



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
☎ 07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)93/Ahd-South/2019-20 / 114856. 7 0 114860
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-020-2020-21
दिनांक Date : 27-05-2020 जारी करने की तारीख Date of Issue 17/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-VI/ROM-01/SKC/Crust/19-20 दिनांक: 30.05.2019 ,
issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Crust Food Company
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.



(क) 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 हैं।

(A) 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.

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

(B) 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।

(c) 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 दिनोंक 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 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 Appellant 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 अनुसूचि-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।

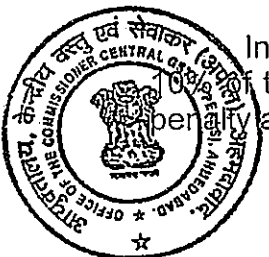
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This order arises on account of an appeal filed M/s Crust Food Company, FF/101, Shilp Square-B, Opposite Himalaya Mall, Drive-In Road, Bodakdev, Ahmedabad (in short '*appellant*') against the Order-in-Original No.CGST-VI/ROM-01/SKC/Crust/MK/19-20 dated 30.05.2019 (in short '*impugned Order*') passed by the Assistant Commissioner, CGST Division- VI, Ahmedabad South (in short '*the adjudicating authority*').

2. Facts of the case, in brief, are that on the basis of an investigation conducted, a Show Cause Notice (in short '*SCN*') dated 08.05.2017 was issued to the appellant demanding service tax of Rs.18.34 lakhs in respect of incomes shown under various heads in their books of accounts which were falling under the ambit of Restaurant Services, Event Management Services, Business Auxiliary Services and Renting of Immovable Property Services. The said SCN was adjudicated vide Order-in-Original (in short '*OIO*') No.SD-02/06/AC/2017-18 dated 01.05.2017 passed by the Assistant Commissioner, Division-II, Service Tax Commissionerate, wherein he confirmed the demand along with interest and further imposed penalty under Section 77 and 78 of the Finance Act, 1994 (in short '*the Act*').

2.1 The appellant vide their letter dated 13.12.2017 has filed an application for Rectification of Mistake in respect of OIO No.SD-02/06/AC/2017-18 dated 01.05.2017 before the Assistant Commissioner of Central GST, Division-VI (Vastrapur), Ahmedabad South, under whose jurisdiction the appellant falls after restructuring of field formations due to GST implementation. The application of Rectification of Mistake was filed on the grounds that (i) the order was passed on ex-parte basis and without supplying copies of the relied upon documents of the SCN including the statements recorded during the proceedings and the OIO having apparent mistake on record is required to be rectified under the provisions of Section 74(3)(b) of the Act and (ii) they were eligible for exemption under Notification No.25/2012-ST dated 20.06.2012 for restaurant services provided by them as they had not installed air conditioner until June 2017. While deciding liability vide OIO, the exemption was considered for the year 2011-12, 2012-13 and 2013-14, however the exemption for the year 2014-15 and 2015-16 was not considered and demand was confirmed. Since there is no change in exemption entry after 01.03.2013, they are eligible for the exemption and there is apparent mistake on record in the form of contradictory decision taken for two period 2011-12 to 2013-14 and 2014-15 to 2015-16 without assigning reason any reason for the period 2014-15 to 2015-16.

2.2 While pursuing the above application for Rectification of Mistake, the appellant has also filed an appeal against the above said OIO before the Commissioner (Appeals), Ahmedabad on 22.12.2017 who vide his Order-in-Appeal (in short '*OIA*') No.AHM-EXCUS-001-APP-316-2017-18 dated 12.02.2018 rejected the appeal on limitation as the appeal was filed after three months from the date of communication of the impugned order. Aggrieved with the said OIA, the appellant has filed an appeal before the Hon'ble CESTAT, Ahmedabad which also was delayed but the Hon'ble CESTAT vide their Order No.M/11055/2018 dated 19.09.2018 allowed the condonation of delay application and the said appeal is pending before Hon'ble CESTAT, Ahmedabad for final decision.

2.3 The application for Rectification of Mistake filed by the appellant before the Assistant Commissioner of Central GST, Division-VI (Vastrapur), Ahmedabad South was rejected by him vide his letter dated 09.01.2018 stating that the situation described under Section 74 of the Act does not prevail in the instant case and the question of "Mistake apparent from the record" is now settled and



this cannot be invoked to open an assessment which has become final under Section 73 and that if this kind of view is taken, then it would amount to a back door entry, to circumvent the provisions of law under Section 85 and that if an appeal is not filed within time under Section 85, the opportunity to reopen the assessment can not be read into provisions of Section 74. Being aggrieved with the above view of the Assistant Commissioner, the appellant has filed Special Civil Application No.4316 of 2018 before the Hon'ble High Court of Gujarat. The Hon'ble High Court vide their Order dated 23.03.2018 set aside the impugned decision of the Assistant Commissioner and requested the Assistant Commissioner "to pass fresh order of rectification of application of the petitioner and specifically comment on the petitioner's contention that though his income restaurant business was exempt and so treated for part of the period under consideration, the same was added for the remaining part which was an apparent error."

2.4 In terms of the above directions of the Hon'ble High Court, the adjudicating authority has passed a fresh order dated 30.05.2019 on the appellant's application for Rectification of Mistake which is the impugned order in this appeal. Vide the impugned order, the adjudicating authority has rejected the appellant's application of Rectification of Mistake dated 13.12.2017 observing that as per the statement of Shri Rohit Khanna, Proprietor of the appellant, recorded during investigation, air conditioner was installed in his restaurant from June 2014 and therefore the exemption available under Notification No.25/2012-ST dated 20.06.2012 for restaurants was not admissible to them for having the facility of air-condition and the proprietor had accepted the liability of service tax from 2014-15 onwards in his statements; that the appellant has retracted from the facts declared and confessed in the statement after a long gap of two years which is not acceptable in any court of law; that the demand confirmed vide OIO dated 01.05.2017 is on the basis of due investigation of the case and statement of the Proprietor of the firm and on scrutiny of the documents found to be proper and correct and he has no reason to interfere with the OIO.

3. Being aggrieved the impugned order dated 30.05.2019, the appellant has filed the present appeal contending mainly that:

- The statements which are relied by the adjudicating authority were not supplied till the original adjudication took place and ROM Application and appeal was filed. Non-receipt of relied upon documents were mentioned in the ROM application dated 13.12.2017, however the adjudicating authority while rejecting the ROM application of the appellant has not offered any comments on non-receipt of the relied upon statement;
- No Retraction could be filed as the appellant was not supplied with the relied upon statements. Confessional statement retracted later on cannot be considered as confessional statement;
- Evidentiary value of the voluntary statements recorded without verifying its veracity, which was subsequently retracted such statement is not admissible evidence; and
- The claim of the appellant in their ROM application dated 13.12.2017 is rightly claimed as no Air Condition was installed in their Restaurant even after 2014-15 onwards. They have reason to say so because the verification of their books of accounts revealed that they had purchased one Air Condition machine which was installed in their office premises situated at S-206, Shailabh Complex, Opp. Vastrapur Lake, Ahmedabad-54 . The Investigating Officers



had never visited at their restaurant to ascertain the fact about the installation of Air Condition at the appellants restaurant.

4. Personal hearing in the matter was held on 08.01.2020. Shri Rohit Khanna, Proprietor appeared and re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case, Appeal Memorandum, submissions made at the time of personal hearing and evidences available on records. It is observed that the impugned order is an order on the application of Rectification of Mistake filed by the appellant against the OIO No.SD-02/06/AC/2017-18 dated 01.05.2017 passed by the Assistant Commissioner, Division-II, Service Tax Commissionerate. It has been passed by the adjudicating authority in terms of the directions given by the Hon'ble High Court of Gujarat vide their decision dated 23.03.2018 in Special Civil Application No.4316 of 2018 filed by the appellant, whereby he was asked by the Hon'ble High Court to pass fresh order of rectification of application of the petitioner and specifically comment on the petitioner's contention that though his income restaurant business was exempt and so treated for part of the period under consideration, the same was added for the remaining part which was an apparent error. The Assistant Commissioner has accordingly passed the impugned order discussing the merits of the appellants application for rectification of mistake and specifically giving his views on the appellants contention on apparent mistake in the OIO of not considering the exemption available under Notification No.25/2012-ST for their restaurant service for the period from 2014-15 to 2015-16. The adjudicating authority in his impugned order has concluded that since the Restaurant of the appellant was installed with Air Conditioner since June, 2014 onwards, as per facts deposed by the Proprietor in his statements recorded during investigation, the exemption available under Notification No.25/ 2012-ST for restaurant service was not admissible to the appellant for the period 2014-15 to 2015-16 and the demand confirmed for the impugned service for the said period was correct and hence the appellants application of rectification in the matter is not legal, proper and liable for rejection.

6. The facts revealed from the impugned order clearly indicates that the denial of exemption under Notification No.25/2012-ST in respect of restaurant services provided by the appellant for the period 2014-15 to 2015-16 was based on facts and evidences gathered during the investigation of the case, to be more precise on the statements of the Proprietor recorded under Section 14 of the Central Excise Act, 1944 and it was not a mistake, as contended by the appellant. Therefore, on the facts of the case, it can not be said that there was a mistake apparent from records in the matter and consequently, the appellants contention in this regard does not survive on merits.

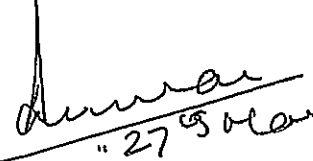
7. Further, it is observed that by the grounds raised in the present appeal, the appellant could not bring out as to what mistake apparent from records exist in the matter. The contentions raised are not qualified to be considered as a mistake apparent from the records so as to ask for a rectification of the order. The grounds like evidentiary value of the statement, non-receipt of relied upon documents and purchase of AC as per their books of accounts, are definitely not reasons to call for a rectification of the decision but are in fact disputing the legal correctness of the decision pronounced vide OIO dated 01.05.2017, which can be challenged by way of remedy of appeal against the original order. It is a fact on records that such an appeal remedy has already been availed by the appellant in the case against the Order dated 01.05.2017, which is now pending before the Hon'ble CESTAT, Ahmedabad for decision, upon rejection from first appellate stage on limitation aspect. In a catena of decisions it



is settled that a mistake which is obvious and self evident is a mistake apparent from the records. In the present case, the grounds raised in the appeal does not to point to any such mistake and hence I do not find any merit in the contentions of the appellant. This is more so, as the original decision on the issue under dispute is pending before the Hon'ble CESTAT for decision.


8. In view thereof, I do not find any reason to interfere with the decision taken by the adjudicating authority vide the impugned order. Accordingly, the appeal filed by the appellant is rejected being devoid of merits.

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


"27 May",
(Akhilesh Kumar)
Commissioner (Appeals)

Date: 27.05.2020.

Attested:


(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.



BY SPEED POST

To

M/s Crust Food Company,
FF/101, Shilp Square-B,
Opposite Himalaya Mall,
Drive-In Road, Bodakdev,
Ahmedabad.

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner, CGST Division-VI, Ahmedabad South.
4. The Assistant Commissioner, CGST (System), HQ, Ahmedabad South.
- ✓ 5. Guard file.
6. P.A. File

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