



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 :

टेलीफैक्स 26305136 - 079 :

DIN-20220964SW000021742A

स्पीड पोस्ट

- क फाइल संख्या : File No :GAPPL/COM/STP/2699/2021 /366H-68
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-048/2022-23**
दिनांक Date : 31.08.2022 जारी करने की तारीख Date of Issue : 08.09.2022.
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.07/CX-I Ahmd/ADC/PKR/2019
dated 23.05.2019 passed by the Additional Commissioner, Central GST,
Ahmedabad South Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Infinity Realty India Pvt. Ltd.,
9/ Khurshid Park,
Opposite Iqra Hospital,
Sarkhej Road,
Ahmedabad.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-
Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2.(1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s Infinity Realty India Pvt. Ltd., 9/ Khurshid Park, Opposite Iqra Hospital, Sarkhej Road, Ahmedabad (hereinafter referred to as "*the appellant*") against the Order-in-Original No. 07/CX-I Ahmd/ADC/PKR/2019 dated 23.05.2019 (hereinafter referred to as "*the impugned order*") passed by the Additional Commissioner, Central GST, Ahmedabad South Commissionerate (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant is a provider of taxable services holding Service Tax Registration No. AACCI7457GSD001. An investigation conducted against the appellant by the H.Q.(Preventive) Section of the erstwhile Service Tax Commissionerate, Ahmedabad revealed that they were engaged in providing 'Construction of Residential Complex Services' in the vicinity of Sarkhej area of Ahmedabad but was not properly discharging service tax liability on the said taxable services provided. It was found that the appellant was receiving advance amounts from their customers who had booked the residential units which were under construction at their site and no service tax was paid on the said consideration received though they were legally required to pay the same. From the ledgers and balance sheet, it was found that the appellant during the period from 2012-13 (January-March, 2013) to 2015-16 (upto November, 2015) had received advances amounting to Rs.21,80,67,545/- from their customers on which they were liable to pay service tax amount of Rs.65,84,421/-. Further, they were also found liable to pay service tax under Reverse Charge Mechanism on Security Services and Legal Consultancy Services received by them during the above period on which their service tax liability was found to be Rs.1,30,823/- and Rs.55,620/- respectively. Based on the facts and evidences gathered during the investigation, a Show Cause Notice F.No.STC-35/O&A/SCN/IRIPL/2016-17 dated 21.09.2017 was issued to the appellant proposing recovery of the non-paid service tax totally amounting to Rs.67,70,864/- along with interest and penalties under Section 77(2) and Section 78(1) of the Finance Act, 1994 (hereinafter referred to as '*the Act*') on the appellant and penalty under Section 78A of the Act on the Director of the appellant.

2.1 The said Show Cause Notice dated 21.09.2017 was decided by the adjudicating authority vide the impugned order wherein he had confirmed the demand of service tax of Rs.67,70,864/- along with interest and also imposed penalties under Section 77(2) and 78(1) of the Act on the appellant. He has also imposed a penalty of Rs.1,00,000/- on the Director of the appellant under Section 78A of the Act.



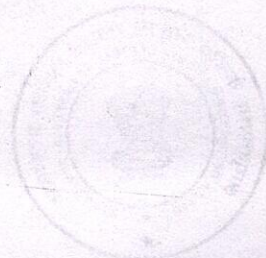
3. Being aggrieved with the said Order, the appellant has filed the present appeal on the following grounds:

- (i) During the period, the appellant had dispute amongst the Directors and as a result, the appellant has refunded certain amount out of total collection of Rs.21.81 Crore to the customers. Such refunded back amount to customer is eligible to reduce Service Tax liability under Rule 6(3) of the Service Tax Rules, 1994. The service tax liability derived has not been calculated by considering the effect of refunded amount. Hence, before making the payment of service tax, the final service tax liability needs to be derived after taking the effect of refunded amount;
- (ii) They will re-calculate service tax liability by considering the effect of Rule 6(3) of Service Tax Rules, 1994 and will finalize the same in next 1.5 months. Once the Service Tax liability finalizes and disputes amongst the directors resolves, till that time the appellant earnestly request to grant some time to pay off the complete service tax liability. It is assured that they would be discharging final service tax liability by end of September, 2019;
- (iii) The interest pertaining to final Service Tax liability will be discharged once the liability gets finalized;
- (iv) This situation arose on account of dispute amongst directors. Kindly waive off the penalty levied on the company and personal penalty levied on the director; and
- (v) No penalty shall be imposable on assessee for any failure referred to in Section 78 of the Act if assessee proves that there was reasonable cause for said failure [CCE, Meerut-II V. On Dot Couriers & Cargo Ltd. (2006) 6 STJ 337 (CESTAT, New Delhi).

5. Personal hearing in the matter was held on 29.08.2022 through virtual mode. Shri Rashmin Vaja, Ms. Bhagyashree Dave and Ms. Komal Agarwal, all Chartered Accountants, appeared on behalf of the appellant for hearing. They reiterated the submissions made in the appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the oral averments made during the course of personal hearing. However, before deciding the matter on merits, I find that the appellant had received the impugned Order-in-Original on 10.06.2019 while the appeal is filed on 08.09.2021.

7. It is observed that as per Section 85 (3A) of the Act, an appeal shall be presented within two months from the date of receipt of the decision or order of adjudicating authority which is being challenged. Relevant extracts of Section 85 of the Finance Act, 1994, is reproduced below for ease of reference:



SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). —

(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [made before the date on which the Finance Bill, 2012, receives the assent of the President] :

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 three months, allow it to be presented within a further period of three months.

(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 receives 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.]

(4) The [Commissioner] of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the [Commissioner] of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

[emphasis added]

8. In the instant case, the impugned order of the adjudicating authority was received by the appellant on 10.06.2019 as stated by them in their appeal memorandum and accordingly, the appellant was required to present appeal within two months i.e., latest by 09.08.2019. But the appellant has presented appeal on 08.09.2021 almost after two years of the expiry of the due date. Therefore, the aforementioned appeal has been presented/filed beyond the prescribed time limit of two months. The delay in filing the



said appeal is also more than one month after the prescribed time limit of two months. As such, the appeal filed by the appellant in the case is barred by limitation prescribed under the law and hence it cannot be entertained. Accordingly, I reject the appeal on limitation as provided under Section 85 of the Finance Act, 1994 without going into the merits of the case.

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

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

Anil
(Anil Kumar)
Commissioner (Appeals)
Date: 31.08.2022.
31st August, 2022

Attested:

Anil Kumar P.

(Anilkumar P.)
Superintendent
CGST Appeals
Ahmedabad.



BY R.P.A.D./SPEED POST

To

M/s Infinity Realty India Pvt. Ltd.,
9/ Khurshid Park,
Opposite Iqra Hospital,
Sarkhej Road,
Ahmedabad.

Copy to:

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad-South.
3. The Assistant Commissioner, Central GST, Division-VIII,
Ahmedabad South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.
(for uploading the OIA)

✓ 5. Guard file

6. P.A. File

