



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 :

टेलीफैक्स 26305136 - 079 :

DIN-20211164SW000000D346

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/552/2021 */MHES 70MHES*
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-019/2021-22**
दिनांक Date : 24.09.2021 जारी करने की तारीख Date of Issue : 29.11.2021
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/Dem/03/BSM/AC/D-VIII/2019-20
dated 25.09.2019 passed by the Assistant Commissioner, Central GST, Division-VIII,
Ahmedabad South Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Vishwamitra Films and Televisions Pvt. Ltd.,
704, Sai Sannidhi, Opp. G.B. Shah College,
Sarkhej Road, Vasna,
Ahmedabad-380007.

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 :

(i) 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 मामले 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 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 पढ़ी 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 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 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 Vishwamitra Films and Televisions Pvt. Ltd., 704, Sai Sannidhi, Opp. G.B. Shah College, Sarkhej Road, Vasna, Ahmedabad-380007 (hereinafter referred to as "the appellant") against the Order-in-Original No. CGST/Dem/03/BSM/AC/D-VIII/2019-20 dated 25.09.2019 and issued on 26.09.2019 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South Commissionerate (hereinafter referred to as "the adjudicating authority").

2. The appellant are engaged in providing Event Management Services/ Programme Producer Service and holding Service Tax Registration No.AAECV3219PSD001 and were also availing facility of Cenvat credit under the Cenvat Credit Rules, 2004.

3. Facts of the case, in brief, are that during the course of audit of the records of the appellant by the CERA, it was noticed that the appellant while discharging their service tax liability was utilizing cenvat credit availed for payment of service tax and in certain months, payment of service tax made by utilization of cenvat credit was done by them by utilizing cenvat credit availed in the subsequent months i.e., for example, the service tax liability for the month of January, 2015 paid through cenvat credit account was made by the appellant by utilizing the cenvat credit availed by them during the subsequent months of February, 2015 and March, 2015. The audit observed that as per proviso to Sub-rule (4) of Rule 3 of the Cenvat Credit Rules, 2004 (in short 'CCR'), the appellant was eligible to utilize cenvat credit only to the extent such credit available on the last day of the month for payment of Service Tax relating to that month and utilizing of such cenvat credit for the payment of service tax payable for the earlier month was irregular and such amount was required to pay in cash/ through challan. This consequently resulted in short payment of service tax amount of Rs.1,39,841/- during the months of January, 2015, April, 2015, July, 2015 and October, 2015. A show cause notice dated 03.01.2018 was issued to the appellant for recovery of the Service Tax amount so short paid. The said Notice was decided by the adjudicating authority vide the impugned order wherein he has confirmed the demand along with interest and imposed penalties under Rule 15(3) of the CCR, and Section 77(2) of the Finance Act, 1994. He also imposed a penalty of Rs.1,00,000/- on the Director of the appellant under Section 78A(c) of the Finance Act apart from ordering for a recovery of late fee of Rs.87,100/- for late filing of ST-3 Returns by the appellant.

4. Being aggrieved with the said Order, the appellant has filed the present appeal on the following grounds:

- (i) As per proviso to Sub Rule 3(4) of the CCR, cenvat credit has been allowable from the balance as on date of the debit from that. Further, department has been taking interest on the late payment, so it amount to availment of credit on regulate date. Once no objection for the interest payment, only demand of ineligible credit from the appellant was not justifiable and tenable. They relied on the case laws in the cases of (i) Metric Solution Pvt. Ltd. Vs. Commissioner of C.Ex., Ahmedabad [2012 (286) E.L.T. 58 (Tri.-Ahmd.)], (ii) Spandana Spoorthy Financial Ltd. Vs. C.C.E. & S.T., Hyderabad-IV [2016 (45) S.T.R, 265 (Tri.-



Hyd.)); (iii) Adani Gas Pvt. Ltd. Vs. Commissioner of C.Ex. & S.T., Ahmedabad [2017 (51) S.T.R. 394 (Tri.-Ahmd.)]; and (iv) Shapoorji Pallonji & Co. Ltd. Vs. Commissioner of C.Ex., Pune-I [2016 (41) S.T.R. 532 (Tri.-Mumbai)] in support of their contention; and

- (ii) When there were no dispute regarding the cenvat availed by the appellant, the demand of service tax only on the reason being strict to the provision without taking reasonable view is not sustainable. Only interest liability arises in such cases which the appellant is ready to pay and so demands of full cenvat reversal has not been sustainable and justifiable. They rely on the case law in the case of Commissioner of Central Excise, Delhi-I Vs. Aero Club [2016 (44) S.T.R. 604 (Tri.-Del.)].

5. Personal hearing in the matter was held on 21.09.2021 through virtual mode. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum and also made an additional written submission dated 21.09.2021 wherein it was contended that (i) while investigating the matter, the department has not taken in to account the liabilities arise due to non compliance in the first quarter, then the subsequent quarter, there were no default, which benefit has not been allowed by the investigating officer; and (ii) appellant has made default which has been correctible on payment of interest. They rely on the case laws in the case of Shapoorji Pallonji & Co. Ltd. Vs. Commissioner of C.Ex., Pune-I [2016 (41) S.T.R. 532 (Tri.-Mumbai)], Santosh Associates Vs. Commissioner of Service Tax, Ahmedabad [2009 (16) S.T.R. 87 (Tri.-Ahmd.)] and Central Warehousing Corpn. Vs. Commissioner of Service Tax, Ahmedabad [2013 (30) S.T.R. 556 (Tri.-Ahmd.)] in support of their contention.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the additional written submissions as well as oral averments made during the course of personal hearing. However, before deciding the matter on merits, I find that the appellant had received the impugned OIO on 26.09.2019 while the appeal is filed on 24.02.2021. The appellant had filed an application for condonation of delay in filing the appeal on the grounds that actually the said OIO had been received by the old consultant and due to some health problem, the old consultant could not file the appeal and when they came to know of this fact afterwards, they could not contact with another consultant due to Covid-19 pandemic.

7. I find that the aforementioned appeal have been filed beyond the stipulated two months time limit specified under Section 85 (3A) of the Finance Act, 1994. Relevant extracts of Section 85 of the Finance Act, 1994, is reproduced below for ease of reference:

SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). —

(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or



penalty under this Chapter [, made before the date on which the Finance Bill, 2012, receives the assent of the President] :

Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

(4) The [Commissioner] of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the [Commissioner] of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

[emphasis added]

8. I find that the aforementioned appeal has been filed beyond the prescribed time limit of two months. The delay in filing the said appeal is also more than one month after the prescribed time limit of two months. As such, I am not empowered to condone the delay in this appeal, as it was filed after three months from the date of communication of the impugned order. In view of the foregoing, I reject the appeal on limitation as provided under Section 85 of the Central Excise Act, 1944.

9. 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: 24.09.2021.

Attested:

(Anilkumar P.)
Superintendent
CGST Appeals
Ahmedabad.

BY R.P.A.D./SPEED POST

To
M/s Vishwamitra Films and Televisions Pvt. Ltd.,
704, Sai Sannidhi, Opp. G.B. Shah College,
Sarkhej Road, Vasna,
Ahmedabad-380007.



Copy to:

1. The Chief Commissioner, CGST& Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST& Central Excise, Ahmedabad-South.
3. The Assistant Commissioner, Central GST, Division-VIII,
Ahmedabad South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.
(for uploading the OIA)
5. Guard file
6. P.A. File