



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: 20230964SW0000717217

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3541/2023 /6111-119
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-126/2023-24
दिनांक Date : 15-09-2023 जारी करने की तारीख Date of Issue 20.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 82/CGST/A'bad-South/JC/SR/2022-23 दिनांक: 24.02.2023 passed by The
Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Gujarat Gold Jewellery Show,
B-109, Ganesh Plaza, Opp. Navrangpura Bus Stop,
Ahmedabad-380009.

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 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 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 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 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.

- 17 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;
इष्ट 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.

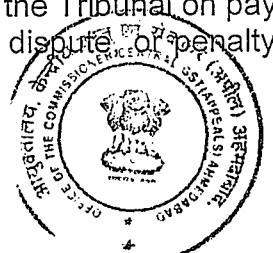
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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



ORDER-IN-APPEAL

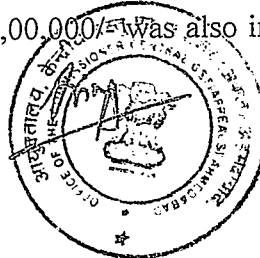
The present appeal has been filed by M/s. Gujarat Gold Jewellery Show, B-109, Ganesh Plaza, Opp. Navrangpura Bus Stop, Ahmedabad – 380009 (hereinafter referred to as “the appellant”) against Order-in-Original No. 82/CGST/Ahmd-South/JC/SR/2022-23 dated 24.02.2023 issued on 31.03.2023 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2.1 Briefly stated the facts of the case are that the appellant are engaged in providing services viz. “Event Management Services” and are holding Service Tax Registration No. AALFG1439SD001. During the course of audit of the financial records of the appellant, for the period from October-2015 to June-2017, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the following observation in Revenue Para-3 was raised in Final Audit Report No. 1164 dated 20.04.2021, which is relevant in the present case.

2.2 Revenue Para 3: Wrongly taken Cenvat Credit without any documents mentioned in Rule 9(1) of the Cenvat Credit Rules, 2004: The appellant had wrongly availed the Cenvat Credit without any duty paying documents. The appellant under a communication dated 22.03.2021 were asked to clarify on the above objection and other objection raised in the said FAR. The observations were not accepted by the appellant.

2.3 Hence, a SCN bearing No. GADT/TECH/SCN/ST/10/2021 dated 14.09.2021, was issued to the appellant. Among the other demands, the show cause notice proposing recovery of wrongly availed and utilized Cenvat Credit, in respect to Revenue Para 3 of the said FAR, amounting of Rs. 19,12,286/- in terms of proviso of Section 73(1) of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with interest under Section 75 of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 and proposing penalty under Section 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004.

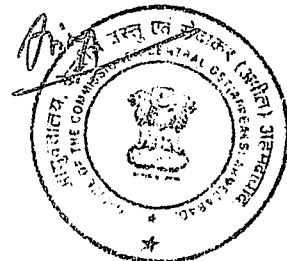
2.4 The said SCN was adjudicated by the adjudicating authority vide impugned order wherein the various demands of Service Tax was dropped by the adjudicating authority. In respect of the wrongly availed and utilized Cenvat Credit, the adjudicating authority has confirmed the demand of recovery of Cenvat Credit of Rs. 14,00,000/-, out of total recovery of Rs. 19,12,288/- proposed in the Show Cause Notice, under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73(2) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and penalty of Rs. 14,00,000/- was also imposed on the



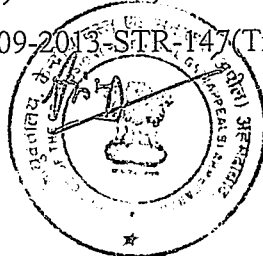
appellant under Section 78(1) of the Finance Act, 1994 read with Rule 15 of the Cenvat Credit Rules, 2004. The adjudicating authority has dropped the remaining demand of recovery of Cenvat Credit as proposed in the show cause notice, as the appellant have submitted copies of Service Tax invoices for verification.

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

- The appellant are engaged in providing Event management services and were holding Service Tax registration No. AABCC8079RST001.
- The appellant has organized various events in the year 2016-17 & 2017-18 (up to June 17) and paid service tax at the time of receipt of advances from their customers as per the provision of Service tax Laws.
- However, due to certain reasons a event got postponed and re-organized on 5-6-7 January, 2018. As a result, the appellant has to return the advances received from the customers on their demand and may keep the same as advance. Accordingly, service tax already paid is required to be carried forward and adjust against the future events liability.
- Hence, Service tax amounting to Rs. 14,00,000/- paid in advance has been carried forwarded in CGST as per Section 142(11)(c) of the CGST Act, 2017. The appellant is required to issue tax invoices in January-2018 for which advances received and tax paid in service tax regime. Accordingly, tax invoices for the stall booking services rendered for the above exhibition has been issued in the month of January-2018; i.e. Post GST regime. In accordance with the GST Law; the appellant has discharge GST on the said tax invoices.
- Due to lack of clarifications at relevant point of time; above service tax which is required to be carried forwarded under Section 142(11)(c) is reported under table 3.1.2.6 specifying "Any other credit advance tax paid as per return of Marcli-17" while filing ST-3 Return for the period April-17 to June-17. The said has been part of the closing balance amounting to Rs. 18,38,217/- of the Cenvat credit as per service tax return. They have submitted copy of ST-3 Return filed for April-2017 to June-2017 along with appeal memorandum.



- The said closing balance has been carried forwarded as CGST Transitional credit by filing Tran-1 under section 140 of the CGST Act, 2017. The Credit of Rs. 14,00,000/- carried forwarded as transitional credit in GST is legally eligible under section 142(11)(c) of the CGST Act, 2017.
- The appellant has due to lack of clarifications reported the said Rs. 14,00,000/- under any other credit while filing service tax return for the period April-17 to June-17. It is to be noted that the said credit has never been utilized in service tax regime for the payment of the service tax liability and closing balance (incl. of Rs. 14,00,000/-) of Credit amounting to Rs. 18,38,217/- has been carried forwarded as CGST Credit.
- SCN is issued on 14 September, 2021 invoking proviso to Section 73(1) of the Finance Act, 1994. The SCN is failed to establish suppression on the part of the appellant. Thus, SCN is issued arbitrarily and illegally. In support of the above, the appellant relied upon the following case laws:
 - a) M/s. Mahadev Trading Company Vs. Union of India - 2020-TIOL-1683-HC-AHM-GST
 - b) Sahibabad Printers Vs. Additional Commissioner CGST (Appeals) and 2 others - 2020-TIOL-2164-HC-ALL-GST
 - c) Principal Commissioner Vs. Shubham Electricals - 2016(42) STR J312 (Del.)
 - d) Commissioner of C.Ex., Bangalore Vs. Brindavan Beverages (P) Ltd -2007(213) ELT487 (SC)
 - e) Commissioner Vs. Interchrome Pvt Ltd - 2004 (164) ELT A128 (SC)
- The SCN in given case has been issued on 14 September, 2021 invoking proviso to Section 73(1), an extended period of limitation can be invoked only in a case where service tax has not been paid on account of fraud, collusion, and wilful misstatement, suppression of facts with an intention to evade tax. In the present case there is no suppression of facts with an intention to evade payment of tax, therefore demand vide impugned SCN invoking proviso to Section 73 is being time-barred and hence null & void. In support of the above, the appellant relied upon the following case laws:
 - a) SOTC Travels Services Pvt. Ltd. Vs Principal Commissioner of Central Excise [2021 (9) TMI 897]
 - b) M/s. Oriental Insurance Company Limited [2021 (5) TMI 869]
 - c) M/s. Gannon Dunkerley & Co. Ltd (2020 (12) TMI 1096)
 - d) Rolex Logistic Private Limited Vs. CST [2009-2013-STR-147(Tri.Bang)]

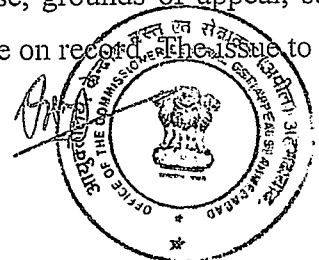


e) Om Sai Professional Detectives and Securities Service Pvt Ltd. vs. CCE [2008-12-STR-79(Tri.Bang)]

- As discussed in the preceding paras, the appellant is not liable to reverse any Cenvat Credit. Thus, the question of paying interest under Section 75 of the Finance Act, 1994 does not arise. It is a well-settled principle of law that where there is no demand of duty, interest and penalty cannot be imposed.
- Without prejudice to the above, The appellant would also like to state that in the absence of "mens-rea", the question of levy of penalty under section 78 does not arise. Also as stated above, suppression of facts is not there in the subject case of the appellant. Therefore the proviso to Section 73(1) is not applicable. Since, proviso to Section 73(1) is not applicable, penalty under Section 78 is not imposable.

4. Personal hearing in the case was held on 28.07.2023. Shri Bisan Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the appellant was issued a show cause notice dated 14.09.2021 for service tax amounting to Rs. 62,75,076/-, Rs. 2,05,862/- and wrongly availed and utilized Cenvat credit amounting to Rs. 19,12,286/-. The adjudicating authority vide the impugned order has dropped the demand of Rs. 62,75,076/-, Rs. 2,05,862/- and the demand of Cenvat credit amounting to Rs. 5,12,661/-. However, the lower authority has ordered recovery of cenvat credit of Rs. 14 lakh alleged to have been wrongly availed. He submitted that the appellant had paid Service Tax amount of Rs. 14 lakhs against an advance payment, for which the supply was made and invoice was raised post-GST era. In the GST Return the appellant has discharged his liability through the credit of service tax of Rs. 14 lakhs paid on the advance and reflected it in the return. No objection was raised on the discharge of liability in the GST. Therefore, it is submitted that demand of tax amounting to Rs. 14 lakhs now alleging to have been wrongly availed is not correct. Therefore, he requested to set aside the impugned order. He further referred to the provisions under Section 142(3) second proviso, which has mentioned that no refund shall be allowed of any amount of cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this act. This implies that the credit was legally carry forwarded by the appellant and utilized later on as per law. He further referred to the decision of Hon'ble CESTAT, Mumbai in the case of Guardain Landmarks LLP, wherein it has been observed that, when no service has been provided as the booking has been cancelled, then the tax on it cannot be retained by the exchequer.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided



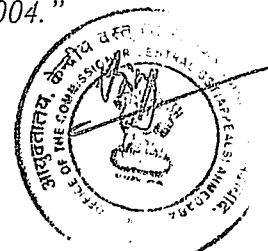
in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of recovery of Cenvat Credit of Rs. 14,00,000/- along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2017-18 (upto June-2017).

6. It is observed that the main contentions of the appellant are that they are engaged in providing Event management services. They have organized various events and paid service tax at the time of receipt of advances from their customers. However, due to certain reasons an event got postponed and re-organized on 5-6-7 January, 2018. As a result, the appellant has to return the advances received from the customers on their demand and may keep the same as advance. Accordingly, service tax already paid is required to be carried forward and adjust against the future events liability. Service tax amounting to Rs. 14,00,000/- paid in advance, has been taken as credit by them in the ST-3 Return for the period April-17 to June-17 and shown the same in table 3.1.2.6 specifying "Any other credit advance tax paid as per return of Marcli-17" while filing ST-3 Return for the period April-17 to June-17.

6.1 It is also observed that the adjudicating authority had confirmed the demand of recovery of Cenvat Credit of Rs. 14,00,000/-, observing as under:

"24. Another charge raised against the Noticee is that they have wrongly availed credit of Service tax amounting to Rs 19,12,288/- without any duty paying documents as during the course of audit, they could not produce any documents. In reply, the Noticee have submitted copies of Service tax invoices aggregating to tax credit of Rs 5,12,661/-. Therefore, tax credit to that extent is required to be allowed.

25. However, I find that in addition to the above amount, they had also taken credit of Rs 14,00,000/-, claimed as advance tax paid, and show in the ST-3 Return for the period October, 2016 to March, 2017. I fact, the above credit taken is part of Rs 15,00,000/-, paid and shown in the ST-3 Return for October, 2016 to March, 2017 against the taxable value declared of Rs. 1,13,72,416/-, shown in the previous return. I find the Noticee is making an attempt in claiming the tax credit of Service tax already paid in discharge of a past liability. Since the service tax of Rs 14,00,000/- was shown as paid in the ST-3 return of October, 2016 to March, 2017 against a past liability of Rs 1,13,72,416/-, it being the taxable value shown in the ST-3 return of April, 2016 to September, 2016, no credit of tax can be admissible as it is against the provisions of Cenvat Credit Rules and also against the transitional credit provisions in GST. In view of the above, I find that credit of tax amounting to Rs. 14,00,000/- is required to be disallowed and recovered under Rule 14 of Cenvat Credit Rules, 2004."



7. On verification of the case records, it is observed that the appellant engaged in providing Event management services and organized various events. However, due to certain reasons an event got postponed and re-organized on 5-6-7 January, 2018. As a result, the appellant has to return the advances received from the customers on their demand and may keep the same as advance. Accordingly, service tax already paid is required to be carried forward and adjust as per Rule 6(3) of the Service Tax Rules, 1994. On verification of the sample letters and credit note submitted by the appellant, I find that the appellant informed the service recipients / their customers that due to demonetization and looking to the market condition, they have postponed the exhibition event i.e. the 8th edition of GGJS scheduled for 6th to 8th January, 2017 and the advance payment carry forward for next exhibition. I also find that as per Rule 6(3) of the Service Tax Rules, 1994 when an assessee has received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, the assessee may take the credit of such excess service tax paid by him. In the present case, the amount received as advance from the customers of the appellants for the exhibition event to be held on 6th to 8th January, 2017 and as per Service Tax Rules, 1994 the appellant discharged their service tax liability on such advance at the material time. However, after the event got cancelled, the amount can not be treated as advance for the taxable service and the appellant are entitled to take credit of such excess service tax paid by them as per the Rule 6(3) of the Service Tax Rules, 1994, The Rule 6(3) of the Service Tax Rules, 1994 reads as under:

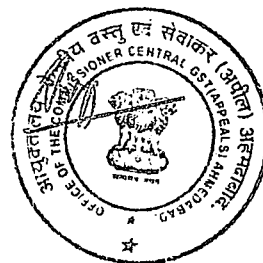
“Rule 6. Payment of service tax

(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.”


8. I also find that even otherwise, the said Cenvat Credit of Rs. 14,00,000/- carried forwarded by the appellant in Tran-1 return filed by them as CGST Transitional credit, and as per Section 142 (11)(c) of the Central Goods and Services Tax Act, 2017 the appellant was entitled to take the credit of the said amount as ITC.



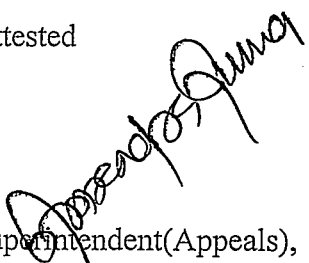
9. In view of above, I hold that the impugned order passed by the adjudicating authority in respect of confirming the demand of recovery of Cenvat Credit of Rs. 14,00,000/- along with interest and penalty, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order to that extent and allow the appeal filed by the appellant.

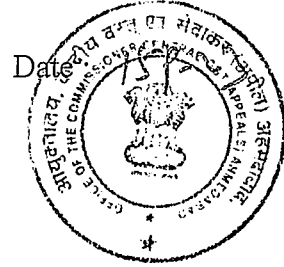
10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested


Superintendent (Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Gujarat Gold Jewellery Show,
B-109, Ganesh Plaza,
Opp. Navrangpura Bus Stop,
Ahmedabad – 380009

Appellant

The Joint Commissioner,
Central GST,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Joint Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)
- 6) Guard File
- 7) PA file