



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 : 20221064SW000000FFA5

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2583/2021 / 3230 - 32
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-057/2022-23**
दिनांक Date : **30-09-2022** जारी करने की तारीख Date of Issue 03.10.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. **11/CGST/Ahmd-South/ADC/MA/2021** दिनांक: **24.02.2021** passed by
Additional Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Lee & Muirhead Pvt Ltd**
Oricon House, 12, K. Dubash Marg,
Mumbai - 400023

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) केंद्रीय 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 संलग्नरकम 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.

- (33) 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)-

- (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.

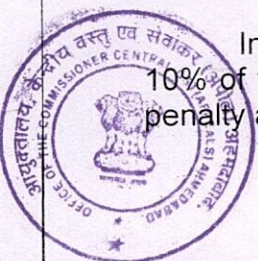
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxxii) amount determined under Section 11 D;
- (lxxxiii) amount of erroneous Cenvat Credit taken;
- (lxxxiv) 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."

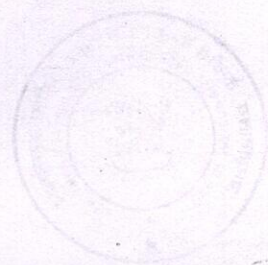


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Lee & Muirhead Private Ltd., Oricon House, 12, K.Dubash Marg, Mumbai – 400 023 [previously at 306, Akik Complex, Opposite Lions Hall, Near Mithakali Six Roads, Ahmedabad– 380 006] (hereinafter referred to as the appellant) against Order in Original No. 11/CGST/Ahmd-South/ADC/MA/2021 dated 24.02.2021 [hereinafter referred to as “*impugned order*”] passed by the Additional Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AAACL0918MST001 and engaged in providing taxable service of Custom House Agent. Intelligence indicated that majority of the Custom House Agents (CHA) were raising two sets of invoice for reimbursement of various expenses incurred by them at the time of providing services to their clients. One invoice was raised towards the Services/Agency charges and the second invoices was for reimbursement of other charges/expenses incurred. The invoice for Services/Agency charges was used for payment of service tax, while the second invoice was only for so called reimbursement of expenses. It appeared that the said procedure was started after the introduction of service tax on CHAs and was done to suppress the actual service/agency charges and thereby pay less service tax.

3. Based on the intelligence, Show Cause Notice demanding service tax amounting to Rs.1,12,153/-, for the period from 01.10.2003 to 31.03.2008, was issued to the appellant from F.No.SD-02/CHA/Lee Muirhead/SCN-25/2009-10. The appellant was called upon to submit the details of the taxable value of reimbursement charges and commission/brokerage received for the period F.Y. 2008-09. The appellant submitted that they had received reimbursement charges amounting to Rs.56,72,846/- during the period from 01.04.2008 to 30.09.2008 on which service tax was not paid by them. Therefore, the appellant were issued Show Cause Notice No.STC-



59/O&A/SCN/ADC/LMR-8/D-II/09 dated 24.09.2009 wherein it was proposed to :

- A. Consider the services rendered by them as taxable services under the category of CHA service.
- B. Demand and recover the service tax amounting to Rs.7,01,164/- under Section 73 (1) of the Finance Act, 1994.
- C. Recover interest under Section 75 of the Finance Act, 1994.
- D. Impose penalty under Section 76,77 and 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide OIO NO. 22/Additional Commissioner/2012 dated 30.03.2012 wherein the demand for service tax was confirmed along with interest. Penalties were also imposed under Sections 76, 77 and 78 of the Finance Act, 1994. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals-IV), Ahmedabad, who vide OIA No. 166/2013(STC)/SKS/Commr.(A)/Ahd. Dated 02.08.2013 allowed the appeal by way of remand. The Department filed appeal, against the said OIA, before CESTAT, Ahmedabad. The Hon'ble Tribunal, Ahmedabad vide Order No.A/10458-10480/2016 dated 27.05.2016 dismissed the appeal as withdrawn.

5. In the denovo proceedings, the case was adjudicated vide OIO No.AHM-SVTAX-000-ADC-39-2016-17 dated 20.02.2017 wherein the demand for service tax was confirmed along with interest. Penalties were also imposed under Sections 77 and 78 of the Finance Act, 1994. Being aggrieved, the appellant filed appeal before the Commissioner (Appeal), Ahmedabad, who vide OIA No.AHM-EXCUS-001-APP-115-17-18 dated 03.11.2017 remanded the matter back to the adjudicating authority with a specific direction to consider the claim of the appellant for exclusion of the reimbursable expenses after verifying the invoices.

6. In the second round of denovo proceedings, the case was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalties were also imposed under Section 77 and 78 of the Finance Act, 1994.



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

- i. The adjudicating authority has not followed the directions of the Commissioner (Appeals) to verify whether the invoices issued for recovery of actual expenses were invoices of actual reimbursement or not and it has been held that he could not determine whether they had acted in the capacity of pure agents. The impugned order has travelled beyond the directions issued by the Commissioner (Appeals).
- ii. They rely upon the decision in the case of Classic Strips Ltd. Vs. CCE, Thane-II – 2016 (339) ELT 144 (Tri.-Mum.); Britannia Industries Ltd. Vs. CCE, Mumbai – 2016 (338) ELT 120 (Tri.-Mum.) and Mukesh Appliances Pvt. Ltd. Vs. CCE & ST, Daman – 2016 (343) ELT 246 (Tri.-Ahm.).
- iii. Non following of instructions of higher forum is a case of breach of judicial discipline. They rely upon the judgment in the case of CCE, Nagpur Vs. Central Cables Pvt. Ltd. – 2017 (48) STR 311 (Bom.); E.T.A. General Pvt. Ltd. Vs. Additional Commissioner, C.Ex, Chennai; Ritesh Ltd. Vs. CST, Delhi – 2016 (43) STR 270 (Tri.-Del.) and TVL Ragam Polymers Vs. CTO, Chennai – 2007 (60 STR 292 (Mad.).
- iv. They had approached the department immediately upon receipt of the OIA. They had also ceased operating from Ahmedabad since 2015 which is evident from the non-migration/seeking registration under the GST regime. However, the adjudicating authority has made sweeping statement that they did not provide the documents for verification, which is factually incorrect.
- v. They neither received any intimation for personal hearing nor the impugned order. The department contacted their Mumbai office only for recovery of the demand. No correspondence was made when they did not respond to six intimations purportedly sent for personal hearing probably to the old Ahmedabad address which never existed and hence, no response was received.

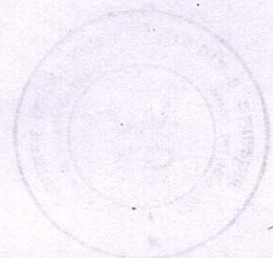


- vi. The adjudicating authority has made sweeping statement without verification of facts and merely reproducing the ground of the earlier OIO to confirm the demand with interest and impose penalty under Section 78 despite this being periodical statement.
- vii. The impugned order is illegal and issued disregarding the direction of the Commissioner (Appeal) and to cover up their own inaction by ending intimation to the erstwhile address in Ahmedabad and is therefore, required to be set aside. They rely upon the decision in the case of Hindustan Level Limited Vs. UOI – 2011 (24) STR 97 (Bom.) and Shirish Harshvardhan Shah Vs. Dy. Director, E.D., Mumbai – 2010 (254) ELT 259 (Bom.).
- viii. The SCN was issued on the single issue that in the absence of proper documentary evidence, it could not be determined whether the actual recoveries were on account of expenditure incurred on behalf or whether it was their own expenditure. The ground of the earlier SCN dated 16.04.2009 is the same for SCN dated 24.09.2009 and there is no allegation that they had not provided any authorization letter of their clients to pay such expenditure. The impugned order has travelled beyond the SCN.
- ix. They rely upon the decision in the case of Bhor Industries Ltd. Vs. UOI – 2011 (266) ELT 444 (Bom.); Saurabh Organics Pvt. Ltd. Vs. CCE, Thane – 2012 (28) STR 321 (Tri.-Mum); CCE, Salem Vs. SNA Granites – 2015 (40) STR 649 (Mad.) and Dharampur Sugar Mills Ltd. Vs. CCE, Meerut-II – 2016 (260) ELT 271 (Tri.-Del.).
- x. They have acted as a pure agent as provided in Explanation 1 to Rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006 and also satisfied all the conditions under the said rule. It is also established in their own case in the order of the Commissioner (Appeals) in relation to SCN dated 16.04.2009.
- xi. The adjudicating authority has not considered that their case is covered by Circular No.119/13/2009-ST dated 21.12.2009. Therefore, the value of actual reimbursement cannot be included in the taxable value. The issue is no longer *res integra* and they rely on the decision



in the case of Ranadey Micro Nutrients Vs. CCE (1996) 10 SCC (SC) and Paper Products Ltd. Vs. CCE – (1999) 7 SCC 84.

- xii. Rule 5 (2) of the Valuation Rules is treated a ultra-vires by the Hon'ble Delhi High Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. UOI & Anr. – 2012-TIOL-966-HC-DEL-ST.
- xiii. Asuming that all the reimbursable value forms part of the taxable value and service tax is payable, they are entitled to equivalent cenvat credit on the input services. In such a scenario, there being no loss of revenue, there can be no implication of interest and penalty.
- xiv. If the liability of service tax is confirmed, the adjudicating authority has overlooked their submission that they have not recovered service tax from any one and, therefore, the benefit of cum-duty ought to have been granted. They rely upon the decision in the case of Advantage Media Consultants – 2008 (10) STR 449 (Tri.-Kol.) which was upheld by the Hon'ble Supreme Court.
- xv. Penalty under Section 78 cannot be imposed as the present SCN is periodical and therefore, the facts were known to the department and there cannot be charge of suppression. They rely upon the decision in the case of CCE&C Vs. Rivaa Textiles Inds. Ltd. – (2015) 54 tamann.com 239 (Gujarat) and Amba Poly tubes Pvt. Ltd. Vs. CCE, Jaipur – 2007 (7) STR 601 (Tri.-Del.),
- xvi. The issue of taxability of reimbursements has under gone extensive litigation. The issue involved interpretation of law and scope of taxing entry. Therefore, penalty under Section 78 cannot be imposed. They rely upon the decision in the case of Ugamchand Bhandari Vs. CCE, Madras – 2004 (167) ELT 491 (SC); Mentha & Allied Products Ltd. Vs. CCE, Meerut – 2004 (167) ELT 494 (SC) and Tata Iron and Steel Co. Ltd. Vs. CCE, Patna – 2004 (167) ELT 497 (SC).
- xvii. Penalty imposed under Section 78 is untenable in the absence of evidence to establish and prove mens-rea or culpable mental state on their part. They rely upon the decision in the case of Hindustan Steel Limited Vs. State of Orissa – 1978 (2) ELT J.159 (SC); State of Madhya Pradesh V. Bharat Heavy Electricals Ltd. – 1997 (99) ELT 33



(SC) and Zunjarrao Bhikaji Nagarkar Vs. UOI – 1999 (112) ELT 772 (SC).

xviii. There would be no liability to penalty and interest for the reason that the demand of service tax fails. They rely upon the decision in the case of Prathiba Processors Vs. UOI – 1996 (88) ELT 12 (SC).

8. Personal Hearing in the case was held on 29.08.2022. Ms. Puloma Dalal, Chartered Accountant, appeared on behalf of appellant for the hearing. She reiterated the submissions made in appeal memorandum and stated that they have all the documents and are ready for verification.

9. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax in respect of the amounts collected by the appellant, which is claimed by them to be reimbursable expenses. The demand pertains to the period from 01.04.2008 to 30.09.2008.

8. It is observed that the impugned order has been passed in denovo proceedings ordered vide OIA No.AHM-EXCUS-001-APP-115-17-18 dated 18.10.2017 of the Commissioner (Appeals), Ahmedabad. The operative portion of the said OIA is reproduced below :

“10. Now, since the documents needed for the verification, has not been provided by the appellant to the adjudicating authority, I am left with no choice but to remand it back once again with a specific direction that the adjudicating authority will reconsider the claim afresh for considering exclusion of reimbursable expenses after verifying the invoices and after giving reasonable opportunity for hearing to the appellant. Needless to state, the issue related to whether the appellant was acting as a pure agent, stands settled already in view of the OIA dated 2.8.2013, which has already attained finality. The appellant is further directed to provide all the documents, etc. to the adjudicating authority within two months from the receipt of this order-in-appeal. The adjudicating authority is also directed to dispose of the matter within a month of receipt of the said documents from the appellant. The sole purpose of remanding it once again is to ensure that there is no miscarriage of justice.”

9. It is crystal clear from the above directions of the Commissioner (Appeals), Ahmedabad that the only issue before the adjudicating authority was to consider the claim of the appellant for exclusion of the reimbursable expenses after verifying the invoices after giving the opportunity of personal



hearing. The adjudicating authority was required to decided the matter within two months of the receipt of the said OIA. However, it is observed that the said direction has not been complied with. The appellant had vide letter dated 23.11.2017 informed the adjudicating authority about receipt of the said OIA and sought a suitable date to appear and submit the invoices for verification. I find that the appellant was called for a personal hearing on 18.10.2019 which was not attended by them. Thereafter, the appellant was called for personal hearing on 21.05.2020, 05.06.2020, 16.06.2020, 25.09.2020, 08.10.2020 and 11.02.2021. However, no one appeared before the adjudicating authority for the hearing.

10. It is the submission of the appellant that none of the communication regarding fixing of personal hearing were received by them as the same were sent to their old address in Ahmedabad from which they had stopped operations. The appellant have submitted a copy of letter dated 11.04.2017 addressed to their jurisdictional Range Superintendent wherein they had informed that as they had ceased operations from their Ahmedabad office, all communications be sent to their address in Mumbai. It is also observed that the appellant had vide letters dated 08.01.2018 and 20.03.2018 requested the adjudicating authority for a suitable date for submitting the documents. Considering these facts, I find merit in the contention of the appellant that they could not attend the personal hearing and submit the documents as they did not receive the communication for personal hearing.

10.1 The sole purpose of the remand proceedings ordered vide OIA dated 18.10.2017 was for verification of the invoices to decide the claim for exclusion of the reimbursable expenses. The impugned order passed without carrying out the exercise of verification of documents is in clear breach of the directions contained in the OIA dated 18.10.2017 and the impugned order passed without hearing the appellant is in violation of the principles of natural justice and is liable to be set aside.

11. In view of the facts discussed herein above, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for adjudication afresh after verifying the invoices/documents



pertaining to the reimbursable expenses, in terms of the directions contained in OIA dated 18.10.2017 supra. The appellants are directed to produce before the adjudicating authority all the necessary documents in support of their claim within 15 days of the receipt of this order. Accordingly, the impugned order is set aside and remanded back to the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

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.

Akhil Kumar
 30th September 2022
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: .09.2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Lee & Muirhead Private Limited,
 Oricon House,
 12, K.Dubash Marg,
 Mumbai – 400 023.

Appellant

The Additional Commissioner,
 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.

