



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 : 20221264SW0000168843

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1524/2022 / 5657-61
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-089/2022-23
दिनांक Date : 07-12-2022 जारी करने की तारीख Date of Issue 09.12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-06/Iris Spectra/AC/DAP/21-22 दिनांक: 28.02.2020
passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Iris Spectra Pvt Ltd
401, Abhijeet-III, Above Pantaloon,
Nr. Law Garden, Ellisbridge, Ahmedabad -380006

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 :

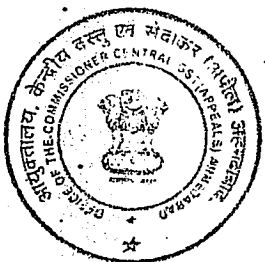
Revision application to Government of India:

(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 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 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 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.

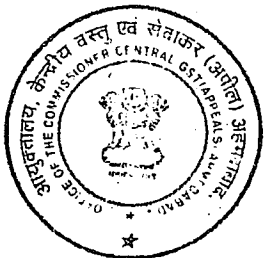
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 बताने 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.

- (61) 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.

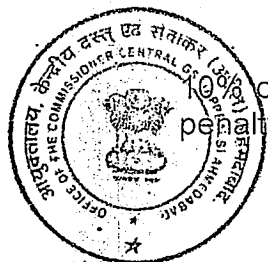
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxxiv) amount determined under Section 11 D;
- (clxxxv) amount of erroneous Cenvat Credit taken;
- (clxxxvi) 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 of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

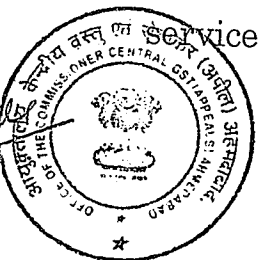
The present appeal has been filed by M/s. Iris Spectra Private Limited (earlier known as M/s. Compuserve Systems Private Limited), 401, Abhijeet-III, Above Pantaloon, Near Law Garden, Ellisbridge, Ahmedabad - 380 006 (hereinafter referred to as the appellant) against Order in Original No. CGST-VI/Dem-06/Iris Spectra/AC/DAP/21-22 dated 28.02.2020 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, Division - VI, 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. AAACC7791HST001 and engaged in providing Business Auxiliary Service, Beauty Parlour/Beauty Treatment service, Commercial Training or Coaching service, Maintenance or Repair service and Health Club and Fitness Centre service. During the course of Audit of the records of the appellant for the period from April, 2014 to June, 2017 by the Officers of Central Tax Audit Commissionerate, Ahmedabad, the following observations were raised by way of Revenue Paras, which are enumerated below :

- a) Revenue Para 1 : Short Payment of Service Tax amounting to Rs.1,18,422/- for F.Y. 2015-16 to F.Y.2017-18 (April to June, 2017) on the basis of reconciliation of income.
- b) Revenue Para 4 : Non-payment of service tax amounting to Rs.20,892/- on the rent income on Photocopier Machine.
- c) Revenue Para 5 : Non Payment of service tax amounting to Rs.6,21,928/- for F.Y. 2014-15 to F.Y. 2017-18(April to June, 2017) on office rent paid to Director under Reverse Charge.

3. The appellant was, subsequently, issued a Show Cause Notice bearing No. 126/2019-20 dated 23.09.2019 wherein it was proposed to :

- a) Recover service tax totally amounting to Rs.7,61,242/- under the proviso to Section 73 (1) of the Finance Act, 1994 and appropriate the service tax amounting to Rs.60,810/- paid by them on 18.04.2019.



- b) Recover Interest under Section 75 of the Finance Act, 1994 and appropriate the interest amounting to Rs.30,261/- paid by them on 18.04.2019.
- c) Impose penalty under Section 78(1) of the Finance Act, 1994 and appropriate the penalty amounting to Rs.9,121/- paid by them on 18.04.2019.

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs.1,18,422/- was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78(1) of the Finance Act, 1994. The amounts paid by the appellant were appropriated. The demand of service tax amounting to Rs.6,42,820/- was held to be settled under SVLDRS, 2019 by issue of SVLDRS-04 bearing No.L1202220SV400595 dated 12.02.2020.

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

- i. The adjudicating authority has erred in considering only the period from F.Y. 2015-16 to F.Y.2017-18(April-June, 2017), though the audit was for the period from April, 2014 to June, 2017.
- ii. They submit the reconciliation of service tax payable income and service tax paid for the period from April, 2014 to June, 2017 from which it can be seen that they are eligible for refund of Rs.90,384/- plus interest for F.Y. 2014-15. The demand is for Rs.1,18,422/-, hence, the net tax liability is only Rs.28,038/- plus interest and penalty.
- iii. The adjudicating authority has erred in not considering the excess payment of service tax and in not reducing the same from the service tax payable.
- iv. Against their liability to pay service tax of Rs.28,038/-, they had already paid service tax amounting to Rs.60,810/-, interest amounting to Rs.30,261/- and penalty amounting to Rs.9,121/- on 18.04.2019.
- v. They are eligible for refund of Rs.32,772/- related to service tax, Rs.48,575/- related to excess interest and Rs.9,121/- for penalty.

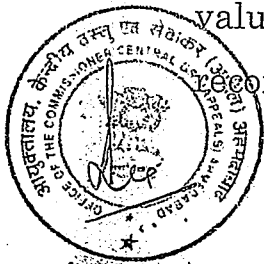


tax amounting to Rs.1,18,422/-, in the facts and circumstances of the case, is legal and proper or otherwise.

8. It is observed that the appellant has *per se* not disputed their liability to pay the service tax demanded from them. They have contended that though the period covered by the audit is from F.Y. 2014-15 to F.Y. 2017-18 (upto June), the adjudicating authority has considered only the period from F.Y. 2015-16 to F.Y. 2017-18 while confirming the demand. The appellant has contended that they had paid excess service tax amounting to Rs.90,384/- during F.Y. 2014-15, which was not considered while arriving at the service tax payable by them. It is the appellant's contention that the excess service tax paid by them during F.Y. 2014-15 is required to be adjusted towards their net service tax liability determined to be payable by the department.

8.1 I, however, do not find any merit in the contention of the appellant regarding adjustment of the excess service tax paid in a financial year towards the service tax liability in another financial year. If the appellant had paid excess service tax in any financial year, the proper recourse available to them was to either claim refund of the excess service tax paid by them under Section 11B of the Central Excise Act, 1944 or take credit of the excess service tax paid in terms of Rule 6 (3) of the Service Tax Rules, 1994. They have not taken recourse to either of the two options under the Finance Act, 1994. There is no provision in the Finance Act, 1994 for adjustment of excess service tax paid in a given financial year towards the service tax payable in another financial year. In view thereof, I do not find any infirmity in the impugned order confirming the demand of service tax.

9. The appellant have also raised the issue of limitation and contended that the extended period of limitation cannot be invoked. In this regard, I find that the appellant had mis-declared the taxable value of services provided by them in the ST-3 returns filed by them. The correct taxable value of the services was with the appellant as is seen from the reconciliation statement submitted by them. Despite this, they had not filed



their returns with the correct taxable value of the services provided by them. Thereby, they had suppressed the actual taxable value from the department and the wrong taxable value of services reported by them in their ST-3 returns amounts to mis-statement. Accordingly, the extended period of limitation is attracted and has been rightly invoked for demanding service tax.

10. In view of the facts discussed herein above, I hold uphold the impugned order and reject the appeal filed by the appellant.

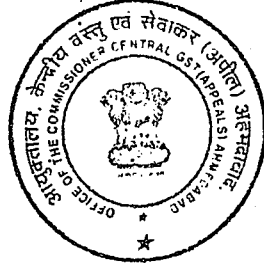
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhil
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 07.12.2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Iris Spectra Private Limited,
 401, Abhijeet-III, Above Pantaloon,
 Near Law Garden,
 Ellisbridge, Ahmedabad – 380 006

Appellant

The Deputy Commissioner,
 CGST, Division- VI,
 Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
 (for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.