



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)7/Ahd-South/2018-19  
Stay Appl.No. /2017-18

360270  
3606

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-006-2018-19  
दिनांक Date : 25-05-2018 जारी करने की तारीख Date of Issue

12/6/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/Ref-79/Sanskrit-Jewel/17-18 दिनांक: 31.01.2018  
issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Sanskrit Jewels Residency LLP  
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।

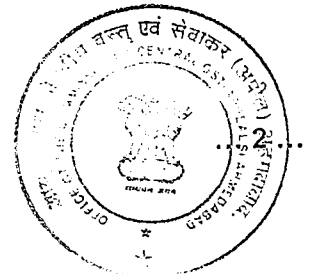
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

(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.

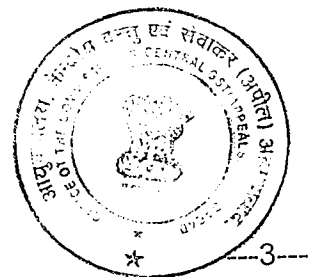
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 हास्पिटल 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।

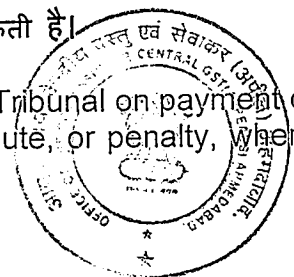
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This appeal has been filed by M/s Sanskrut Jewels Residency LLP, 401, Tilakraj Complex Surya rath, Panchwati, Ambawadi, Ahmedabad [for short-appellant] against Order-in-Original No.CGST-VI/Ref-79/Sanskrut-Jewel/17-18 dated 31.01.2018 [for short-"impugned order"] passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South [for short-adjudicating authority].

2. Briefly stated, the appellant filed a refund claim of Rs.40,55,712/- on 17.10.2017 before the adjudicating authority. The background for filing the said claim is that they are engaged in providing of Residency Construction service to various clients; that they had paid service tax amounting to Rs.57,32,165/- during the course of investigation conducted by Directorate General of Central Excise Intelligence, Ahmedabad [for short-DGCEI] as per service worked out by DGCEI. As there was some error in the figure worked out by DGCEI due to non consideration of input service credit, the appellant submitted a revised calculation of service tax and accordingly, they claimed excess service tax of Rs.40,55,712/- paid by them. After issuing show cause notice dated 23.01.2018, the adjudicating authority vide impugned order dated 31.01.2018 rejected the claim.

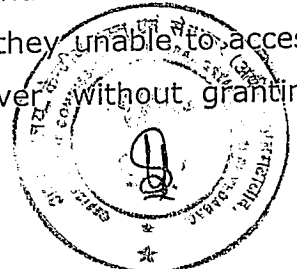
3. Feeling aggrieved, the appellant has filed the instant appeal on the grounds that the adjudicating authority has passed the impugned order without following natural justice of law; that they were not given any time to represent their case; that show cause was issued on 23.01.2018 (emailed on 23.01.2018), giving opportunity of personal hearing on 25.01.2018; that the adjudicating authority has decided the matter without allowing their request of adjournment.

4. Personal hearing in the matter was held on 25.08.2018. Shri Samir M Vora, Advocate appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing.

6. At the outset, I observe that the adjudicating authority has decided the refund claim filed by the appellant without following natural justice of law, without describing facts of the case. In other words, he has passed a non-speaking order.

7. In the matter, I observe that the appellant has filed a refund claim on 17.10.2017, against which the adjudicating authority has issued a show cause notice on 23.01.2018 (emailed on 23.01.2018), giving opportunity of personal hearing on 25.01.2018; that the registered copy of the personal hearing letter was received by the appellant on 02.02.2018. The appellant contended that he came to know the details of personal hearing only on 25.01.2018 as they unable to access internet and accordingly requested for adjournment. However, without granting



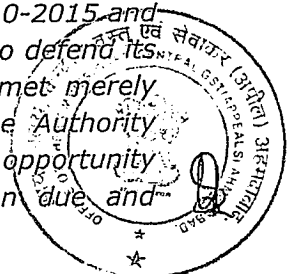
○ another opportunity of personal hearing, the adjudicating authority has passed a non-speaking order by rejecting the claim.

6. I observe that it is settled law that every assessee should be afforded sufficient opportunity of natural justice before deciding the case. In this instant case, I observe that the adjudicating authority was in hurry to decide the matter without following principles of natural justice. I do not find any justification for issuing show cause notice after a period of 90 days on filing refund claim and decide the matter within span of 15 days without granting proper opportunity of natural justice. I also do not find any justification in giving one time personal hearing in the show cause notice itself and then passing an *ex parte* order without granting further opportunity to defend their case.

7. Further, under clause (a) of sub-section (1) of Section 37C of Central Excise Act, notice to be served by registered post/speed post with proof of delivery. In the present case, I observe that the letter of personal hearing fixed on 25.01.2018 was sent to the appellant through mail and through registered post; that they came to know through mail on 25.01.2018 and received registered post on 02.02.2018 only. Further, Section 33A of CEA provides for giving an opportunity of hearing to a party in a proceeding by the adjudicating authority. Sub-section (2) thereof, provides for granting time to the parties and for adjourning the hearing for reasons to be recorded in writing. The proviso thereto circumscribes the power to grant time conferred under sub-section (2) of Section 33A of the Act, by providing that no such adjournment shall be granted more than three times to a party during the proceeding. Thus, by virtue of the provisions of sub-section (2) of Section 33A of the Act, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such a case, the adjudicating authority may grant time and adjourn the hearing, but not more than three such adjournments. Thus, apart from the fact that the notice of hearing has not been served in the manner contemplated under Section 37C of the Act, the notice itself suffers from a legal infirmity inasmuch as it fixes three dates of hearing at a time, which is not in consonance with the proviso to Section 33A of the Act.

8. In this regard, I pertinent to rely on the decision of Hon'ble High Court of Karnataka in the case of M/s IPC Packaging Company Pvt Ltd [2017 (6) G.S.T.L. 256 (Kar.)]. The Hon'ble Court held that:

*"6. This Court is also constrained to observe that the Quasi Judicial Revenue Authorities while assigned the job of collection of Revenue in accordance with law need not act in a rash manner and throw the principles of natural justice to winds like it has been done in the present case and this Court does not find any justification for fixing three consecutive dates for personal hearing on 6-10-2015, 7-10-2015 and 8-10-2015 and then closing the opportunity for the petitioner-Company to defend its case and passing an *ex parte* order. The ends of justice cannot be met merely because an order raising a demand of tax or duty is passed by the Authority concerned but such orders also have to show that not only the adequate opportunity has been given to the assessee concerned but also there has been due and*



reasonable application of mind on the part of the Authority concerned before raising such demand. Such Authorities who pass such kind of orders only add to the volume of litigation for the Constitutional Courts or higher Appellate Authorities rather than genuinely serving the cause of the Revenue or the Government. Such tendency of the quasi-judicial Authorities cannot be encouraged. Their powers to pass orders within the frame work of law is understood and appreciated, but exceptionally when the Courts take up such cases for scrutiny under extraordinary jurisdiction, if the breach of principles of natural justice is glaring, the Courts cannot shut its eyes and leave the parties to fend for themselves in the long channels of appellate litigation under the Act. The present case is a glaring example of misuse of powers by the Respondent Authority.

7. The petition is therefore allowed with costs of Rs. 20,000/- to be personally borne and paid by the said Authority, Ms. Reena Shetty, Additional Commissioner of Customs, Inland Container Depot, Bangalore, to the petitioner Company."

9. In view of above discussion, I observe that the impugned order is clearly in breach of the principles of natural justice warranting interference. Accordingly I set aside the same and remand back to the adjudicating authority with a strict direction to pass a speaking order after allowing the appellant a sufficient opportunities of natural justice.

10. The appeal stand disposed of in above terms.

*Uma Shankar*

(उमा शंकर)  
आयुक्त (अपील्स)  
Date : .05.2018

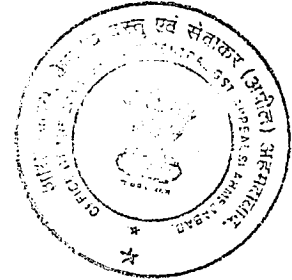
Attested

*Mohanan V.V.*  
(Mohanan V.V.)  
Superintendent (Appeals)  
CGST, Ahmedabad

By R.P.A.D

To

M/s Sanskrut Jewels Residency LLP, 401,  
Tilakraj Complex Surya rath,  
Panchwati, Ambawadi, Ahmedabad



Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-South
3. The Deputy/Assistant Commissioner, CGST Dn-VI, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad-South.
5. Guard File.
6. P.A. File.