



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 :

टैलेफैक्स 26305136 - 079 :

DIN-20220164SW00002732C8

स्पीड पोस्ट

- क फाइल संख्या : File No :GAPPL/COM/STP/360/2021 *15743 70 52 119*
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-030/2021-22**
दिनांक Date : 28.12.2021 जारी करने की तारीख Date of Issue : 12.01.2022.
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Letter F.No.STC/AHD/VCES/ANMOL TECHNO/1431/13-14
dated 01.02.021 issued by the Joint Commissioner (in-situ), Central GST,
Ahmedabad South Commissionerate.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Anmol Technomart Pvt. Ltd.,
2nd Floor, N.B.C.C. House,
Opposite Stock Exchange,
Panjrapole, Ahmedabad-380015.

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 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 ईए-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 Anmol Technomart Pvt. Ltd., 2nd Floor, N.B.C.C. House, Opposite Stock Exchange, Panjrapole, Ahmedabad-380015 [hereinafter referred to as "*the appellant*"] against a letter dated 01.02.2021 [hereinafter referred to as "*the impugned letter*"] issued by the Joint Commissioner (in-situ), Central GST, Division-VI, Ahmedabad South [hereinafter referred to as "*the jurisdictional authority*"] on the subject of non-payment of tax dues declared under Voluntary Compliance Encouragement Scheme – 2013 [hereinafter referred to as '*VCES*'].

2. The facts of the case, in brief, are that the appellant was engaged in providing 'Business Auxiliary Services' under erstwhile Section 65(105) of the Finance Act, 1994 and holding Service Tax Registration AAGCA4775KST001. In terms of the Voluntary Compliance Encouragement Scheme – 2013 announced by the Government vide Chapter VI - Finance Act, 2013 [hereinafter referred to as '*the Act*'], the appellant had made a declaration dated 30.12.2013 under the said scheme as provided in Section 107 of the Act, declaring a tax dues of Rs.8,57,195/- for the period from April, 2008 to December, 2012 along with payment of 50% of tax dues of Rs.4,28,598/-. The remaining tax liability of Rs. 4,28,597/- was paid by them on 31.12.2014 along with interest of Rs.38,575/-. The Designated Authority, VCES Cell, Service Tax Commissionerate, Ahmedabad vide letter dated 20.03.2015 issued from F.No.STC/AHD/VCES/Anmol Techno/1431/13-14 (New Group-II) informed the appellant that the tax dues declared by them in their VCES declaration was wrongly arrived at by them as they had adjusted cenvat credit against the actual tax dues liable to be paid by them, which was not permissible as per Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2103 issued under Notification No.10/2013 dated 13.05.2013. In terms of the said Rule, cenvat credit shall not be utilized for payment of tax due under VCES. Therefore, it was held that the appellant has short paid by their tax dues declared in their return to the extent of tax dues adjusted through the cenvat credit and thereby found to have failed to fulfill the provisions of sub-section (3) and (4) of Section 107 of the Act for the reason of which they were not issued the acknowledgement of discharge in form VCES-3. The appellant was also communicated vide the said letter dated 20.03.2015 of the Designated Authority that as per Section 110 of the Act, the declared amount is liable to recover from them under the provisions of Section 87 of the Chapter viz. Chapter V of the Finance Act, 1994 (32 of 1994). As per the department's version, the actual tax dues liable to be paid by the appellant under VCES in terms of their declaration was Rs.27,58,040/- and the appellant had only paid Rs.8,57,195/- against the said liability



and the remaining amount of tax dues is liable for recovery from them. Accordingly, action for recovery of unpaid amount of tax dues seems to have been initiated by the Range Superintendent and the jurisdictional authority vide their letter dated 27.10.2015 and 13.11.2018 respectively vide which the appellant was requested to pay up the remaining amount of unpaid tax dues. A further letter dated 01.02.2021 from F.No.STC/AHD/VCES/Anmol Techno/1431/13-14 was issued by the jurisdictional authority in this regard again asking the appellant to pay the remaining tax dues unpaid.

3. Being aggrieved, the appellant has filed the present appeal against the above said letter dated 01.02.2021 issued by the jurisdictional authority contending, *inter-alia*, that in the given matter instead of initiating action under Section 73 of the Finance Act, 1994 within one year of date of declaration as stipulated in Section 111 of the Finance Act, 2013, the department intend to resort the action under Section 110 of the Finance Act, 2013; that Section 110 of the Act clearly suggests that action under Section 87 can be resorted in the case where tax dues declared but not paid; that in the given case of the appellant, he has discharged the declared amount of Rs.8,57,195/- as declared in VCES 1 and the entire amount as declared has been paid vide Challan No.00569 dated 31.12.2013 and No.00327 dated 31.12.2014 and, hence, recourse to this Section cannot be taken; that their Bank Accounts were freezed on the directions of the department which was unfreezed later and they have not received any demand notice, summons or show cause notice before this blocking of Bank Accounts; that in the given case, the appellant has clearly and correctly stated the entire facts in the declaration, which has also not disputed by the department even while issuing the acknowledgement of declaration on 07.01.2014 in VCES 2; that no notice as per provisions of Section 111(1) of the Act was served on them by the Commissioner of Service Tax, Ahmedabad till date; that as per the provisions of Section 111(2) of the VCES, no action shall be taken under subsection (1) after the expiry of one year from the date of declaration and, therefore, if any action was required to be taken, the same should have been taken by 31.12.2014 as the declaration was filed by them on 31.12.2013 and thereafter no action may be taken; that there has been no discrepancies as far as the payment of the dues as declared in VCES is concerned, the entire amount as declared in VCES 1 was paid by them; and that they rely on the case laws in the case of (i) Commissioner of Central Excise, Customs & Service Tax, Hyderabad-I Vs. Giridhari Constructions [2019 (10) TMI 1043 – CESTAT Hyderabad], (ii) Commissioner of Service Tax, Hyderabad-I Vs. Sravanthi Contractors & Developers [2019 (9) TMI 648 – CESTAT Hyderabad] and



(iii) M/s Aggarwal Communication Vs. CCE, Gurgaon I [2018 (5) TMI 1360 – CESTAT Chandigarh].

4. Personal hearing in the matter was held on 02.11.2021. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant. He re-iterated submissions made in appeal memorandum.

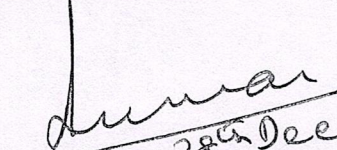
5. I have carefully gone through the facts of the case, appeal memorandum, oral submissions made at the time of personal hearing and evidences available on records. I find that the impugned letter dated 01.02.2021 issued by the jurisdictional authority is regarding recovery of tax dues declared by the appellant under the Voluntary Compliance Encouragement Scheme – 2013 (VCES). From the said letter, it is apparent that the same is with reference to the letter dated 20.03.2015 issued from F.No.STC/AHD/VCES/Anmol Techno/1431/13-14 (New Group-II) by the Designated Authority, VCES Cell, Service Tax, Ahmedabad to the appellant, wherein the said Authority has held that the part of tax dues declared and shown to have paid by way of adjustment of cenvat credit by the appellant was not a valid payment in as much as utilization of cenvat credit was not allowed for payment of tax dues under VCES in terms of Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2103 and, hence, there was a short payment of tax dues to that extent on their part for which the benefit of the VCES cannot be extended to them and the tax dues short paid was liable for recovery from them. It is, thus, evident that the impugned letter is in consequence to the findings of the Designated Authority discussed above which was communicated vide letter dated 20.03.2015. There is no fresh decision/order by the jurisdictional authority vide the impugned letter so as to make the appellant aggrieved against the same. The cause of action in the case indisputably originates/arises from the findings dated 20.03.2015 of the Designated Authority discussed above and the impugned letter is only seeking implementation of the decision dated 20.03.2015 of the Designated Authority. Therefore, there is no decision/order by the jurisdictional authority in the impugned letter and for that reason, it is not appealable under Section 85 of the Finance Act, 1994. If at all aggrieved, the appellant should have challenged the decision of the Designated Authority communicated vide his letter dated 20.03.2015, under which the amount of tax dues under dispute was confirmed. I find that the appellant has not challenged the above decision/findings dated 20.03.2015 of the Designated Authority and has challenged the same by way of this appeal against the impugned letter, as is evident from the contentions raised in the present appeal. It is apparent that the appellant is



trying to circumvent the hurdle of limitation that comes into their way for challenging the decision dated 20.03.2015 of the Designated Authority now as the period of limitation for filing appeal in the said case is expired. In view thereof, the present appeal filed by the appellant is not maintainable and is rejected accordingly.

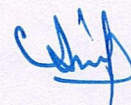
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

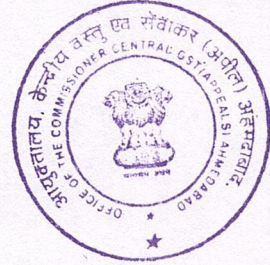
The appeal filed by the appellant stands disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28.12.2021.

Attested:


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



By RPAD.

To
M/s Anmol Technomart Pvt. Ltd.,
2nd Floor, N.B.C.C. House,
Opposite Stock Exchange,
Panjrapole, Ahmedabad-380015.

Copy to:-

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