



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

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- टेलिफैक्स 07926305136



DIN : 20230464SW000000A840

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/353/2022 / 374 378
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-01/2023-24**
दिनांक Date : **06-04-2023** जारी करने की तारीख Date of Issue 11.04.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. **MP/7/AC/Div-III/2021-22** दिनांक: **08.03.2022** passed by Assistant Commissioner, CGST, Division-III, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Esso Fab Tech Private Limited
14/A, Kanjibhai Industrial Estate,
Opposite Ramvadi Weigh Bridge,
Vatva, Ahmedabad - 382445

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 :

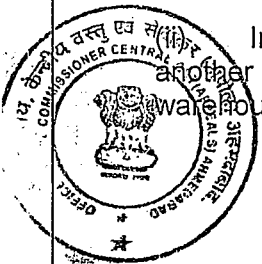
Revision application to Government of India:

(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।

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 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 filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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.

11^प 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:

- (cxxx) amount determined under Section 11 D;
(cxxxii) amount of erroneous Cenvat Credit taken;
(cxxxii) 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."

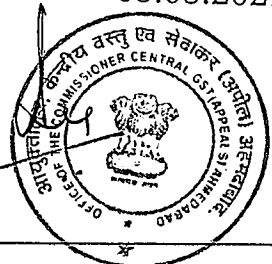


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Esso Fab Tech Private Limited, 14/A, Kanjibhai Industrial Estate, Opposite Ramvadi Weigh Bridge, Vatva, Ahmedabad - 382 445 (hereinafter referred to as the "appellant") against Order in Original No. MP/7/AC/Div-III/2021-22 dated 08.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-III, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise Registration No. AACCE8509KEM001 and also Service Tax Registration No.AACE8509KSD001. The appellant were engaged in the manufacture of M.S. Foundation Bold, M.S. Tie Rod etc. falling under Chapter 72 & 73 of the Central Excise Tariff Act, 1985. During the course of Audit of the records of the appellant, for the period from April, 2016 to June, 2017, conducted by the Departmental Audit Officers, the following Revenue Paras as detailed below were raised.

2.1 Revenue Para 1 : It was observed that the appellant had, during F.Y. 2016-17 to F.Y. 2017-18 (up to June, 2017), cleared exempted goods by availing benefit of Notification No.6/2006-CE dated 01.03.2006 and had also undertaken trading. It was observed that the appellant had availed cenvat credit on various common inputs used in the manufacture of excisable goods, exempted goods and also traded goods. In terms of Rule 6(1) of the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004), the appellant were not eligible to take cenvat credit on inputs/services used in the manufacture of exempted goods. It appeared that the appellant had not followed the procedure laid down under Rule 6(3) of the CCR, 2004 and neither had they paid the amount determined in terms of Rule 6(3)(ii) of the CCR, 2004. Therefore, the appellant was required to pay an amount of Rs. 1,86,348/-, equal to six per cent of the value of exempted goods, which was not paid by them. The audit objection was communicated to the appellant vide Query Memo dated 03.03.2021 and they paid an amount of Rs. 1,80,032/- on 25.01.2021. However,



the appellant did not pay the applicable interest and penalty and they also did not pay the remaining amount of Rs. 6,316/-.

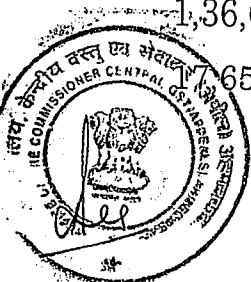
2.2 Revenue Para 2 :- On reconciliation of the excise turnover shown in their financial statements with their ER-3 returns, for the period from F.Y. 2016-17 to F.Y. 2017-18 (up to June, 2017), it was observed that there was a difference in the value declared in the ER-3 returns as compared to their financial statements on which central excise duty amounting to Rs. 20,16,148/- was not paid by the appellant. The appellant did not respond to the Query Memo dated 03.03.2021 communicating the audit observation.

2.3 Reconciliation of the taxable value shown in their ST-3 returns with their financial statements indicated that there was a difference in the income reported in their ST-3 returns as compared to the financial statements. The appellant had accordingly not paid/short paid service tax amounting to Rs. 3,79,239/- on this differential income.

2.4 Revenue Para 3 :- It was observed that the appellant had failed to file ER-3 returns for October-December, 2016 and April-June, 2017. Hence, the appellant were liable for penalty under Rule 12(6) of the Central Excise Rules, 2002. Further, the appellant had also late filed their ST-3 returns for the period April-September, 2016 by 90 days. They had also not filed their ST-3 returns for the period October, 2016-March, 2017 and April-June, 2017. It, therefore, appeared that the appellant were liable to pay late fees amounting to Rs. 87,000/- for non filing of ER-3/ST-3 returns.

2.5 Revenue Para 4 :- It was observed that the appellant had availed Legal Services to the tune of Rs. 20,000/- during F.Y. 2016-17 but had not paid service tax amounting to Rs. 3,000/- under reverse charge.

2.6 Revenue Para 5 :- It was observed that the appellant had incurred Freight Charges amounting to Rs. 2,55,656/- during F.Y. 2016-17 and Rs. 1,36,609/- during F.Y. 2017-18 but not paid service tax amounting to Rs. 652/- under reverse charge.

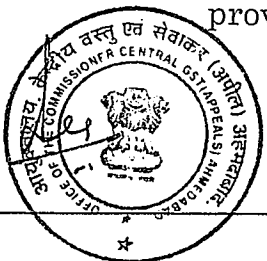


3. The appellant were subsequently issued Show Cause Notice bearing No. VI/1(b)-259/C-I/AP-1/Audit/Ahd/2019-20 dated 21.05.2021, wherein it was proposed to :

- a) Demand and recover an amount of Rs. 1,86,348/- under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CCR, 2004 and to appropriate the amount of Rs. 1,80,032/- paid by them.
- b) Demand and recover the central excise duty amounting to Rs. 20,16,148/- under Section 11A(4) of the Central Excise Act, 1944.
- c) Demand and recover the service tax amounting to Rs. 3,79,239/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- d) Demand and recover the service tax amounting to Rs. 3,000/-, in respect of the Legal Services, under the proviso to Section 73 (1) of the Finance Act, 1994.
- e) Demand and recover the service tax amounting to Rs. 17,652/-, in respect of GTA Services, under the proviso to Section 73 (1) of the Finance Act, 1994.
- f) Demand and recover the late fees/penalty amounting to Rs. 47,000/- under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- g) Demand and recover the late fees/penalty amounting to Rs. 40,000/- under Rule 12(6) of the Central Excise Rules, 2002.
- h) Charge and recover interest under Section 11AA of the Central Excise Act, 1944 and Section 75 of the Finance Act, 1994.
- i) Impose penalty under Sections 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the CCR, 2004 and 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order ex-parte wherein :

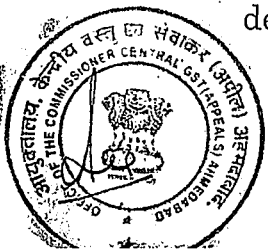
- I. An amount of Rs. 1,86,348/- was confirmed under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CCR, 2004. The amount of Rs. 1,80,032/- paid by the appellant was appropriated.
- II. The central excise duty amounting to Rs. 20,16,148/- was confirmed under Section 11A(4) of the Central Excise Act, 1944.
- III. The service tax amounting to Rs. 3,79,239/- was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994.



- IV. The service tax amounting to Rs. 3,000/-, in respect of the Legal Services, was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994.
- V. The service tax amounting to Rs. 17,652/-, in respect of GTA Services, was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994.
- VI. The late fees/penalty amounting to Rs. 47,000/- was confirmed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- VII. The late fees/penalty amounting to Rs. 40,000/- was confirmed under Rule 12(6) of the Central Excise Rules, 2002.
- VIII. Interest was ordered to be recovered under Section 11AA of the Central Excise Act, 1944 and Section 75 of the Finance Act, 1994.
- IX. Penalty amounting to Rs. 6,316/- was imposed under Sections 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the CCR, 2004.
- X. Penalty amounting to Rs. 20,16,148/- was imposed under Section 11AC(1)(c) of the Central Excise Act, 1944.
- XI. Penalty amounting to Rs. 3,79,239/-, Rs. 3,000/- and Rs. 17,652/- was imposed under and 78(1) of the Finance Act, 1994.

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

- i. In respect of Revenue Para 1, they had not availed cenvat credit during the period in question and, hence, the observation of the department is factually wrong.
- ii. In respect of Revenue Para 2, they had reported their turnover properly in the returns filed by them. There was no short disclosure of turnover and consequently no short payment of tax. The department had not considered the excise returns and service tax returns filed by the for F.Y. 2016-17 and F.Y. 2017-18.
- iii. In respect of Revenue Para 3, it is submitted that they had filed all their returns regularly and in time. The said fact has not been verified by the department before passing the impugned order.



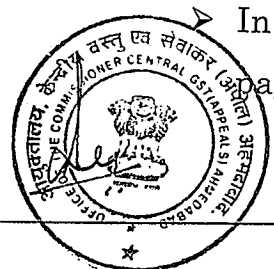
- iv. Regarding Revenue Para 4, it is submitted that they agree with the observation of the department and they had made payment through DRC-03 dated 06.05.2022.
- v. Regarding Revenue Para 5, it is submitted that they agree with the observation of the department and they had made payment through DRC-03 dated 06.05.2022.
- vi. They had regularly filed their returns and there has been no suppression nor any wilful misstatement. They have also filed their audited Balance Sheet disclosing all the information. Hence, penalty should not be imposed.
- vii. Interest is payable for non payment or delay in payment of duty. As there is no liability of duty, interest is also not payable.
- viii. Extended period cannot be invoked as there is no wilful misstatement. This can be vouched on the basis of their filing returns under various tax laws and also audited Balance Sheet with Income Tax department disclosing all information. The SCN is, hence, time barred.

6. Personal Hearing in the case was held on 17.02.2023. Shri Sourabh Singhal, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He also submitted additional written submission during the hearing.

7. In the additional written submissions filed on 17.02.2023, the appellant submitted that :

- The SCN issued is not sustainable for being vague and for being issued without verifying the documents in their hands. Therefore, the impugned order is liable to be set aside.
- During F.Y. 2016-17 and F.Y. 2017-18 (till June, 2017), they had exported goods, without payment of tax, valued at Rs. 22,28,470/- and Rs. 8,46,000/- respectively. This has been considered by the department as trading of exempted goods for the purpose of Rule 6(3) of the CCR, 2004, which is factually wrong. Therefore, the impugned order is liable to be set aside and the amount of Rs. 1,80,032/- paid by them is liable to be refunded back to them.

In respect of the central excise duty and service tax determined to be payable on account of reconciliation, it is submitted that the department



has not considered the Excise and Service Tax returns already filed by them for F.Y. 2016-17 and F.Y. 2017-18 (up to June, 2017). Copy of the summary of these returns are being submitted.

- Regarding late filing/non filing of returns, it is submitted that the impugned order has been passed without verifying the returns filed by them. Copies of the return are submitted. Hence, they are not liable to pay late fees.
- As they are not liable to pay central excise duty and service tax, they are also not liable to pay interest.
- For imposing penalty, there has to be intention to evade payment of tax or there should be suppression or concealment of facts. They have provided all the details as an when desired by the department and at no point of time, they had any intention of evade payment of tax not had they suppressed any fact wilfully. Therefore, penalty is not imposable upon them.
- As they have not suppressed any facts with intention to evade duty, extended period of limitation cannot be invoked.
- The SCN has not brought on record any evidence to show that they had suppressed any fact from the department with intention to evade payment of tax.
- Every omission to disclose certain fact is not sufficient to invoke larger period of limitation on the grounds of suppression of facts. In the present case, wilful nature of the omission is not established by the department.
- Reliance is placed upon the judgment in the case of Pahwa Chemicals Vs. CCE – 2005 (189) ELT 257 (SC); Ispat Industries Ltd. Vs. CCE – 2006 (199) ELT 509 (T); NIRC Ltd. Vs. CCE – 2007 (209) ELT 22 (T); Suvikram Plastex Pvt. Ltd. Vs. CCE, Bangalore –III – 2008(225) ELT 2828 (T); Rallis India Ltd. Vs. CCE, Surat – 2006 (201) ELT 429 (T); Patton Ltd. Vs. CCE, Kolkata –V – 2006 (206) ELT 496 (T); CCE, Tirupati Vs. Satguru Engineering & Consultants Pvt. Ltd. – 2006 (203) ELT 492 (T) and Indian Hume Pipes Co. Ltd. Vs. CCE, Coimbatore – 2004 (163) ELT 273 (T).
- Reliance is also placed upon the judgment in the case of Pushpam Pharmacueticals Company Vs. CCE – 1995 (78) ELT 401 (SC); CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC).



7. 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 of Cenvat credit, central excise duty, service tax and late fees. The demand pertains to the period F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017).

8. The appellant have in their appeal memorandum contested the confirmation of demand of service tax on merits as well as on the grounds of limitation. However, none of the submissions made by the appellant in their appeal memorandum have been made before the adjudicating authority. It is observed that the case was adjudicated ex-parte by the adjudicating authority. It has been mentioned at Para 13 of the impugned order that the appellant were granted personal hearing on 15 & 16.11.2021, 13 & 14.12.2021 and 10 & 11.02.2022. However, the appellant did not appear before the adjudicating authority for personal hearing.

8.1 It is further observed that the appellant were called for personal hearing on three different dates by the adjudicating authority, which was not attended by the appellant. Thereafter, the case was adjudicated ex-parte by the adjudicating authority. In terms of Section 33A (1) of the Central Excise Act, 1944, the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 were not been granted to the appellant. It is pertinent to refer to the judgment of the Hon 'ble High Court of Gujarat in the case of Regent Overseas Pvt Ltd. Vs. UOI – 2017 (6) GSTL 15 (Guj) wherein it was held that :

“12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two



adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.”

8.2. It is further observed that the appellant did not file any defense reply before the adjudicating authority. The impugned order has, therefore, been passed without the appellant filing their written submissions and without hearing the appellant. Therefore, I am of the considered view that in the interest of natural justice, the appellant is required to be given another opportunity to present their case before the adjudicating authority. Therefore, I remand the case back to the adjudicating authority for afresh adjudication. The appellant are directed to file their written submissions before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the case after granting opportunity of personal hearing to the appellant. Consequently, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

9. 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
6/5 April, 2023
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 06.04.2023

Attested:

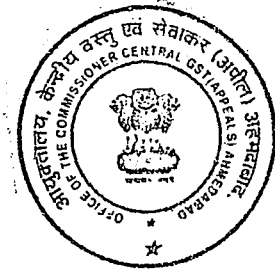
(Signature)
(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Esso Fab Tech Private Limited,
14/A, Kanjibhai Industrial Estate,
Opposite Ramvadi Weigh Bridge,
Vatva, Ahmedabad – 382 445

The Assistant Commissioner,
Division- III, CGST,
Commissionerate : Ahmedabad South.



Appellant

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.

