	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX.	केंद्रीय कर भवन,	7 th Floor, GST Building,
सातवीं मंजिल, पॉलिटेक्निक के पास,	आम्बावाडी, अहमदाबाद-380015	Near Polytechnic, Ambavadi, Ahmedabad-380015
079-26305065		टेलीफोन 079-26305136

774210 7746

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)119/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-122-2018-19
दिनांक Date : 20-11-2018 जारी करने की तारीख Date of Issue

21-12-2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/Div-VI/12/Pioneer auto/17-18 दिनांक: 03.07.2018
issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Pioneer Autolink
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 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।

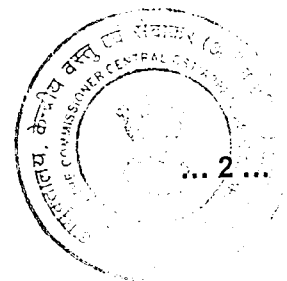
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 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 मामलों 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 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.

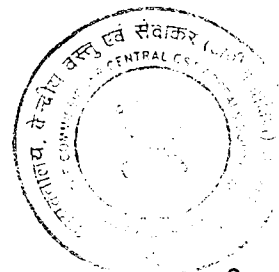
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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.

- (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।

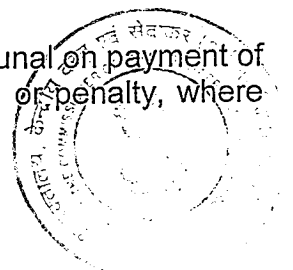
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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."

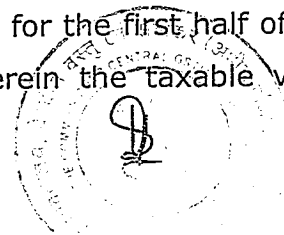


ORDER IN APPEAL

M/s. Pioneer Autolink, 104, 1st Floor, Vishwa Complex, Opp. Navrangpura Jain Temple, Nr. Navrangpura Bus Stand, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original No. CGST/Div-VI/12/Pioneer Auto/1917-18 dated 03.07.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad-South.

2. The facts of the case, in brief, are that during the course of search operation by the officers of the preventive section on 29.10.2015 at the premises of the appellants, it was noticed that the latter were not registered with the Service Tax department and had crossed the threshold limit on 2012-13. It was further noticed that the appellants did not pay Service Tax with the intent to evade the same. Accordingly, a show cause notice, dated 19.06.2017, was issued to them demanding Service Tax duty amounting to ₹ 12,44,443/- for the period from 2012-13 to 2015-16 (upto September 2016). Meanwhile, the appellants obtained Service Tax registration number AMPPS4118JJSD001 on 03.11.2015 and started filing ST-3 return and paid Service Tax accordingly. They also paid the remaining amount of Service Tax along with interest and penalty. The adjudicating authority, vide the impugned order, confirmed the entire Service Tax, as demanded, upto September 2016. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 12,44,443/- (upto September 2016) under the proviso to Section 73(1) of the Finance Act, 1994 and ordered to appropriate ₹ 9,35,721/- already paid by them. The adjudicating authority further ordered to appropriate the rest of the amount of ₹ 3,08,772/- which was already paid and mentioned in the ST-3 return by the appellants. The adjudicating authority also ordered to recover interest under Section 75 of the Finance Act, 1994 and ordered to appropriate ₹ 5,43,468/- already paid by them. The adjudicating authority further ordered to appropriate interest amounting to ₹ 15,300/- which was already paid and mentioned in the ST-3 return by the appellants. The adjudicating authority further imposed penalty under Sections 70(1) (₹ 1,40,000/-), 77(1)(a) (₹ 10,000/-), 77(2) (₹ 10,000/-) and 78(1) (₹ 12,44,443/-) of the Finance Act, 1994 and ordered to appropriate ₹ 35,358/- already paid by the appellants.

3. Being aggrieved with the impugned order, the appellants have preferred the present appeal. The appellants have submitted that the investigation was initiated on 29.10.2015 and they had obtained Service Tax registration on 03.11.2015 and filed ST-3 return for the first half of 2015-16 (April-September) on 06.02.2016 declaring therein the taxable value and



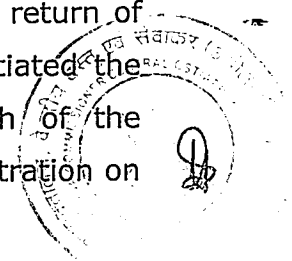
Service Tax payable and Service Tax paid along with interest. However, the said amount of Service Tax was included in the show cause notice dated 19.06.2017 and the adjudicating authority has confirmed the said amount in spite of the matter being brought to his notice vide letter dated 16.02.2018. The appellants further contended that the adjudicating authority, further, imposed penalty under Section 78 of the Finance Act, 1994, to the extent of ₹ 12,44,443/- which includes penalty of ₹ 3,08,772/-, equivalent to the Service Tax pertaining to the period 2015-16. Regarding the issue of imposition of late fee of ₹ 1,40,000/-, the appellants have claimed that same is not imposable as no penalty has been prescribed under Section 77(1) for non-filing of returns.

4. Personal hearing in the matter was granted and held on 25.10.2018. Shri Pravin Dhandharia, Chartered Accountant, appeared before me and reiterated the contents of appeal memo. He further stated that as ₹ 2,35,721/- was paid within 30 days of the show cause notice, no further penalty remains to be paid by them.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the adjudicating authority has included the amount of ₹ 3,08,772/- in the total amount of Service Tax confirmed. The appellants have countered the said decision and contended that the said amount was already paid and mentioned in the ST-3 return and hence cannot be included in the total amount demanded. The adjudicating authority, in the impugned order, has accepted the fact that the appellants have paid the said amount and showed the same in the concerned ST-3 return. I reproduce below, verbatim, the related portion of the impugned order where the adjudicating authority has accepted the said fact;

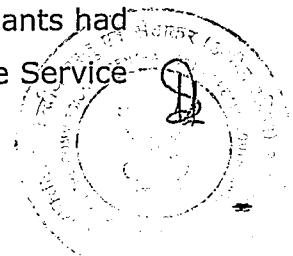
"15. I find that they have discharged service tax liability up to financial year 2014-15 whereas show cause notice was issued up to 2015-16 (upto September 2016). As regards demand for 2015-16 (Up to September, 2016), the assessee submitted that they paid in routine in their ST-3 returns for the year 2015-16. After perusal of St-3 return for April-September 2015-16, prima facie I find that the assessee has discharged their service tax liability of ₹ 3,08,772/- as mentioned in the SCN for the said period of 2015-16 (up to September) by reflecting the said liability in the ST-3 Return."

Now, going through the above, I find that the appellants have paid the amount of ₹ 3,08,772/- and the same was mentioned in the ST-3 return of the concerned period. I further find that the department had initiated the investigation on 29.10.2015 (mentioned in the first paragraph of the impugned order) and the appellants had obtained Service Tax registration on



03.11.2015. The appellants had filed ST-3 return of the first half of 2015-16 (1st April to 30th September) on 06.02.2016 declaring therein the taxable value and Service Tax payable and Service Tax paid along with interest (the appellants have submitted, before me, copy of ST-3 return of the said period). The show cause notice was issued to the appellants, by the department, on 19.06.2017 i.e. more than 1 year from the filing of the said ST-3 return by the appellants. Thus, looking to the above fact, it can be very well seen that the said amount was not suppressed by the appellants as details of the same was very well available on the government approved document (i.e. ST-3 return) and officially submitted by the appellants during the course of investigation. Thus, penalty, under Section 78 of the Finance Act, 1994, cannot be imposed on that particular portion of the amount demanded which has already been shown by the appellants in the respective ST-3 return. Further, in paragraph 13 of the impugned order, it is reflected that the appellants had paid ₹7,00,000/- before the issuance of the show cause notice. Thus, as the appellants have paid part of the amount demanded (along with interest) before issuance of show cause notice, penalty cannot be demanded on the said amount. In the case of CCE, Panchkula Vs. M/s. Krishna Cylinders, Hon'ble CESTAT, New Delhi had held that no penalty could be imposed on the assessee as they had paid the Service Tax along with interest. The Hon'ble CESTAT, Delhi after discussing Section 73(3) of the Finance Act held that as per the provisions of Section 73(3) of the Finance Act, the SCN was not required to be issued when Service tax along with interest has been paid by the Assessee before issuance of SCN. Further, in SCN there were no specific allegations of non-payment by way of fraud, collusion, willful misstatement or suppression of material facts. Accordingly, it was held that although the SCN was issued to the Assessee which was not required to be issued as per Section 73(3) of the Finance Act, no penalty could be imposed. In view of the above, I hold that the appellants have already correctly paid the total penalty of ₹35,358/- @15% under Section 78 of the Finance Act, 1994, on ₹2,35,721/- (part of the total Service Tax paid within 30 days of the issue of show cause notice) as accepted by the adjudicating authority in paragraph 13 of the impugned order.

6. Now comes another plea of the appellants that late fee of ₹1,40,000/- is not imposable as no penalty has been prescribed under Section 77(1) for non-filing of returns. In this regard, there is no denying that the appellants have failed to file returns for the period from 2012-13 to 2014-15. In the show cause notice, the demand for late fee has been made under Section 77(2) of the Finance Act, 1994. I find that if at all the show cause notice has made a typing error; it does not deviate from the fact that the appellants had not filed ST-3 returns for the above mentioned periods. Rule 7 of the Service

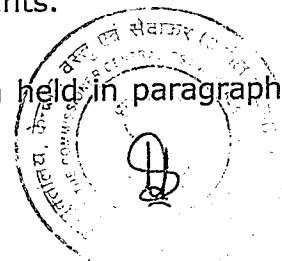


Tax Rules, 1994, read with its sub-rules, deals with the provisions relating to the filing of Service Tax return. Rule 7C prescribes the penalty which an assessee has to pay if there is delay in filing of service Tax Return. Where the return prescribed under Rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of Central Government, from the date prescribed for submission of return i.e. 25th of the month following the particular half year till the date of furnishing of the said return, the following penalty;

Period of Delay	Penalty/late fee before finance ACT 2011	Penalty/late fee After finance ACT 2011
for delay up to 15 days	₹ 500/-	₹ 500/-
for delay beyond 15 days but up to 30 days	₹ 1,000/-	₹ 1,000/-
for delay beyond 30 days	₹ 1,000/- + ₹100/- per day (from 31st day subject to a maximum amount of ₹2000/-.	₹1,000/- + ₹ 100/- per day (from 31st day subject to a maximum amount of ₹20000/-.

It is clear from ~~the above~~ the above that penalty was subject to maximum specified in Section 70. Section 70(1) Specify the maximum penalty of ₹ 2,000/- in respect of return filed up to 31st March 2011. This amount of maximum penalty had been increased to ₹ 20,000/- w.e.f. 01.04.2011. Thus, as per the table above, I find that the adjudicating authority has rightly imposed late fee of ₹1,40,000/- on the appellants. However, the appellants, vide their letter dated 03.12.2018, have stated before me that they had additionally paid ₹1,98,572/- vide challan number 50148 dated 10.09.2018. They pleaded before me that the penal amount of ₹ 1,40,000/- may be adjusted against the said additional amount. In view of the above, I direct the adjudicating authority to verify whether ₹ 1,40,000/- can be adjusted against the said amount. If the amount is accordingly adjusted, the remaining amount may be refunded back to the appellants.

7. The appeal is disposed off as per the discussion held in paragraphs 5 and 6 above.



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

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

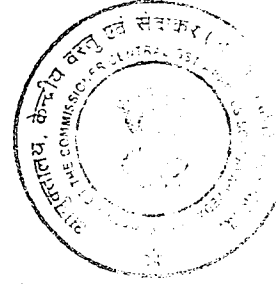
ATTESTED

S. Dutta
(S. DUTTA) 28/12/18

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,

M/s. Pioneer Autolink, 104, 1st Floor,

Vishwa Complex, Opp. Navrangpura Jain Temple,

Nr. Navrangpura Bus Stand,

Ahmedabad-380 009.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-South.
3. The Dy. / Asstt. Commissioner, Central Tax, Div- VI, Ahmedabad-South.
4. The Asstt. Commissioner, (Systems), Central Tax, Ahmedabad-South.
5. ~~Guard file.~~
6. P.A file.