



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 : 20221164SW0000000C31

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/58/2022 / 4562 - 68
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-064/2022-23
दिनांक Date : 21-10-2022 जारी करने की तारीख Date of Issue 10.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS08/Ref-07/ST/MK/20-21 दिनांक: 09.03.2021 passed by Deputy Commissioner, CGST, Division-VIII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST & Central Excise,
Division VII, Ahmedabad South
First Floor, APM Mall, Anandnagar Road,
Praladnagar, Ahmedabad - 380015

Respondent

- Shri Vaibhav Jajoo
B-803, Dev Aurum Residency,
Anandnagar Cross Road, Praladnagar,
Satellite, 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 :

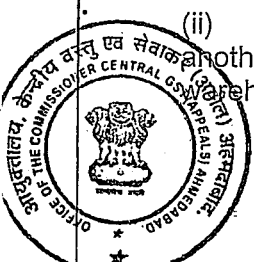
Revision application to Government of India:

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

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया 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 other 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 इका 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 होता रूपये 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 रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

- (37) 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 उत्पादन 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:

- (xciv) amount determined under Section 11 D;
- (xcv) amount of erroneous Cenvat Credit taken;
- (xcvi) 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।

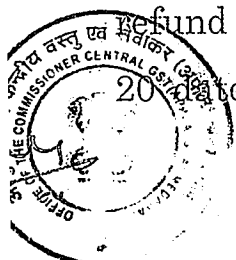
In view of above, an appeal against this order shall lie before the Tribunal on payment of the duty demanded where duty or duty and penalty are in dispute, or penalty, where alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VIII, Commissionerate Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 50/2021-22 dated 01.02.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. CGST/WS08/Ref-07/ST/MK/20-21 dated 09.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST, Division-VIII, Commissionerate Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of Shri Vaibhav Jajoo, B-803, Dev Aurum Residency, Anandnagar Cross Road, Prahladnagar, Satellite, Ahmedabad – 380 015 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that the respondent had purchased a residential property, namely Floris, Unit No.40, Sky City from M/s. Safal Goyal LLP – the service provider. The service provider had charged and recovered service tax amounting to Rs.5,68,395/- which was borne by the respondent. In December, 2018, the respondent cancelled the contract for the services of construction of residential complex with the service provider. The respondent and the service provider agreed that due to non-provision of service, the service provider shall refund the consideration paid by the respondent towards the services to be provided. The service tax amounting to Rs.5,68,395/-, which was deposited to the Government by the service provider, was not paid back to the respondent. Therefore, the respondent filed a claim for refund of the service tax on 22.05.2019. From the documents submitted by the respondent, it was seen that the service tax was paid on 01.06.2017, while the claim for refund was filed on 22.05.2019 i.e. after one year from the date of payment of service tax. Accordingly the fund claim was rejected vide OIO No.CGST/WSOS/Ref-09/ST/BMS/19-20 dated 12.09.2019 on the ground that the same had not been filed

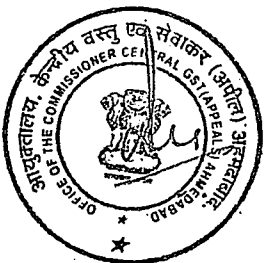


within a period of one year from the relevant date in terms of Section 11B of the Central Excise Act, 1944.

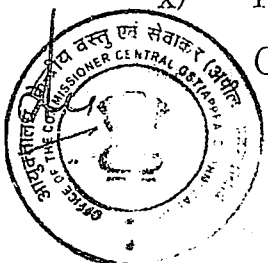
3. Being aggrieved, the respondent filed an appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM-EXCUS-001-APP-019-2020-21 dated 27.05.2020 set aside the said OIO and remanded the matter back to the adjudicating authority to decide it afresh after examining the applicability of the decision passed in OIA dated 29.05.2017 in the case of M/s.Panchratna Corporation, Ahmedabad. In the remand proceedings, the refund of service tax amounting to Rs.5,68,395/- was sanctioned to the respondent vide the impugned order.

4. Being aggrieved with the impugned order, the department has filed the instant appeal through the appellant on the following grounds:

- i) The adjudicating authority has erred in sanctioning the refund by merely relying upon the order dated 29.06.2017 of the Commissioner (Appeals), Ahmedabad in the case of M/s. Panchratna Corporation, Ahmedabad.
- ii) However, the view of the adjudicating authority is contrary to law, facts and evidences on record inasmuch as the respondent had made payment of the said amount, which is nothing but service tax. The view of the adjudicating authority, by relying upon OIA No.AHM-EXCUS-001-APP-019-2020-21 dated 27.05.2020, that once the booking is cancelled and the entire amount is returned, no service has been provided, is incorrect.
- iii) The service provider has shown receipts of consideration for providing construction services in the ST-3 returns and accordingly paid service tax on the advances toward construction services which is a continuous supply of service. Therefore, the amount paid by the service provider was not a deposit but service tax.



- iv) The statute does not provide that the liability to pay service tax would arise only after the service is provided, rather it provided that service tax is payable once payment towards the service is received. Therefore, the service tax paid was by the service provider on the amount received from the respondent and its refund would be governed by Section 11B of the Central Excise Act, 1944.
- v) The service tax was paid on 30.06.2017 without any protest and the refund claim was filed on 22.05.2019 i.e. after more than one year from the relevant date of payment of service tax. Since the refund claim was filed under Section 11B of the Central Excise Act, 1944, all the provisions of the said section are attracted and the claim filed by the respondent is hit by limitation. Therefore, the refund was erroneously sanctioned.
- vi) The decision in the case of C.C.E & S.T, Bhavnagar Vs. Madhvi Procon Pvt. Ltd – 2015(38) STR 74 (Tri.-Ahmd.) has been distinguished in the case of Benzy Tours & Travels Pvt. Ltd. Vs. Commissioner of S.T., Mumbai-I – 2016 (43) STR 625 (Tri.-Mum.).
- vii) The adjudicating authority has also wrongly relied upon the decision in the case of Shravan Banarasilal Jejani Vs. CCE, Nagpur – (2015) 55 taxmann.com 363 (Mumbai – CESTAT).
- viii) With reference to OIA dated 27.05.2020, the adjudicating authority has relied upon the judgment in the case of Parijat Construction Vs. Commissioner of Central Excise, Nashik. However, there is material difference in the facts of both the cases.
- ix) The adjudicating authority has failed to appreciate the judgment in the case of Assistant Commissioner of S.T., Chennai Vs. Nataraj and Venkat Associates – 2015 (40) STR 31 (Mad.).
- x) Reliance is placed upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.283 of 1988 in the case of Collector of



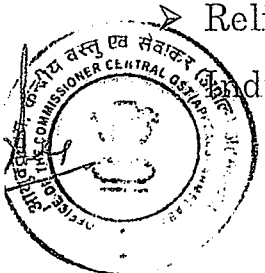
Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills; Veer Overseas Ltd. Vs. Commissioner of Central Excise, Panchkula; Comexx Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2020-TIOL-698-CESTAT-AHM.

5. The respondent has filed their cross-objections on 07.06.2022, inter-alia, submitting that :

- The appeal has been filed on consideration of wrong set of facts and without considering the documents and material on record, without following the principle that the authorities and judiciary cannot adopt contrary view, without following the principles of judicial discipline.
- The appeal filed is devoid of merits and against the principal that an appeal cannot be filed on the same grounds contained in the SCN and already ordered under OIA. The said OIA has not been appealed against, therefore, it has attained finality.
- The remand proceedings was on a limited point of eligibility to refund and the adjudicating authority, after considering the merits of the case, granted refund. The department is attempting to re-open the same which is against the principles of natural justice.
- The grounds stated in Para 1 and 2 of the Grounds of Appeal are incorrect and devoid of logic and based on wrong facts.
- The contention that any advance paid towards provision of service would be subject to service tax irrespective of the fact that the services are not provided is devoid of merit and against the principle of the charging section of service tax.
- The department is reopening the issue of limitation settled in their favour by the said OIA which has attained finality.
- The ruling in the case of Shravan Banarasilal Jejani does not find any mention in the ruling in the case of Benzy Tours and Travels Pvt. Ltd.



- The decision in the case of Natraj and Venkat Associates supra, was already subject matter of dispute raised in the SCN and the same was contested in detail on multiple grounds in the reply to the SCN.
- The decision in the case of Doaba Co-operative Sugar Mills, M/s.Veer Overseas Ltd. and Commexx supra are distinguished on facts. In the present case, refund is claimed in the absence of provision of service where the claimant has borne the incidence of service tax and there is no unjust enrichment.
- The eligibility of refund was never subject matter of dispute in the SCN and as the refund was not rejected on merits, it is established that the adjudicating authority has accepted the fact that they were otherwise eligible for refund.
- The appeal filed challenging the merits and in particular the limitation period under Section 11B of the Act, which is already settled in the OIA, is nothing but expanding the scope of the SCN.
- Reliance is placed upon the judgment of the Hon'ble Tribunal in their own case involving a similar matter wherein the Hon'ble Tribunal ruled in their favour.
- Reliance is also placed upon the decision in the case of Reckitt & Colman of India Ltd. V. Collector of Central Excise – 1996 (88) ELT 641 (SC); Volvo India Pvt. Ltd. V. Commissioner of Customs – 2005 (180) ELT 489 (Tri.-Bang.); Metal Press India V. Commissioner of Central Excise, Mumbai – 2005 (192) ELT 564 (Tri.-Mumbai); Visaka Industries Limited Vs. Commissioner of C.Ex., Bangalore-II – 2015 (329) ELT 801 (Tri.-Bang.) and C.C.E & S.T., Belgaum Vs. Swarnagiri Wire Insulations Pvt. Ltd. – 2014 (301) ELT 46 (Kar.).
- Detailed submissions on judicial discipline was made in their additional reply dated 03.09.2019 to the SCN and in the appeal before the Commissioner (Appeals).
- Reliance is also placed upon the judgment in the case of Excel Industries Ltd. – TS-506-SC-2013.



- On the issue of violation of the principles of natural justice, reliance is placed upon the judgment in the case of Dharampal Satyapal Ltd. Vs. Dy. CCE, Gauhati – 2015 (320) ELT 3 (SC) and M. Rathnakrishnan Vs. ADG, DTE of Revenue Intelligence, Chennai – 2016 (336) ELT 622 (Mad.).

6. Personal Hearing in the case was held on 29.08.2022. The respondent had appeared for the hearing in person. He reiterated the submissions made in the cross-objection filed. He also submitted a written submission during the hearing.

7. In the written submission filed during the personal hearing, it was contended, inter alia, that :

- The judgment in the case of Doaba Co-Operative Sugar Mills – 2002-TIOL-426-SC-CX has been distinguished in the case of Parijat Construction Vs. Commissioner of Central Excise, Nashik – 2018 (359) ELT 113 (Bom.).
- Once the OIA has relied upon the judgment in the case of Parijat Construction, rejection of the refund based on the Doaba Co-operative Sugar Mills is unjust and does not accord fair play.

7.1 The respondent has subsequently filed further additional written submissions on 01.09.2022 wherein it was, inter alia, submitted that :

- No reason or logic has been provided regarding the applicability of the decision in the case of Commex supra, for rejecting the refund. The said judgment is distinguished on facts. Further, the said judgment was passed by relying upon the judgment in the case of Doaba Co-operative Sugar Mills supra, which has been distinguished in the case of Parijat Construction supra.
- In their own case involving a similar matter, the Commissioner (Appeals) had held that limitation prescribed under Section 11B is not applicable. The Hon'ble CESTAT had in the same matter held that Section 11B *per se* is not applicable and ruled in their favour



by ordering grant of refund of service tax paid on construction of residential complex service along with interest. A copy of the Hon'ble Tribunal's order is submitted.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections, the additional written submissions filed by the respondent and materials available on records. The issue before me for decision is whether the impugned order sanctioning refund, of the service tax paid on advances paid during booking of residential property, consequent to cancellation of the booking is legal and proper or otherwise.

9. It is observed that the impugned order was passed in the remand proceedings ordered vide OIA No. AHM-EXCUS-001-APP-019-2020-21 dated 27.05.2020. The relevant part of the said OIA is reproduced below:

"16. In view of the above discussion, it is held that the provisions of Section 11B of the Central Excise Act, 1944 prescribing time limit to claim refund of duty paid as applicable to Service Tax vide Section 83 of the Finance Act, 1994 is not applicable in the facts of the case. The order passed by the adjudicating authority is accordingly not legally sustainable and is liable to be set aside.

17. Further, as the adjudicating authority has not discussed the eligibility of refund filed by the applicant, the matter needs to be remanded back to him to decide the case afresh on merits.

18. Accordingly, the matter is remanded back to the adjudicating authority for deciding the case afresh. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority during the adjudication proceedings."

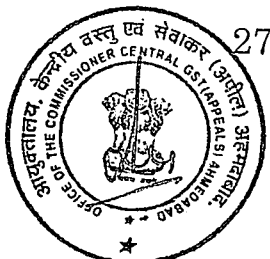
9.1 It is therefore, clear from the above OIA that the issue pertaining to limitation in terms of Section 11B of the Central Excise Act, 1944 was held to be not applicable. Further, the only issue to be decided by the adjudicating authority in the remand proceedings was the eligibility of the respondent to refund on merits.



10. In terms of the directions contained in the OIA supra, the adjudicating authority has examined the refund claim of the respondent on merits and being satisfied about the same, sanctioned the refund claim to the respondent.

11. I find that at Para 3 of the Grounds of Appeal, the findings of the Commissioner (Appeals), Ahmedabad in OIA No. AHM-SVTAX-000-APP-023-17-18 dated 29.06.2017 in the case of Panchratna Corporation, Ahmedabad has been reproduced. However, thereafter the appellant department has proceeded to attribute and consider the view of the Commissioner (Appeals), in the said OIA, to be that of the adjudicating authority of the impugned order and it is contended by the appellant department that such a view is contrary to law, facts and evidences on record. This, in my considered view, is indicative of the fact that the appellant department have not taken any pains to properly appreciate or understand the findings of adjudicating authority in the impugned order.

12. The appellant department have in the Grounds of Appeal not challenged the findings of the adjudicating authority insofar as it pertains to the eligibility of the respondent to refund on merits. They have challenged the impugned order on the grounds that the limitation as prescribed under Section 11B of the Central Excise Act, 1944 are applicable. In support of their contention, the appellant department has relied upon a few judicial pronouncements. However, from the material available on record, I find that the appellant department have not challenged OIA No. AHM-EXCUS-001-APP-019-2020-21 dated 27.05.2020 wherein it was held that the time limit prescribed under Section 11B of the Central Excise Act, 1944 are not applicable to the facts of the present case. Neither has the appellant department put forth any material to indicate that the said OIA has been set aside by any higher appellate authority. Therefore, the said OIA dated 27.05.2020 has attained finality. Consequently, it is not open for the

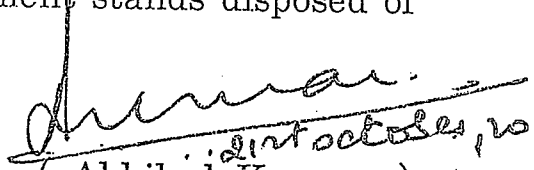


department to challenge the findings of the said OIA dated 27.05.2020 through an appeal filed against the impugned order which does not deal with the issue of limitation or applicability of the provisions of Section 11B of the Central Excise Act, 1944. Accordingly, I find that the appeal filed by the appellant department is bereft of any merit and is liable to be rejected.

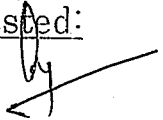
13. In view of the facts discussed hereinabove, I uphold the impugned order and reject the appeal filed by the appellant department.

14. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


21st October, 2022.
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 21.10.2022.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent (Appeals),
CGST, Ahmedabad.
BY RPAD / SPEED POST



To

The Assistant Commissioner,
CGST & Central Excise,
Division-VII,
Commissionerate : Ahmedabad South.

Appellant

Shri Vaibhav Jajoo,
B-803, Dev Aurum Residency,
Anandnagar Cross Road,
Prahlanagar, Satellite,
Ahmedabad - 380 015

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.