



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 : 20230264SW000000CE25

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1784/2022 / 8593-97
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-163/2022-23
दिनांक Date : 17-02-2023 जारी करने की तारीख Date of Issue 20.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-03/Travel Exultant/AC/DAP/21-22 दिनांक: 31.01.2022
passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Travel Exultant
702, Sun Square, Besides the Nest Hotel,
Off. C.G. Road, Navrangpura,
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 :

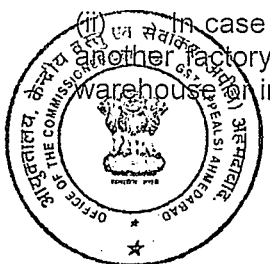
Revision application to Government of India:

(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 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 प्रक्रिया 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 warehouse or from one warehouse to another during the course of processing of the goods in a warehouse 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 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 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 रु.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.

- 1^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.

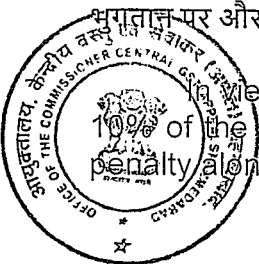
⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

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:

- (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।



Review 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. Travel Exultant, 702, Sun Square, Beside The Nest Hotel, Off. C.G. Road, Navrangpura, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. CGST-VI/Dem-03/Travel Exultant/AC/DAP/21-22 dated 31.01.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – VI, 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. AQLPP1870GSD001 and engaged in providing Air Travel Agent Services, Tour Operator Services, Rent-a-Cab Scheme Operator Services and Business Auxiliary Services. During the course of Audit of the records of the appellant conducted by the Officers of CGST Audit Commissionerate, Ahmedabad, the following observations were made :

- Revenue Para No. 1 : Non payment of penalty amounting to Rs.1,54,200/- on late filing of ST-3 returns for F.Y. 2012-13 to F.Y. 2016-17.
- Revenue Para No. 2 : On scrutiny of the cenvat credit ledger maintained by the appellant, it was observed that they had availed excess cenvat credit amounting to Rs.29,754/- during F.Y. 2012-13, Rs.61,220/- during F.Y. 2013-14 and Rs.2,01,837/- during F.Y. 2014-15 in respect of which the appellant did not produce any valid documents.
- Revenue Para No. 3 : During the course of reconciliation of income shown in their books of accounts with the ST-3 returns, it was observed that the appellant had short paid service tax amounting to Rs.5,04,746/- during F.Y. 2012-13 to F.Y. 2017-18.

3. The appellant was, subsequently, issued a Show Cause Notice bearing No. 199/2019-20 dated 18.11.2019 from F.No. VI/1(b)-528/Cir-III/AP-16/18-19 wherein it was proposed to :

- a) Demand and recover the late fees/penalty amounting to Rs.1,54,200/- under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.



- b) Demand and recover the service tax amounting to Rs.5,04,746/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- c) Recover interest under Section 75 of the Finance Act, 1994.
- d) Impose penalty under Section 78(1) of the Finance Act, 1994.
- e) Disallow and recover the wrongly availed cenvat credit amounting to Rs.2,92,811/- under the proviso to Section 73(1) of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.
- f) Recover interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.
- g) Impose penalty under Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004.

4. The SCN was adjudicated vide the impugned order wherein :

- I. The demand of service tax amounting to Rs.5,04,746/- was confirmed along with interest.
- II. The demand of cenvat credit amounting to Rs.2,92,811/- was confirmed along with interest.
- III. Penalty amounting to Rs.7,97,557/- (Rs.5,04,746/- + Rs.2,92,811/-) was imposed under Section 78 (1) of the Finance Act, 1994.
- IV. Late Fees/penalty amounting to Rs.1,34,200/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds :

- i. The reconciliation mentioned in the SCN is not correct. If factual details are taken into account then there is no such liabilities. So the working of the department is required to be re-worked.
- ii. The demand has been raised without looking to the factual data and details. The demand on the basis of the reconciliation is not sustainable.
- iii. Reliance is placed upon the judgment in the case of Regional Manager, Tobacco Board Vs. Commissioner of C.Ex., Mysore – 2013 (31) STR 673 (Tri.-Bang.); Anvil Capital Management (P) Ltd. Vs. Commissioner of Service Tax, Mumbai – 2010 (20) STR 789 (Tri.-Mumbai); Commissioner of Service Tax, Ahmedabad Vs. Purni Ads. Pvt. Ltd. – 2010 (19) STR 242



(Tri.-Ahmd.); Sify Technologies Ltd. Vs. Commissioner of Service Tax, Chennai – 2009 (16) STR 63 (Tri.-Chennai); Bhogilal Chhagulal & Sons Vs. Commissioner of Service Tax, Ahmedabad – 2013 (30) STR 62 (Tri.-Ahmd.).

- iv. Regarding the demand of excess cenvat credit, it is submitted that they had adopted the practice for availment of cenvat credit in the books of accounts on the basis of payment made, whereas in the ST-3 returns it is as per purchase/service availed basis.
- v. That during F.Y.2012-13 to F.Y. 2014-15, the cenvat credit availed in the books of accounts was less than the cenvat credit as per their ST-3 returns. However, during F.Y. 2015-16 to F.Y. 2017-18, the cenvat credit as per the books of accounts is more than the cenvat credit as per their ST-3 returns.
- vi. In a nutshell, they had short claimed cenvat credit amounting to Rs.39,168/- during the period from F.Y. 2012-13 to F.Y. 2017-18. Accordingly, there was no excess availment of credit. Further, only taking excess credit into account without considering the short claim in subsequent period was not justifiable.
- vi. The SCN covers the period from 01.04.2012 to 30.06.2017 and was issued on 18.11.2019 by invoking the extended period of limitation. Extended period cannot be invoked as there is no suppression, wilful mis-statement on their part. No case of suppression, wilful mis-statement has been made out in the SCN.
- vii. Penalty cannot be imposed under Section 78 of the Finance Act, 1994. They have demonstrated that they have not suppressed any information from the department and there was no wilful mis-statement on their part. The SCN has not brought any evidence which can establish that they had suppressed anything from the department. Hence, the present case is not the case of fraud, suppression, wilful mis-statement of facts etc. Hence, penalty under Section 78 cannot be imposed. They are entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the department. They rely upon the decision in the case of Steel Cast Ltd. – 2011 (21) STR 500 (Guj.).
- viii. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon & Engg. Co Ltd. Vs. Commissioner of C.Ex.,



Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs. Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur – 2001 (129) ELT 458 (Tri._Del).

- ix. Regarding the late fees imposed, it is submitted that they had paid the service tax in time, but due to IT glitch they were not able to file ST-3 return in time. Reliance is placed upon the judgment in the case of Candid Security Service Vs. CCE & ST, Raipur and Circular No.137/167/2006-CX-4 dated 03.10.2007.
- x. They were not in receipt of any notice for audit and as soon as they received, they produced the records and audit was concluded. If the audit was concluded before 30.06.2019, they would be eligible for exemption from payment of late fees.

5.1 The appellant, on 26.12.2022, filed an application for condonation of delay in filing appeal. It was submitted by them that the impugned order was received on 10.03.2022 and the appeal was required to be filed on 08.05.2022. However, they filed the appeal on 11.05.2022 and there was a delay of three days. The delay occurred as their accountant had not given the data for filing of the appeal. They requested that the delay may be condoned.

6. Personal Hearing in the case was held on 10.02.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant for the hearing. He stated that the delay in filing appeal was mainly due to completion of formalities for payment of pre-deposit as their firm has been closed. He reiterated the submissions made in appeal memorandum. He submitted a written submission during the hearing.

7. In the written submission filed during course of the personal hearing, the appellant reiterated the submissions made in the appeal memorandum.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The

dispute involved in the present appeal relates to the confirmation of demand for service tax noticed on reconciliation of the books of accounts with the ST-3



returns, excess availment of cenvat credit and imposition of late fees. The demand pertains to the period F.Y. 2012-13 to F.Y. 2017-18 (upto June, 2017).

9. Before dealing with the merits of the issues involved in the present appeal, I take up for decision the request of the appellant for condonation of delay in filing of appeal. It is observed that the impugned order is dated 31.01.2022, which the appellant claimed to have received by them on 10.03.2022 and the appeal has been filed on 11.05.2022. 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.”

9.1 In the instant case, the impugned order is dated 31.01.2022 which was received by the appellant on 10.03.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 10.05.2022. Therefore, there was a delay of one day in filing the appeal. As per the proviso to Section 85(3A) of the Finance Act, 1994, the Commissioner (Appeals) can allow a further period of one month for filing of appeal if sufficient cause is shown. Considering the reasons cited by the appellant for delay in filing the appeal and also considering the fact that the delay is of only one day, I am of the considered view that this is a fit case for condoning the delay in filing of appeal. Accordingly, the delay in filing the appeal by the appellant is condoned.

10. As regards the issue of demand of service tax in respect of the differential income observed during reconciliation of income with ST-3 returns vis-à-vis their financial records, it is observed that the appellant have, except for contending that the department has not considered the factual position, not submitted any document or evidence in support of their contention. It is also observed that the adjudicating authority has, at Para 20 of the impugned order, recorded the finding that *“The assessee has not submitted any*

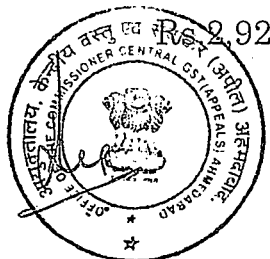


documents substantiating their claim neither prior to issuance of SCN nor during the personal hearing.”

10.1 The appellant have, in their appeal memorandum and the submissions made during course of the personal hearing, not made any submissions regarding the reasons for the differential income noticed on reconciliation of the financial statements with the ST-3 returns filed by them. The appellant have in their additional written submission submitted a reconciliation statement. I have perused the reconciliation statement and find that no explanation to the difference in taxable value, detected in the course of the audit, is forthcoming. Since the appellant have not come forward with any tenable reason explaining the difference in taxable value either before the adjudicating authority or in their appeal memorandum, I do not find any infirmity in the impugned order confirming the demand of service tax in the impugned order. Accordingly, I uphold the impugned order confirming the demand of service tax amounting to Rs.5,04,746/-.

11. As regards confirmation of demand of cenvat credit amounting to Rs.2,92,811/-, it is observed that the appellant have contended that they were recording the cenvat credit in their books of accounts on the basis of payment made, whereas in the ST-3 returns it was recorded on purchase/service availed basis. However, the appellant have not submitted any document or evidence in support of their contention. They have merely submitted lists of the invoices received by them which does not however, contain any details of the cenvat credit of the service tax availed, the date on which it was availed etc. The appellant have not submitted the relevant documents either before the Audit Officers or before the adjudicating authority and neither have they submitted the same as part of their appeal memorandum or additional written submissions. As the appellant have throughout failed to submit any documentary evidence in support of their claim for cenvat credit, I find no reason to interfere with the order of the adjudicating authority denying cenvat credit to the appellant and confirming the demand. Accordingly, I uphold the impugned order confirming the demand of cenvat credit amounting to

Rs.2,92,811/-.



12. As regards imposition of late fee amounting to Rs.1,34,200/- for delayed filing of ST-3 returns, it is observed that the appellant have stated that the delay was on account of IT glitch. However, the appellant have not come forward with any evidence to show the IT glitch caused the delay in filing of the ST-3 returns. Further, it is observed that the returns were filed after a delay ranging from 2 days to 904 days, the details of which are tabulated under Para 7 of the impugned order. It is too far fetched to believe that the so called IT glitch prevented the appellant from filing their returns for different period, for such long periods extending upto almost three years. Clearly, the contention of the appellant is nothing but lame attempt to justify the delay on their part. However, the reason cited by the appellant does not merit any consideration and is accordingly rejected.

13. The appellant have also raised the issue of limitation and contended that the extended period of limitation cannot be invoked in the present case. In this regard, I find that the adjudicating authority has, at Para 22 to 29 of the impugned order, dealt with the contentions of the appellant on the issue of limitation. The appellant have in their appeal memorandum not refuted the findings of the adjudicating authority. Further, the facts about their correct taxable value of service, and wrong availment of cenvat credit were suppressed from the department. The fact of the appellant not declaring the correct taxable value as well as not paying the applicable service tax on the taxable services provided by them were unearthed only in the course of the audit on the records of the appellant carried out by the departmental officers. But for the audit on the records of the appellant, the non payment of service tax by mis-stating the taxable value of services provided by them as well as the excess cenvat credit availed by them would not have been unearthed. The only reason behind suppressing such facts from the department is attributable to the intent of the appellant to evade payment of service tax. Therefore, the extended period of limitation was rightly invoked in raising demand against the appellant by the impugned SCN.

14. Section 78 (1) of the Finance Act, 1994 provides for imposition of penalty in cases where service tax has not been paid or short paid by reason of fraud, collusion or wilful mis-statement or suppression of facts or contravention of the provisions of the Act or the Rules framed thereunder. Since the appellant have



not paid/short paid service tax and wrongly availed excess cenvat credit by indulging in wilful mis-statement and suppression of facts with the intent to evade payment of service tax, the invocation of extended period has been upheld. Accordingly, they are also liable for penalty under Section 78 (1) of the Finance Act, 1994 and the adjudicating authority has rightly imposed penalty upon the appellant under the said Section. Therefore, I do not find any reason to interfere with the impugned order imposing penalty under Section 78(1) of the Finance Act, 1994.

15. In view of the above facts, I uphold the impugned order and reject the appeal filed by the appellant.

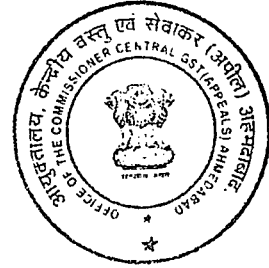
16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhilesh Kumar
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 17.02.2023

Attested:

(N.Suryanarayanan. Iyer)
(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Travel Exultant,
702, Sun Square,
Beside The Nest Hotel,
Off. C.G. Road, Navrangpura,
Ahmedabad

Appellant

The Assistant Commissioner,
CGST, Division- VI,
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.

