



आयुक्त(अपील)का कार्यालय,  
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065 - टेलिफैक्स 07926305136



**DIN : 20230164SW000000F0B9**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1780/2022 / 6872-76
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-118/2022-23  
दिनांक Date : 02-01-2023 जारी करने की तारीख Date of Issue 04.01.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 07/AC/Div-I/PBB/2020-21 दिनांक: 01.03.2021 passed by Assistant Commissioner, CGST, Division-I, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s R.B. Trading Company  
9, G.F, H.H. Trust Building,  
Near Kothari Pole, Gandhi Road,  
Ahmedabad - 380001

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।

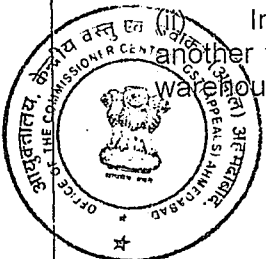
Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :-

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, 4<sup>th</sup> 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 हानिकार खाने 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।

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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो 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 सेवा कर 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

80 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;  
इण लिया गलत सेनवैट क्रेडिट की राशि;  
बण 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.

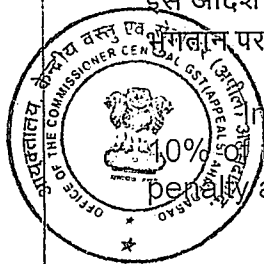
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (cclix) amount determined under Section 11 D;  
(cclx) amount of erroneous Cenvat Credit taken;  
(cclxi) 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 साँग 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

The present appeal has been filed by M/s. R.B. Trading Company, present address at 9, G.F, H.H. Trust Building, Near Kothari Pole, Gandhi Road, Ahmedabad – 380 001 ( previously at 663/A, Jariwada, Opposite Shree Krishna Complex, Opposite Model Cinema, Gandhi Road, Ahmedabad – 380001) (hereinafter referred to as the “appellant”) against Order in Original No. 07/AC/Div-I/PBB/2020-21 dated 01.03.2021 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division – I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACJPS9065NSD002 and engaged in providing taxable services. During the course of Audit of the records of the appellant conducted by the departmental officers for the period from October, 2013 to June, 2017, it was observed that there was a difference in the value of the taxable services shown in their ST-3 returns as compared to their financial statements. It appeared that the appellant had accordingly short paid service tax amounting to Rs.3,83,542/- during the period from F.Y. 2013-14 to F.Y. 2016-17.

2.1 It was further observed that the appellant had taken cenvat credit amounting to Rs.16,083/- during F.Y. 2013-14 to F.Y. 2017-18, but could not produce the cenvat credit account as stipulated in Rule 9 (5)/9(6) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). It also appeared that the appellant had availed the cenvat credit without having duty paying documents as stipulated in Rule 9 (1) of the CCR, 2004.

3. The appellant was, subsequently, issued a Show Cause Notice bearing No. Vi/1(b)-753/C-1/AP-1/Audit/Ahd/2018-19 dated 04.04.2019 wherein it was proposed to :

a) Demand and recover service tax amounting to Rs.3,83,452/- under the Section 73 (1) of the Finance Act, 1994.

b) Recover Interest under Section 75 of the Finance Act, 1994.

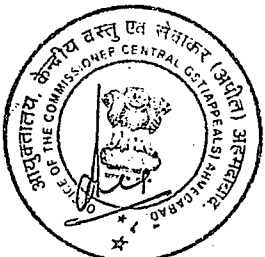


- c) Impose penalty under Section 78(1) of the Finance Act, 1994.
- d) Disallow and recover the cenvat credit amounting to Rs.16,083/- under Rule 14 of the CCR, 2004 read with Section 73 of the Finance Act, 1994.
- e) Recover interest under Rule 14 of the CCR, 2004 read with Section 75 of the Finance Act, 1994.
- f) Impose penalty under Rule 15 of the CCR, 2004 read with Section 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs.34,595/- was confirmed along with interest. Penalty equivalent to the service tax amount confirmed was imposed under Section 78(1) of the Finance Act, 1994. The demand of service tax amounting to Rs.3,48,947/- was dropped. The cenvat credit amounting to Rs.16,083/- was confirmed along with interest. Penalty equivalent to the cenvat credit confirmed was imposed. The appellant was given the option of paying reduced penalty amounting to 25% if the same is paid within a period of 30 days.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

- i. The adjudicating authority has passed the impugned order without considering their reply dated 25.09.2020.
- ii. Due to COVID-19, they were not allowed to enter the premises during the period from 22.03.2021 till 28.08.2021. Their office as well as that of their advocate was not operative from April, 2021 to August, 2021.
- iii. They had tried to contact the Range Office regarding the amount of interest but no appropriate response was received.
- iv. They had received the impugned order on 14.12.2021 in which the interest amount was not mentioned. Both the interest and penalty amount was mentioned as Rs.50,678/-. It was a mistake of communication on the part of the department.
- v. As per letter dated 04.01.2022 of the Superintendent, AR-IV, Division-I, CGST, Ahmedabad South, they were liable to pay service tax amounting to Rs.50,687/- along with interest and penalty amounting to Rs.50,678/- i.e. they were required to pay a total amount of Rs.1,01,356/-, which they have already paid.



- vi. They had paid the service tax amounting to Rs.50,678/- within the period of 30 days. They had also paid interest amounting to Rs.60,668/- and penalty @25% amounting to Rs.12,670/- upon receipt of the impugned order.
- vii. They are seeking a reasonable and fair opportunity as they had already paid service tax, interest and 25% penalty as per the impugned order.
- viii. The penalty amounting to Rs.38,008/- may be deleted.

6. Personal Hearing in the case was held on 16.12.2022. Shri Devang Shukla, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in application for condonation of delay.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issue before me for decision is as to whether the appellant are eligible to the benefit of reduced penalty amounting to 25% of the penalty imposed, in terms of the impugned order.

8. Before delving in to the merits of the case, I proceed to deal with the issue of condonation of delay sought by the appellant. It is observed that the impugned order is dated 01.03.2021 and the appeal has been filed on 30.05.2022. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994.

The relevant part of the said section is reproduced below :

“(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 received 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.”

8.1 In the instant case, the impugned order is dated 01.03.2021. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 30.04.2021. The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal, also ended on 31.05.2021. However, considering the prevailing COVID pandemic, the



Hon'ble Supreme Court on 23.03.2020 extended the period of limitation in all proceedings w.e.f. 15.03.2020. The relaxation of the period of limitation was subsequently extended till 02.10.2021 vide Order dated 23.09.2021. Subsequently, the Hon'ble Supreme Court vide Order dated 10.01.2022 directed that the period from 15.0.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. It was further directed by the Hon'ble Supreme Court that where the limitation would have expired during the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

8.2 In the instant case, the period of limitation for filing of appeal by the appellant expired on 30.04.2021 and the further condonable period of one month also expired on 31.05.2021. Therefore, in terms of the Order of the Hon'ble Supreme Court, the appellant was having a period 90 days from 01.03.2022 for filing of appeal against the impugned order dated 01.03.2021 and the 90 days period of limitation for filing appeal expired on 29.05.2022. The present appeal was filed by the appellant on 30.05.2022. Considering that 28.05.2022 and 29.05.2022 were Saturday and Sunday and the office of this authority is closed on these days, the last day for filing of appeal in the instant case would be the next working day i.e. 30.05.2022 and the appeal was filed by the appellant on 30.05.2022. Therefore, the appeal is considered to be filed within the period of 90 days allowed by the Hon'ble Supreme Court.

9. Coming to the merits of the case, I find that the appellant have sought the benefit of reduced penalty in terms of clause (ii) of the second proviso to Section 78 (1) of the Finance Act, 1994. In terms of clause (ii) of the second proviso to Section 78 (1), the benefit of reduced penalty of 25% of the service tax determined is available where the service tax and interest as well as the reduced penalty are paid within 30 days of the receipt of the order determining the amount of service tax in terms of Section 73 (2) of the Finance Act, 1994.

The adjudicating authority has at Para 14 (v) of the impugned order allowed the benefit of reduced penalty in terms of clause (ii) of the second



proviso to Section 78 (1) of the Finance Act, 1994, if the service tax, interest and 25% of the penalty is paid within a period of thirty days. In the instant case, the appellant have contended that they have paid the service tax along with interest as well as the reduced penalty amounting to Rs.12,670/- within 30 days of receipt of the impugned order. It is observed that the issue raised by the appellant in the present appeal is not one which the impugned order has given any cause for being aggrieved. The adjudicating authority has, in terms of the provisions of law, allowed the benefit of reduced penalty subject to the specified conditions being fulfilled. The appellant would be eligible to reduced penalty only if they have paid the service tax confirmed along with interest as well as 25% of the penalty within a period of thirty days of issuance of the impugned order. The issue as to whether the appellant have fulfilled the specified conditions to be eligible for reduced penalty is a matter of fact which is required to be verified by the jurisdictional office. Hence, the appellant are directed to approach the jurisdictional office with relevant records to substantiate their claim for eligibility of benefit of reduced penalty.

10. The appeal filed by the appellant is disposed of in light of the observations contained in Para 9.1 above.

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

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

Attested:

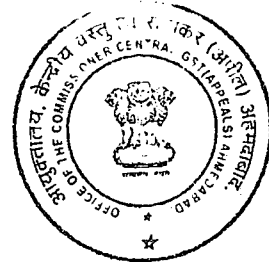
(N.Suryanarayanan. Iyer)  
Superintendent(Appeals),  
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. R.B. Trading Company,  
9, G.F, H.H. Trust Building,  
Near Kothari Pole,  
Gandhi Road, Ahmedabad – 380 001

*Akhil Kumar*  
( Akhilesh Kumar ) 02.01.2023..  
Commissioner (Appeals)  
Date: 02 .01.2023.



Appellant



The Assistant Commissioner,  
CGST, Division- I,  
Commissionerate : Ahmedabad South.

Respondent

Copy to:

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



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