



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 - टेलिफैक्स 07926305136



DIN : 20230364SW0000000B24

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2764/2022 / 6 70 10
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-194/2022-23
दिनांक Date : 29-03-2023 जारी करने की तारीख Date of Issue 30.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-004/AC-RAG/2022-23 दिनांक: 11.05.2022
passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Nirbhay Capital Services Pvt. Ltd.
201, Maruti Crystal, S.G. Road,
Opposite Rajpath Club,
Bodakdev, Ahmedabad - 380054

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 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 भीतर मूल-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.

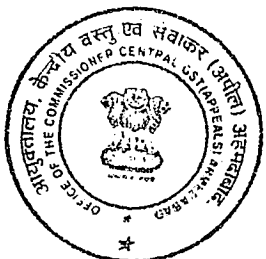
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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.

57 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.

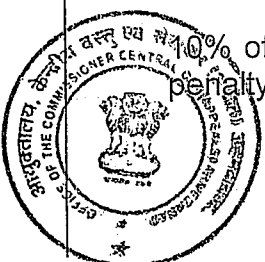
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cix) amount determined under Section 11 D;
(cx) amount of erroneous Cenvat Credit taken;
(cxi) 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

The present appeal has been filed by M/s. Nirbhay Capital Services Pvt. Ltd., 201, Maruti Crystal, S.G. Road, Opposite Rajpath Club, Bodakdev, Ahmedabad – 380 054 (hereinafter referred to as the “appellant”) against Order in Original No. CGST/WS07/O&A/OIO-004/AC-RAG/2022-23 dated 11.05.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division-VII, 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. AACCN2720MST001 and engaged in providing Management and Business Consultancy services. During the course of audit of records of the appellant, for the period from October, 2014 to June, 2017, conducted by the officers of Central Tax Audit Commissionerate, Ahmedabad, the following Revenue Paras remained unsettled.

2.1 Revenue Para 1 : Non payment of service tax, under reverse charge, amounting to Rs. 83,769/- on the rent paid to the Directors of the Company.

2.2 Revenue Para 2 : Non payment of service tax, under reverse charge, amounting to Rs. 45,000/- on the Professional Fees paid to the Directors of the Company.

2.3 Revenue Para 3 : Short payment of service tax amounting to Rs. 5,63,017/- noticed during reconciliation of the financial statements and the ST-3 returns filed by the appellant.

2.4 Revenue Para 4 : Non payment of service tax amounting to Rs. 31,400/- on the reimbursement income of Rs. 20,000/- and Rs. 1,90,000/- shown in the other income head of P&L Account for F.Y. 2015-16 and F.Y. 2016-17.

3. The appellant were subsequently issued Show Cause Notice bearing No.279/2019-20 dated 15.05.2020 from F.No. VI/1(b)-32/Cir-III/AP-16/19-20

wherein it was proposed to :



- a) Demand and recover the service tax totally amounting to Rs. 7,23,186/- under Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- b) Impose penalty under Section 78 of the Finance Act, 1994.

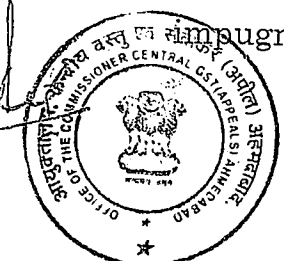
4. The SCN was adjudicated vide the impugned order wherein :
 - I. The demand of service tax amounting to Rs. 6,35,408/- was confirmed along with interest.
 - II. The service tax amounting to Rs. 1,98,104 paid by the appellant on 13.01.2020 was appropriated.
 - III. Penalty amounting to Rs. 4,37,304/- was imposed under Section 78 of the Finance Act, 1994 read with Rule 15 (3) of the Cenvat Credit Rules, 2004.
 - IV. The demand of service tax amounting to Rs. 87,778/- was dropped.

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

- i. The adjudicating authority has erred by confirming the demand of service tax amounting to Rs. 5,63,017/- without considering the tax that was paid by them through cenvat credit.
- ii. The service tax payment was made by utilizing cenvat credit and is duly reflected in their books of accounts. The credit pertains to the services availed by them under forward charge as well as services on which tax was paid under reverse charge. Copy of the ledger is submitted. Considering the same, there would be no difference.
- iii. They had also paid Rs. 45,000/- as service tax under reverse charge in respect of the professional fees paid to the Directors, which is eligible as cenvat credit.
- iv. The observation of the adjudicating authority that they had not taken cenvat credit at the time of filing ST-3 returns and, therefore, they are liable to pay service tax amounting to Rs. 4,37,304/- (Rs. 5,63,017/- less Rs. 1,25,713/- paid under SVLDRS) was not a part of the SCN. Thus, the impugned order is beyond the SCN.



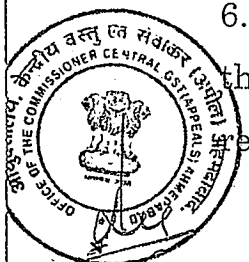
- v. They had explained the manner of discharge of service tax and no fault has been observed by the department except that the tax was paid by utilizing cenvat credit, which is not reflected in the ST-3 returns.
- vi. They had availed cenvat credit in their books of accounts which are duly audited by Chartered Accountant. The cenvat credit was availed in their books of accounts as per the provisions of Cenvat Credit Rules, 2004.
- vii. They are submitting, on a sample basis, details of invoices and the corresponding ledgers which show that the credit was availed within one year from the date of documents as specified in Rule 9(1).
- viii. Reliance is placed upon the judgment in the case of Temenos India Private Limited Vs. CST (2020) 2 TMI 354 (Tri.-Chennai); Blue River Capital India Advisory Services LLP Vs. CCE – (2021) 11 TMI 303 (Tri.-Mumbai); Origin Learning Solutions Pvt. Ltd. Vs. CST – (2021) 7 TMI 898 (Tri.-Chennai).
- ix. There is no condition laid down in CCR, 2004 or the Service Tax Rules, 1994 that availment of credit is subject to timely disclosure in the ST-3 returns. Reliance is placed upon the judgment in the case of Mportal India Wireless Solutions (P) Ltd. Vs. CST – (2011) 9 TMI 450 (Karnataka HC).
- x. The department seeks to deny cenvat credit which is otherwise reflected in their records. Thus, on account of this, substantive benefit is being to them. They rely upon the various judicial pronouncements holding that substantive benefit cannot be denied on account of procedural violation.
- xi. The audit has not demanded service tax on account of reconciliation. The reconciliation was submitted by them, which has not been faulted by the department except that the service tax credit was not reflected in the ST-3 returns. However, denial of cenvat credit for that reasons is not a part of the SCN.
- xii. It has been alleged that service tax was not paid on professional fees paid to the Directors. It is submitted that they had paid service tax and copy of the challan was also submitted to the audit officer by email. Copy of the challan is submitted.
- xiii. Regarding service tax on reimbursement income, it is submitted that since service tax was not collected separately, it was requested that the benefit of cum tax be given to them and the same was given in the impugned order. They had applied under SVLDRS and paid service tax



under the scheme. Copy of Challan is submitted. The service tax was paid before issuance of SCN.

- xiv. In terms of Section 73(3) of the Finance Act, 1994, the department was not required to issue SCN for service tax amounting to Rs. 45,000/- which was paid before issuance of SCN.
- xv. There is no merit in invoking extended period of limitation. There was no non-cooperation on their part as regards submission of data and the same was also disclosed in their audited books of accounts. Therefore, there is no basis for the allegation that they had deliberately withheld information from the department.
- xvi. Reliance is placed upon the judgment in the case of Hindalco Industries Ltd. – 2003(161) ELT 346; Kirloskar Oil Engines Ltd. Vs. CCE, Nashik – 2004 (178) ELT 998; Martin & Hariss Laboratories Ltd. Vs. Commissioner – 2005 (185) ELT 421.
- xvii. The law is settled about invocation of extended period of limitation only in case where the assessee knew that certain information was required to be disclosed and yet was deliberately not disclosed.
- xviii. Reliance is placed upon the judgment in the case of Padmini Products Vs. Collector of Central Excise – 1989 (43) ELT 195; Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC); Continental Foundation Jt. Venture Vs. CCE, Chandigarh – 2007 (216) ELT 177 (SC); Bharat Hotels Limited Vs. CCE (Adjudication) – (2018) 2 TMI 23; Asian School of Media Studies Vs. CCE – (2021) 11 TMI 541 (Tri.-Allahabad); Compark E Services P. Ltd. Vs. CST, Ghaziabad – (2019) 5 TMI 1230 (Tri.-Allahabad); CIT Vs. Ssa's Emerald Meadows – (2015) 11 TMI 1620 (Kar. HC).
- xix. The adjudicating authority has erred in imposing penalty under Section 78 of the Finance Act, 1994. As no extended period is invocable, no penalty under Section 78 could be imposed for discharging service tax through cenvat credit which is duly reflected in their books of accounts.
- xx. The adjudicating authority has erred in charging interest when they had made application under SVLDRS.

6. The appellant have also filed an application for condonation of delay on the grounds that the delay was on account of medical reasons of the authorized representative, who was admitted to ICU due to Chronic Kidney Disease.



Therefore, they could not file the appeal in time. The appellant requested for condonation of the delay in filing appeal.

7. Personal Hearing in the case was held on 09.02.2023 through virtual mode. Shri Rohan Thakkar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

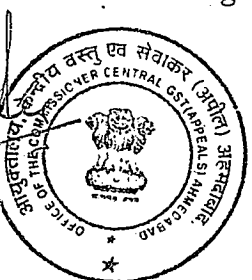
8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax amounting to Rs. 6,35,408/- along with interest and penalties. The demand pertains to the period F.Y. 2015-16 to F.Y. 2017-18 (up to June, 2017).

9. Before dealing with the merits of the case, I proceed to take up the matter of condonation of delay in filing the appeal by the appellant. It is observed from the records that the present appeal was filed by the appellant on 04.08.2022 against the impugned order dated 11.05.2022, which the appellant claimed to have received on 21.05.2022. Therefore, there was a delay of 14 days in filing the appeal beyond the statutory period of two months. 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 11.05.2022 and the appellant have received it on 21.05.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 21.07.2022.



The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal, ends on 21.08.2022.

9.2 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

9.3 The appellant was required to file the appeal on or before 21.07.2022, i.e., two months computed from 21.05.2022. Further, the condonable period of one month, in terms of Section 85 (3A) of the Finance Act, 1994 ends on 21.08.2022. The present appeal filed on 04.08.2022, is, therefore, within the condonable period. Keeping in view the fact that the delay in filing the appeal was on account of the hospitalization of the authorized representative of the appellant, I am of the considered view that the appellant have shown sufficient cause for condonation of delay in filing appeal. Accordingly, the delay of 14 days in filing the appeal by the appellant is condoned.

10. As regards merits of the case, it is observed that the demand of service tax has been confirmed on three different issues viz. i) Rs. 45,000/- in respect of the Professional Fees paid to Directors; ii) Rs. 5,63,017/- in respect of reconciliation taxable income and iii) Rs. 31,400/- in respect of reimbursement income.

10.1 The appellant have contended before the adjudicating authority that they had paid the service tax amounting to Rs. 45,000/- on 13.01.2020 i.e. before issuance of SCN. The adjudicating authority has accepted the contention of the appellant but held that the appellant were liable to pay interest on the delayed payment of service tax.

10.2 As regards the service tax amounting to Rs. 31,400/- in respect of the reimbursement income, the appellant had submitted before the adjudicating authority that they had paid the service tax on being pointed out by the audit. However, the appellant requested for the benefit of cum-duty valuation. The



adjudicating authority had accepted the contention of the appellant and reduced the demand to Rs. 27,391/- by giving the benefit of cum-duty valuation.

10.3 In respect of the service tax amounting to Rs. 45,000/- and Rs. 31,400/-, the appellant have contended that in terms of Section 73(3) of the Finance Act, 1994, no notice was required to be issued. In this regard, it is observed that in terms of the said Section 73(3), the appellant was required to inform the Central Excise Officer of such payment in writing, who on receipt of such information shall not serve notice in terms of Section 73(1) of the Finance Act, 1944. In the instant case, there is no material on record and neither has any document been submitted by the appellant which indicates that they had informed the Central Excise Officer regarding the payment made by them. Further, as per Explanation (1) to Section 73(3), the appellant was also required to pay the applicable interest in terms of Section 75, which the appellant have failed to do so. Considering these facts, I am of the considered view that there is no merit in the contention of the appellant regarding benefit under Section 73(3).

10.4 As regards the demand of service tax amounting to Rs. 5,63,017/-, it is observed that the appellant have admitted that they had inadvertently not paid service tax amounting to Rs. 1,25,713/- on the taxable value of Rs. 9,92,700/- during F.Y. 2015-16. However, they had paid the same under SVLDRS. In respect of the service tax payable on the remaining differential income of F.Y. 2015-16 and F.Y. 2016-17, the appellant have contended that the department has not considered the payment of service tax made by them by utilizing cenvat credit. In this regard, it is observed that the adjudicating authority has not given any findings on the service tax payable in respect of the differential taxable value, other than Rs. 9,92,700/-. Further, the adjudicating authority has, without giving any finding, rejected the contention of the appellant regarding cenvat credit on the grounds that "*the noticee has not shown availment of CENVAT credit at the time of filing of ST-3 returns, therefore, the noticee is liable to pay the difference of Rs.5,63,017/- (-) Rs.1,25,713 = Rs.4,37,304/- along with interest as the noticee has not taken CENVAT credit in their ST-3 returns at the relevant time.*"



10.5 It is observed that the cenvat credit has been denied on the grounds that the same was not shown in the ST-3 returns filed by the appellant. The appellant have, on the other hand, contended that the credit was taken by them at the relevant time and recorded in their audited books of accounts. In support of their contention, the appellant had submitted sample copies of invoices and other financial statements before the adjudicating authority. However, the adjudicating authority has not given any finding on the same and rejected the claim for cenvat credit as the same was not shown in the ST-3 returns. Further, I also find merit in the contention of the appellant that eligibility of cenvat credit was not a subject matter of the SCN issued to them. However, it is not clear from the materials available on record whether the appellant had shown payment of service tax, in their ST-3 returns, by utilization of cenvat credit. Be that as it may, mere non reporting of the cenvat credit in the ST- returns would not render the same as inadmissible. The eligibility and availment of cenvat credit has to be determined in terms of Rule 3 of the CCR, 2004. It is also a settled law that substantive benefit cannot be denied on procedural grounds.

10.6 It is observed that the liability of the appellant to pay the service tax amounting to Rs.5,63,017/-, confirmed vide the impugned order, hinges upon the determination of their eligibility to cenvat credit. Therefore, the cenvat credit availed by the appellant in their books of accounts needs to be examined to determine their eligibility towards the same. If it is found that the appellant are otherwise eligible to the cenvat credit, payment from the same has to be factored in while arriving at the amount of service tax payable by the appellant. This requires a verification of the documents and records pertaining to the availment of cenvat credit. I am, therefore, of the considered view that the matter is required to be remanded back to the adjudicating authority to re-examine the issue of cenvat credit availed and utilized by the appellant in light of the Cenvat Credit Register, Invoices, Ledgers and other relevant documents. Accordingly, I remand the case back to the adjudicating authority to decide the case afresh after granting the opportunity of personal hearing to the appellant. The appellant are directed to submit before the adjudicating authority, within 15 days of the receipt of this order, all the documents and records pertaining to availment and utilization of cenvat credit for payment of service tax.

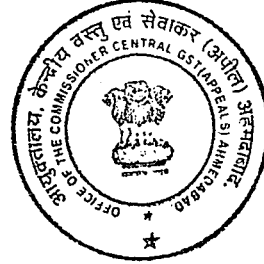


11. In view of the above, I uphold the impugned order insofar as it pertains to the confirmation of demand of service tax amounting to Rs. 45,000/- and Rs. 27,931/- along with interest. The impugned order pertaining to confirmation of demand of service tax amounting to Rs.5,63,017/- is set aside and remanded back to the adjudicating authority in terms of the directions contained in Para 10.6 above.

12. 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
29th March, 2023.
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 29.03.2023



Attested:

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

BY RPAD / SPEED POST

To

M/s. Nirbhay Capital Services Pvt. Ltd.,
201, Maruti Crystal, S.G. Road,
Opposite Rajpath Club,
Bodakdev,
Ahmedabad – 380 054

Appellant

The Assistant Commissioner,
Division- VII, CGST,
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.