैक्स 26305136 - 079 :



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)16/EA-2/Ahd-South/2019-20
V2(GST)17/EA-2/Ahd-South/2019-20

15220 TO 15225

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-07 to 08-2020-21
दिनांक Date : 14-07-2020 जारी करने की तारीख Date of Issue 29/07/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST/WS06/Ref-273/Shreenath/SKS/18-19 &
CGST/WS06/Ref-264/Shreenath/SKS/18-19 दिनांक: 06.03.2019 issued by Assistant
Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shreenath Smart Technologies 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) केंद्रीय 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, 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 proviso
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.

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(ख) 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।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) 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।

(d) 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 QIO 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.

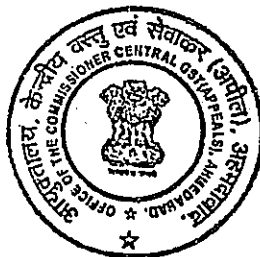
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed 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 contained 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 वाखिल 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

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.

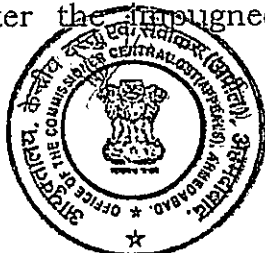
ORDER IN APPEAL

The below mentioned both departmental appeals have been filed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as the 'appellant') under Section 107 of the Central Goods and Services Tax Act, 2017, against the following Orders-in-Originals (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as 'adjudicating authority') in the matter of refund, the details of which are as follows:

Sr. No.	Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.	Amount Under Dispute (in Rs.)
1	2	3	4	5	6
1	M/s. Shreenath Smart Technologies Pvt. Ltd., P/1/41, Varun Apartments, Vasantbaug, Opp. Gulbai Tekra Pumping Station, Ahmedabad	CGST/WS06/Ref-273/Shreenath/SK C/2018-19 dated 06.03.2019	15/2019-20 dated 30.09.2019	V2(GST)16/EA2/Ahd-South/19-20	Rs.1940/- (IGST)
2	24AALCS8208G1Z9 (GSTIN)	CGST/WS06/Ref-264/Shreenath/SK C/2018-19 dated 06.03.2019	14/2019-20 dated 30.09.2019	V2(GST)17/EA2/Ahd-South/19-20	Rs.24068/- (IGST)

2. The facts of the cases, in brief, are that the respondent, had filed both the refund claims for the month of February-2018 & October-2017 on account of Export of Services with payment of tax and the same has been sanctioned by adjudicating authority vide impugned orders.

3. On the refund claim being sent for post audit, it was observed that, both the refund claims was not containing statement-3 and Foreign Inward Remittance Certificates (FIRC) for proof of export. In view of the above, the respondent is not eligible for refund on account of IGST paid for export of service. Thereafter the impugned orders, having been examined for their



legality and propriety, the Pr. Commissioner, CGST, Ahmedabad South Commissionerate, vide above mentioned Review Orders authorized the appellant to file appeals against the impugned orders raising the following grounds:

- That the Deputy Commissioner(Audit), CGST, Ahmedabad South has observed that refund file has not contained statement-3 and FIRC for proof of export under Rule 89(2)(c) of CGST Rules, 2017 and the same was called out but not submitted yet.
- That the adjudicating authority has erred in sanctioning refund of IGST under Sub-section (8) of Section 54 of CGST Act, 2017 by considering that containing statement-3 as per Rule 89(2)(c) and FIRC for proof of export. Therefore proof of export is not established.
- that the erroneously refund sanctioned needs to be recovered along with interest.

4. Personal hearing in respect of both the appeals was held on 07.07.2020, wherein Shri Archesh Shah, Accountant of the Company appeared before me on behalf of respondent. He has submitted his written submission on dated 07.07.2020 at the time of personal hearing.

5. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders and the written submissions submitted by the respondent at the time of personal hearing. I find that the date of receipt of the impugned order as mentioned in the review orders is 04.04.2019 and the above appeals have been filed on 03.10.2019. As per Section 107 of the CGST Act 2017, the review of the order and the consequent filing of appeal by the subordinate has to be done within a period of six months from the date of communication of the order. I find that the above appeal have been filled within time limit.

6. I have gone through the facts of the cases, the impugned orders & the grounds raised in the review orders mentioned *supra* and written submissions and the oral averments raised during the course of personal hearing. I find that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of CGST Rule 89(2)(c), relevant part of which is reproduced below:



“Rule 89 of CGST Rules 2017: Application for Refund of Tax, Interest, Penalty, Fees or any Other Amount (Chapter-X:Refund):

(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:

...

...

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a)

(b)

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d)

7. It is very crystal clear from above provisions that in a case where the refund is on account of the export of services, the respondent is required to submit a statement containing the number and date of invoices and the relevant BRC or FIRC, as the case may be, alongwith refund application. I find that the respondent has failed to submit the proof of export and they have also accepted in their written submission that the invoice was not realized and the respondent is ready to reverse the claim.

8. In view of the foregoing, I find that adjudicating authority has erroneously sanctioned the refund to the respondent and therefore the refund amount should be recovered with appropriate interest. Hence, the appeal filed by the appellant is allowed.



9. The departmental appeal is allowed and the impugned order is set aside. The prayer of the department for the recovery of the erroneously sanctioned refund along with interest is also allowed.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the appellant stand disposed of in above terms.

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : .07.2020

Attested

(D.A. Parmar)
Superintendent(Appeals),
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Shreenath Smart Technologies Pvt. Ltd.,
(GSTIN: 24AALCS8208G1Z9)
P/1/41, Varun Apartments, Vasantbaug,
Opp. Gulbai Tekra Pumping Station,
Ahmedabad

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner of Central Tax, Ahmedabad-South.
4. The Additional /Joint Commissioner, Central Tax (System), Ahmedabad-South.
5. The Assistant Commissioner, CGST Division-VI, Ahmedabad-South.
6. Guard File.
7. P.A. File

