



आयुक्त का कार्यालय), अपीलस(

Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)13/Ahd-South/2019-20 / 11282 to 11286

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-026-2019-20**
दिनांक Date : **25-06-2019** जारी करने की तारीख Date of Issue _____ 01/07/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr. Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST/DN-VI/09/DEM/SKC/69** दिनांक: **26.12.2018** issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**69 Interior Design
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 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.

(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 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

This appeal has been filed by M/s. 69 Interior Design, G-42, Takshashilla, Nr., Vishveshwar Mandir, Satellite, Ahmedabad 380 015 [for short – ‘appellant’] against OIO No. GST/DN VI/DEM/SKC/69 Interior/18-19 dated 26.12.2018 issued by the Assistant Commissioner, CGST Division VI, Ahmedabad South Commissionerate [for short ‘adjudicating authority’].

2. Briefly, the facts are that consequent to visit of the premises of the appellant in terms of Rule 5A of the Service Tax Rules, 1994, it was observed that the appellant had not paid service tax for the FY 2014-15 and had also failed to file their returns for the FY 2014-15. A show cause notice dated 27.3.2017 was issued to the appellant inter alia proposing that the value of Rs. 53,50,157/- received as payment/recovered by them from their clients during 2014-15 should not be considered as taxable value; that Rs. 3,30,640/- should not be recovered from the appellant towards service tax for the FY 2014-15 along with interest. The notice further proposed penalty on the appellant under section 76, 77, 78 and also proposed imposition of late fees under section 70 of the Finance Act, 1994. The notice also proposed appropriation of Rs. 271332/- paid towards duty, Rs. 40825/- paid towards interest and Rs. 11000/- paid towards late fees. .

3. This notice was adjudicated vide the impugned OIO dated 26.12.2018, wherein the adjudicating authority confirmed the demand along with interest and further proposed penalty under section 77 and 78 of the Finance Act, 1994. The OIO further ordered recovery of interest and also imposed late fee on the appellant. Amounts already paid was appropriated towards the demand, interest and late fee.

4. Feeling aggrieved, the appellant has filed this appeal on the grounds that :

- that they had filed returns and paid tax along with interest which are available in the ACES profile;
- that though they had filed the returns there is neither mention nor a reference to the service tax returns submitted by the appellant;
- that they have paid the entire amount of tax and interest;
- that the show cause notice was issued though all payments were done by April 2016 while the notice is issued in 2017 invoking extended period;
- that the delay in payment was due to financial and medical difficulties; that the only mistake committed by the appellant was in mentioning the incorrect challan number at the time of filing of ST-3 returns;
- that they would like to rely on the case of Padmini Products [1989(43) ELT 195(SC)], M/s. Continental Foundation [2007(216) ELT 177(SC), Pushpam Pharmaceutical Company[1995(78) ELT 401(SC)];
- that extended period cannot be invoked; that they would like to rely on the case of Jaiprakash Industries Ltd [2002(146) ELT 481(SC)];
- that they would like to rely on the case of Hindustan Steel Ltd [1978(2) ELT J 159(SC)].

5. Personal hearing in the matter was held on 21.5.2019 wherein CA Gunjan Shah and CA Kiran Tahelani, appeared before me on behalf of the appellant. They reiterated the grounds of appeal and further stated that the service tax, interest and late fee were paid before the issue of SCN along with the returns. They also submitted copy of two citations viz. C Ramachandran [2016(46) STR 866 (Tri-Chennai)] and Shri Sarveshwari Logistics [2019(1) TMI 1175 CESTAT New Delhi].



6. I have gone through the facts of the case, the grounds of appeal and the oral submissions and the two case laws submitted during the course of personal hearing. The question to be decided is whether [a] show cause notice was required to be issued to the appellant when they had paid all the dues by April 2016; and [b] whether the adjudicating authority was correct in confirming the demand along with interest, late fee and penalty.

7. The appellant, I find has sought condonation of delay of 25 days. In terms of proviso to Section 85(3A) of the Finance Act, 1994, I condone the delay.

8. Now moving on to the matter, the appellant has in his grounds stated that they had paid the entire amount of duty and interest and in a tabular format given the details of the payments made through 6 challans. The show cause notice mentions five challans, meaning thereby that one challan shown by the appellant as having paid service tax, interest, is in dispute. The appellant in the first para of the grounds also mentions that the returns were filed and they were available on the ACES profile of the appellant. The adjudicating authority in para 20 however states that the return for the period 2013-14 onwards has not been filed till date 3.9.2015 [the date on which the appellant's premises was visited by the officers].

9. There is as is evident, dispute with primary facts. What is disturbing is that while the appellant has made these claims before me, he failed to avail the opportunity accorded by the adjudicating authority on six different dates, spanning a period of four months. This callous attitude of the appellant has lead to unnecessary litigation, if what he claims is true. Surely, this could have been verified by the adjudicating authority. With both the appellant and the adjudicating authority coming up with contra claims, I find it difficult to adjudicate the matter. Findings, as I have stated many times, can only be arrived at if facts are clear/undisputed. Since duty was not paid/short paid, the notice was issued under Section 73(1) of the Finance Act, 1994 invoking extended period. On the other hand, the appellant while claiming that the entire duty stands paid, the returns filed, has relied upon the case of Shri Sarveshwari Logistics [2019(1) TMI 1175 CESTAT New Delhi], which deals with a situation, wherein the entire duty was paid along with interest and Section 73(3) came into play. Had the appellant informed the payment details to the adjudicating authority, the situation would have taken a different turn. Having not done so, I do not think the approach of the appellant of putting facts before me, that to without substantiation, is a correct approach.

10. I am therefore, left with no option but to remand the matter back to the adjudicating authority with a direction to decide the matter afresh after adhering to the principles of natural justice. The appellant is also directed to provide all the facts before the adjudicating authority, along with necessary documentation, to help him to arrive at a proper finding. The adjudicating authority while deciding the case should give his finding after taking into consideration all his case laws quoted before providing the appellant



11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : .6.2019

Attested

20/6/2019
(Mohan V.V)
Superintendent (Appeal),
Central Tax,
Ahmedabad.



By RPAD.

To,

M/s. 69 Interior Design,
G-42, Takshashilla,
Nr. Vishveshwar Mandir,
Satellite,
Ahmedabad 380 015.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division- VI, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.