



सत्यमेव जयते

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 - टेलीफैक्स 07926305136



DIN : 20230164SW000011691E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1782/2022 / 7248-52
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-125/2022-23
दिनांक Date : 10-01-2023 जारी करने की तारीख Date of Issue 13.01.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 25/AC/Div-I/RBB/2021-22 दिनांक: 13.12.2021 passed by Assistant
Commissioner, CGST, Division I, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Ahmedabad Municipal Corporation
Mahanagar Seva Sadan, Sardar Patel Bhavan,
Danapith, 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:

- (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 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।
- (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 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.

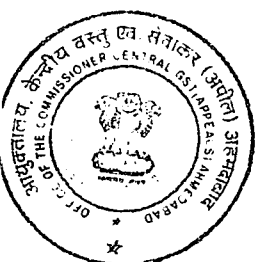
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 not withstanding 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 अनुसूचि-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.

13^प 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.

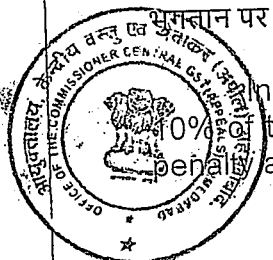
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cclxxvii) amount determined under Section 11 D;
(cclxxviii) amount of erroneous Cenvat Credit taken;
(cclxxix) 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 मांग 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 alone is in dispute."



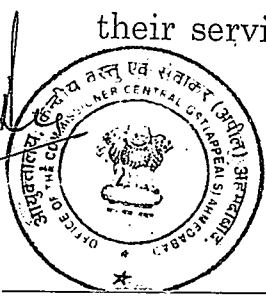
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Ahmedabad Municipal Corporation, Sardar Patel Bhavan, Danapith, Ahmedabad – 380 001 (hereinafter referred to as the “appellant”) against Order in Original No. 25/AC/Div-I/RBB/2021-22 dated 13.12.2021 [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. AAALA0024CST005 and were engaged in providing taxable services such as Selling of Space or Time Slots for Advertisement, Renting of Immovable Property and Mandap Keeper. The appellant were issued Show Cause Notice bearing No. STC/4-47/O&A/13-14 dated 18.10.2013 demanding service tax amounting to Rs.51,79,281/- for the period F.Y. 2008-09 to F.Y. 2012-13. The SCN was adjudicated vide OIO No. AHM-SVTAX-000-JC-036-16-17 dated 21.03.2017 wherein demand of service tax was confirmed along with interest and penalty. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No.AHM-EXCUS-00295-19-20 dated 04.11.2019 set aside the demand for the extended period and remanded the matter back to the adjudicating authority.

2.1 In the denovo proceedings, the case was adjudicated vide OIO No.16/CGST/Ahmd/ADC/MA/2020-21 dated 29.10.2020 wherein the demand of service tax amounting to Rs.17,03,582/- was confirmed along with interest. Penalty amounting to Rs.1,70,358/- and Rs.10,000/- was imposed on the appellant under Section 76 and 77(2) of the Finance Act, 1994 respectively.

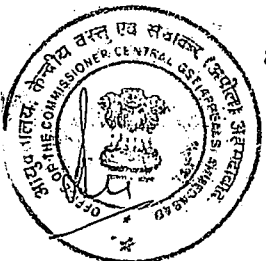
2.2 The appellant, on 26.10.2021, filed claim for refund amounting to Rs.80,55,965/- on the grounds that the same was excess tax paid towards their service tax liability. The appellant were issued Show Cause Notice



bearing No. V/15-1058/Div-I/AMC/2021-22 dated 23.11.2021 wherein it was proposed to reject the claim for refund on the grounds of non-submission of documents regarding payment particulars in relation to the concerned subject and even if the refund was allowed, the same was proposed to be credited to the Consumer Welfare Fund. The SCN was adjudicated vide the impugned order wherein the claim for refund filed by the appellant was rejected.

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

- i. They had adjusted the amount of interest against interest payment only. The amount of penalty was adjusted against the refund amount and thereby the refund claim was reduced.
- ii. They had claimed refund of service tax in pursuance of Order dated 29.10.2020. So, interest recovered from them is now refundable automatically.
- iii. The interest @ 15% is calculated by the department itself while making recovery of Rs.5,04,42,960/-. Interest for the period from 05.07.2018 to 17.07.2018, even if calculatec, will be refundable as the demand has been set aside for the longer period. Refund cannot become ineligible on this ground.
- iv. They had produced the proof of payment made on 17.07.2018 and the Demand Draft was acknowledged by the then Superintendent, which is subsequently confirmed by him. The proof of payment must be in the file of the department also otherwise hcw recovery of such a huge demand was not made.
- v. They had submitted GAR-7 Challan given to them by the then Superintendent. It is not understood how the adjudicating authority is not able to recognize the GAR-7 Challan downloaded from the website of CBIC by its own Superintendent.
- vi. The reasons for not referring to the payment made by them in the Order dated 29.10.2019 and 29.10.2020 are best known to the authorities who pass the orders. It is ridiculous that they are asked



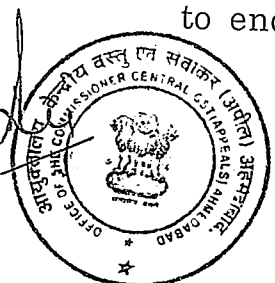
about the reasons for the payment not being referred to in the said Orders.

- vii. The copies of sales invoices and Income Ledgers were never asked and therefore, not submitted. The demand was raised for F.Y. 2008-09 to F.Y. 2012-13 whereas the payment under protest was made on 17.07.2018. So the question of unjust enrichment does not arise. Sales Invoices and Income Ledgers are attached. Chartered Accountant Certificate to the effect that incidence of tax has not been passed on to the ultimate customer has already been submitted by them.
- viii. It is alleged that as stipulated under law, certificate issued by statutory auditor is mandatory. However, there is no such law which mandates certificate to be issued by the statutory auditor only. They had produced before the adjudicating authority the ledgers of tax payment which are shown as outstanding in the Balance Sheet.

4. Personal Hearing in the case was held on 05.01.2023. Shri Tushar R. Shah, Chartered Accountant, appeared on behalf of appellant for the hearing. He submitted a written reply during hearing. He reiterated the submissions made in appeal memorandum.

5. In the written submission dated 04.01.2023, filed during the personal hearing, the appellant contended, inter alia, that :

- They submit the reply received from their jurisdictional Central Excise Office wherein it has been accepted that the Demand Draft No. 541124 dated 17.07.2018 for Rs.5,04,42,960/- was deposited in Bank of Baroda, Ahmedabad on 19.07.2018. Copy of GAR-7 Challan is also given.
- The amount of Rs.5,04,42,960/- is pre-deposit and therefore, Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 is not applicable. So rejection of refund under Section 11B on the ground of unjust enrichment is factually and legally incorrect.
- It has been established that incidence of tax has not been passed on to end user as the amount paid is outstanding in their Books of



Accounts. Ledgers showing the amount of outstanding in their Books of Accounts were submitted during the course of adjudication.

- A certificate of Chartered Accountant certifying that the incidence of tax has not been passed on was also submitted during the course of adjudication. However, the same was not considered.
- Reliance is placed upon Circular No. 1053/02/2017-CX dated 10.03.2017 regarding refund of pre-deposit.

6. 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 materials available on records. The issue before me for decision is whether the impugned order rejecting the claim for refund of Rs.80,55,965/-, in the facts and circumstances of the case, is legal and proper or otherwise.

7. It is observed from the case records that the refund claim has been rejected on the grounds mentioned in Para 17 of the impugned order. Having gone through the said grounds of rejection of claim for refund, it is found that the grounds are mainly procedural in nature. It has been stated that the appellant has failed to segregate the claim for service tax and the interest, the appellant had not arrived at the correct amount of interest, the amount of penalty has been adjusted against the service tax and interest, the appellant had not submitted copies of the sales invoices of the services provided during the relevant period as well as the Income Ledgers for examining the issue of unjust enrichment and that the appellant had failed to submit Certificate of the statutory auditor for incidence of tax.

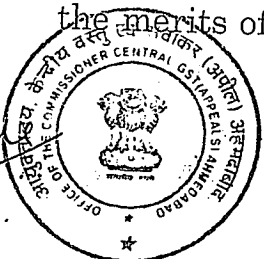
7.1 The appellant have as part of their additional written submissions submitted a copy of the refund claim filed by them and on perusal of the same it is observed that the appellant had at Para 2 (vi) clearly stated that they are submitting "Working of Service Tax and Interest provided by the service tax department for payment". Therefore, the finding of the adjudicating authority that the appellant have failed to segregate the amount of service tax and interest is without any merit. As regards the



finding regarding the appellant not calculating the correct amount of interest payable by them, I am of the considered view that the adjudicating authority could have very well re-calculated the correct amount of interest payable by the appellant and accordingly reduced the amount of refund payable to the appellant. In so far as non submission of sales invoices is concerned, it is observed that the appellant was issued SCNs demanding service tax not paid by them. Therefore, the question of the appellant having collected service tax from their customers does not arise. In any case, the appellant had submitted Certificate of the Chartered Accountant certifying that the incidence of service tax was not passed on to the customers. It is also a matter of record that the dispute pertains to the period from F.Y. 2008-09 to F.Y. 2012-13 and the payment of the disputed amount was made by the appellant on 17.07.2018. Considering these facts, it is clear that the provisions of unjust enrichment are not applicable in the present case.

8. It is further observed that the adjudicating authority has, in the impugned order, not given any findings on the merits of the refund claim filed by the appellant and the impugned order is more of a memo citing the deficiencies in the refund claim filed by the appellant. The purported deficiencies are also not those which affect the eligibility of the appellant to the refund in question. By rejecting the claim for refund on mere technicalities, without giving any finding on the merit of the refund claim, the adjudicating authority has shirked from his responsibilities as a quasi judicial authority. However, being the authority in possession of all the material facts and entrusted the task of verifying the facts relating to the refund claim, the adjudicating authority ought to have been more judicious in deciding the claim for refund filed by the appellant.

9. Considering the above facts, I am constrained to remand the case back to the adjudicating authority with the direction to decide the matter afresh after considering all relevant facts as well as the documents submitted by the appellant as well as their submissions. Thereafter, the adjudicating authority shall pass a speaking order giving clear and specific findings on the merits of the claim for refund. The appellant shall co-operate with the



adjudicating authority and produce before him all the relevant documents required.

10. In view of the facts discussed herein above, I set aside the impugned order and allow the appeal filed by the appellant by way or remand.

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.

Akhil Kumar
 (Akhil Kumar) 10 January 2023.
 Commissioner (Appeals)
 Date: 10.01.2023.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Ahmedabad Municipal Corporation, Appellant
 Sardar Patel Bhavan,
 Danapith,
 Ahmedabad – 380 001

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

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.

