



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :

DIN- 20201164SW000001540A

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST) 13/Ahd-South/2020-21
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-56/2020-21
दिनांक Date : 23.11.2020 जारी करने की तारीख Date of Issue : 10.12.2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-VI/Ref-64/Amplus/DC/DRS/2019-20
dated 20.03.2020 passed by the Deputy Commissioner, Central Excise, Division-IV,
Ahmedabad-I.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Amplus Capital Advisors Pvt. Ltd.,
23-24, Government Servant Society,
Adjoining Municipal Market,
C.G. Road, Ahmedabad-380009.

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 :

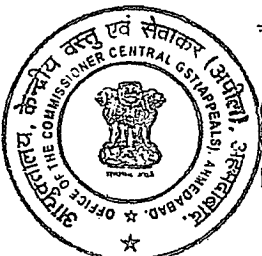
Revision application to Government of India :

(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.



- (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 है।
- (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 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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of would 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 adjudicating authority shall bear 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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 Amplus Capital Advisors Pvt. Ltd., 23-24, Government Servant Society, Adjoining Municipal Market, C.G. Road, Navrangpura, Ahmedabad-380009 [hereinafter referred to "appellant"] against Order-in-Original No. CGST-VI/Ref-64/Amplus/DC/DRS/2019-20 dated 20.03.2020 [hereinafter referred to as "impugned order"] passed by the Deputy Commissioner, Central GST, Division-VI, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. The facts of the case, in brief, are that the appellant was in the business of providing 'Management or Business Consultant Service'. During the period from April 2017 to June 2017, the taxable amount of service provided by the appellant to Amplus Realty Fund-II, viz. the amount of management fees charged, was Rs.71,71,875/- on which they have paid service tax (including Swachh Bharat Cess and KrishiKalyanCess) amounting to Rs. 10,75,781/- vide Challan No. 00385 dated 01.06.2017 whose Current Committed Corpus was Rs.183.50 Crores. Subsequently, because of the sluggishness in the real estate sector, Amplus Realty Fund-II decided to wind up and to restrict its capital commitment from investors to 20% (which is already called till date). Accordingly, the total capital commitment drawdown is to the tune of Rs. 36.70 Crores and as a result, the appellant is entitled to the management fees calculated at the prescribed percentage on Rs. 36.70 Crores. Therefore, it was mutually agreed between the parties that the appellant would refund the management fees to Amplus Realty Fund-II and a Credit Note No.07/19 dated 10.06.2019 was issued for an amount of Rs. 58,71,582/- (including service tax amounting to Rs.7,65,859/-) to be refunded along with applicable service tax with reference to Invoice No.1/2017-18 issued by the appellant. As a result of the above mentioned issuance of credit note, the appellant refunded the management fees, along with applicable service tax, to Amplus Realty Fund-II. Accordingly, the appellant has filed a refund claim for the service tax amounting to Rs.7,65,859/- paid back to the service recipient vide the above said credit note to the adjudicating authority on 05.12.2019 along with all necessary supporting documents. The said refund claim filed by the appellant was rejected by the adjudicating authority vide the impugned order holding that the refund claimed is time barred as per provisions of Section 11B of the Central Excise Act, 1944 as the appellant has filed the claim on 05.12.2019 i.e. after two years of issuing Invoice and filing of ST-3 returns for the period April 2017 to June 2017.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal contending *inter alia* that the adjudicating authority has passed the impugned order in violation of principles of natural justice as the impugned order was passed without issuance of Show Cause Notice and without giving any proper opportunity of proper personal hearing. They have relied upon a number of case laws in support of their grievance.

4. Personal hearing in the matter was held on 29.10.2020. Shri Parag Shah, Chartered Accountant, appeared on behalf of the appellant. He stated that the claim was rejected without giving a SCN and therefore natural justice was denied to them.

5. I have gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as oral submissions made during the hearing. The main grievance of the



appellant in their appeal is that natural justice was denied to them by the adjudicating authority as they were not given opportunity to represent their side of facts in the matter before rejecting their claim for refund in the case.

6. On perusal of records, I find that the contention raised by the appellant regarding non-adhering to the principles of natural justice is correct. In the instant case, I find that notice for rejecting the claim was not issued to the appellant before adjudicating of the case. It is settled legal position that rejection of refund claim without issuance of show cause notice cannot sustain in law. The Hon'ble Tribunal, Chennai in their decision in the case of M/s ITC Ltd. Vs. Commissioner of GST & Central Excise, Salem [2018(9) TMI 1590 – CESTAT Chennai] has held that:

“a notice is a right of the party to enable him to know the grounds for rejection of the refund claim so as to arm himself to defend the case. It is the foundation of any lis in taxation proceedings.”

Apart from that, before rejecting the refund claim in question, no fair or proper opportunity of hearing was granted to the appellant. It is seen that the letter issued to the appellant granting personal hearing in the matter on 11.03.2020 has been issued vide letter dated 09.03.2020, which in itself is a very short period for an assessee to respond. It is more so, when it is seen that the only day available in between the date of issue of letter and the scheduled hearing, viz. 10.03.2020 was a public holiday on account of the festival, 'Holi'. Further, it appeared from the copy of e-mail dated 11.03.2020 submitted by the appellant that they have submitted a letter requesting for adjournment of the hearing. It is a settled law that every assessee/appellant should have been afforded an opportunity to represent their case, as the impugned order is an order of adjudication. In terms of Section 33A of the Central Excise Act, 1944 which has been made applicable to service tax matter vide Section 83 of the Finance Act, 1994, the Respondent was duty bound to grant fair and proper opportunity of personal hearing to the appellant. In the instant case, it is clearly evident that the adjudicating authority has not given any such fair opportunity to the appellant. The impugned order is, therefore, passed in violation of principles of natural justice and is against the settled principle of 'audi alteram partem'. The Hon'ble Supreme Court in the case of Uma Nath Pandey Vs. State of UP [2009 (3) TMI 526 – Supreme Court = 2009 (237) E.L.T. 241 (S.C.)] has held that:

“Natural justice is essence of fair adjudication and to be ranked as fundamental. Purpose of following principle of natural justice is to prevent miscarriage of justice. Notice and hearing required as principle of natural justice.”




In the circumstances, the impugned order calls for interference for violation of principles of natural justice and it is required to be set aside without going into the merit of the case.

7. In view thereof, I set aside the impugned order and remand the matter to the adjudicating authority with a direction to decide the matter afresh after following principles of natural justice and considering the submission of the appellant. Needless to say, the Adjudicating Authority shall give Notice and a reasonable opportunity of hearing before passing the order. The appellant is at liberty to file all documentary evidences before the adjudicating authority.

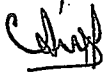
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 23.11.2020.

Attested:



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



By RPAD.

To,
M/s Amplus Capital Advisors Pvt. Ltd.,
23-24, Government Servant Society,
Adjoining Municipal Market,
C.G. Road, Ahmedabad-380009.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central GST & Central Excise Division-VI, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.