



सत्यमेव जयते

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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DIN- 20231064SW000000FD9F

रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/1394/2023 -APPEAL / 2023 - 26

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-126/2023-24**
दिनांक Date : **29.09.2023** जारी करने की तारीख Date of Issue : **10.10.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

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Arising out of Notice issued under Section 130 of CGST Act, 2017 vide Form GST MOV-10 dated 27.11.2022 passed by The Deputy Commissioner (Prev.), CGST Ahmedabad South.

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अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondent
M/s. Shivansh Enterprise, 212/2, TP-84/8, 535-C, Siddhi Vinayak Tower, Makarba, Ahmedabad (GSTIN: 224ACXPJ9703E2ZC)	The Deputy Commissioner (Prev.), CGST Ahmedabad South

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL

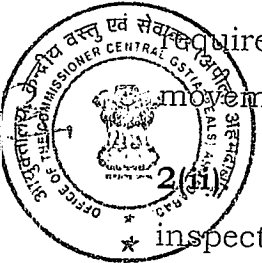
Brief Facts of the Case :-

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") by M/s. Shivansh Enterprise , 212/2, TP84/8, 535-C, Sidhhi Vinayak Tower, Makarba, Ahmedabad(GSTIN 24ACXPJ9703E2ZC) (hereinafter referred to as "Appellant") against the Notice issued under Section 130 of CGST ACT, 2017 vide FORM GST MOV-10 dated 27.11.2022 passed by the Deputy Commissioner(Prev.) (hereinafter referred to as " Proper officer")

2(i). Facts of the case, in brief, are that the appellant is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24ACXPJ9703E2ZC. An order of Detention in Form GST MOV-06 dated 27.11.2022 under section 130 of the Central Goods and Service Tax Act, 2017 and the State/Union Territory Goods And Service Tax ACT 2017 Under Section 20 of the IGST Act,2017 was issued as the goods conveyance bearing No. RJ-09GC-9997 was intercepted and inspected by the proper officer on 26.11.2022 at santhal Bakrol Road, Ahmedabad (03.20 PM). AT the time of interception, the owner/driver/person in charge of the goods/conveyance was Shri Nafees Khan. The outcome of inspection was that the owner/driver/person in charge of the good/conveyance Shri Nafees Khan has not tendered any documents for the goods in movement; prima facie, the documents tendered are found to be defective, the genuineness of the goods in transit and/or tendered documents requires further verification and E-way bill not tendered for goods in movement.

For the said above reasons, and order for physical verification/ inspection of the conveyance, goods and documents was issued in Form GST MOV-02 dated 26.11.2022 and served on the owner/driver/person in Charge, of the conveyance. A physical verification and inspection of goods in movement was conducted on 26.11.2022 by Shri Amit Pratap (inspector) in the presence of the driver/owner/person in charge Shri Nafees Khan and a report was drawn in FORM GST MOV-04.

2(iii). The discrepancy noticed after physical verification of the goods and conveyance was that no document for the goods in movement was available. The goods and the above conveyance were detained by the proper officer and the driver/person in charge of the conveyance was directed to station the conveyance at GST Bhawan, Ambawadi, Ahmedabad at his own risk and responsibility and not to part with any goods, till the issue of release order in form GST MOV-05.



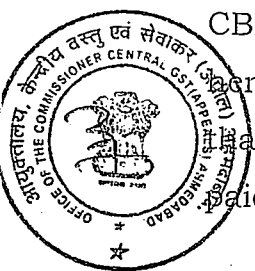
3. Details of the goods seized:

Sr. No.	Description of the goods	Quantity or units	Make/Mark or Model	Remarks
1	2	3	4	5
1.	M-1 Zarda	74880 Packets	-	-
2.	Mahak Silver Pan Masala	1664 Packets	-	-

4. The above intercepted goods were issued order of release vide FORM GST INS-05 dated 28.11.2022 by the proper officer for the reasons:

- These goods are of perishable in nature,
- An amount of Rs 44,35,994/- (Forty four lakh Thirty five Thousand Nine Hundred Ninety four only), which is equivalent to the amount of Tax, penalty fine in lieu of Confiscation of conveyance has been paid,
- And on execution of bond equivalent to value of goods.

5. Being aggrieved with the notice issued in form GST MOV-10, the appellant preferred this appeal on 17.04.2023. In the appeal memo the appellant has submitted that the learned Deputy Commissioner, has erred in law and fact while passing the order under section 130 of Central Goods and Service Tax ACT, 2017 in as much as not considering the amendments as per CBIC Notification No. 39/2021-Central Tax Dated 21.12.2021. The appellant has prayed to provide the opportunity of hearing to produce the evidences so that proper assessment of the case could be done and tax and penalty which is paid by the appellant may please be refunded.



PERSONAL HEARING:

6. The appellant were given the opportunity of personal hearing on 31.07.2023 which was not attended by the appellant. The next PH was granted on 16.08.2023 which too was not attended by the appellant and the 3rd opportunity for Personal Hearing was granted on 25.08.2023 which was attended by the authorized person Shri Kandarp Shah, CA wherein it was submitted that no order in form MOV-11 has been issued to them. Even after repeated oral and written reminders, so far no order is passed hence the present appeal is filed, he further requested on week time for additional submissions. He does not desire further PH in the matter.

DISCUSSION AND FINDINGS :-

7. I have gone through the facts of the case, written submissions made by the appellant/authorized person. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed as per the statutory provisions prescribed or otherwise and (ii) Whether the refund application filed by the appellant is to be allowed or not.

8(i). First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. - (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

8(ii). In the present matter, as per the submissions and documents available on the file, I find that the appeal has been filed against the Notice (GST MOV-10). I also find that no order in form GST MOV-11 has been issued in the instant case. During the Personal hearing held on 25.08.2023 the authorized representative of the appellant have submitted that No order in the form MOV-11 has been passed by the proper officer hence the present appeal is filed against the Notice issued in FORM GST MOV-10 dated 27.11.2022. The appellant have further sought for one week time for additional submission. However the appellant have not submitted any additional submission/documents till date.

9. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. On plain reading, the statutory provisions as prescribed under Section 107 of The CGST clearly mandates the prerequisite that the appeal should be filed against the **order/decision** passed under the CGST Act, 2017. From the submission on record, it transpires that in the said case, the appeal has been filed against the notice issued in Form GST MOV-10.

10. In view of the foregoing facts, I find that in absence of any order in form GST MOV-11 by the Adjudicating Authority, no appeal is maintainable under Section 107 of CGST Act, 2017. Therefore without going into the merits of the



case, I reject the appeal filed by the appellant as the appeal has been filed against the Show Cause Notice issued in form GST MOV-10 and not against the Order in Form GST MOV-11.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

(Signature)
29/09/2023

(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Dated: 29.09.2023

F.No. G1APPL/ADC/GSTAP/1394/2023-Appeal

Attested by:

(Signature)
29/9/23

(Mohit Kumar)
Superintendent
CGST Appeals,
Ahmedabad.



By R.P.A.D.

To

M/s. Shivansh Enterprise,
212/2, TP84/8, 535-C,
Sidhhi Vinayak Tower, Makarba,
Ahmedabad-380051
(GSTIN 24ACXPJ9703E2ZC).

Copy to:-

1. The Chief Commissioner, Central GST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, Central GST & Central Excise, Ahmedabad South.
3. The Deputy Commissioner, Central GST & Central Excise, Preventive, Ahmedabad South.
4. The Assistant Commissioner, Central GST & Central Excise Division-III, Ahmedabad South.
5. The Assistant Commissioner (Systems), Central GST & Central Excise, Ahmedabad South.
6. Guard File.
7. P.A.



