



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000818036

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3214/2023 / 809-52
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-233/23-24 and 24.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	29.01.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Ref-25/ADDIS/AC/DAP/2022-23 dated 06.02.2023 passed by The Assistant Commissioner, CGST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Addis Infrabuild LLP, 32, 3 rd Floor, Roopa Building, Sona Roopa, Opp. Lal Bungalow, CG Road, 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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.

(ख) 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।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित 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 का न्यायालय 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 और 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

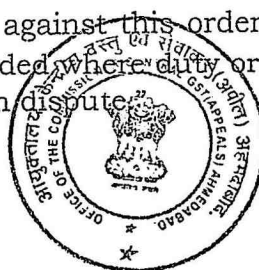
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

(6) (i) 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. Addis Infrabuild LLP, 32,3rd Floor, Roopa Building, Sona Roopa, Opp. Lal Bunglow, CG Road, Ahmedabad-9 (hereinafter referred to as "*the appellant*") against Order-in-Original No. CGST-VI/Ref-25/ADDIS/AC/DAP/22-23 dated 06.02.2022 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division-VI Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. The facts of the case are that the appellant had originally filed refund claim for Rs. 53,41,867/- on 28.09.2020 on the ground that the customer had made their booking before 1st July, 2017 and had paid an amount in advance for their booking before implementation of GST law. They cancelled their booking after July' 2017 i.e. after implementation of GST Act, 2017. Since the Service Tax had been paid but the output service was not implemented, the Service Tax was no longer payable and accordingly, they applied for refund of Service Tax paid by them. The said refund claim was rejected by the then Assistant Commissioner. Division-VI, CGST, Ahmedabad South vide OIO No.: CGST-VI/ Ref-44/Addis Infra/DC/ Neetu Singh/2021 dated 30.12.2020. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), Central GST, Appeal Commissionerate, Ahmedabad, who vide OIA No. AHM-EXCUS-001-APP-088/ 2020-21 dated 30.03.2021 set aside the OIO and remanded the matter back to the adjudicating authority. Accordingly, the appellant filed refund claim for Rs. 53,41,867/- on 08.06.2021 wherein the refund of Rs. 33,14,327/- was sanctioned after adjusting an amount of Rs. 20,27,540/- in terms of Rule 6(3) of the CCR, 2004 vide OIO No. CGST-VI/Ref-03/Addis Infra/DAP/2021-22 dated 07.09.2021. Being aggrieved with the said OIO dated 07.09.2021, the appellant preferred appeal before the Commissioner (Appeals), CGST Appeal Commissionerate,



Ahmedabad, who had vide OIA No. AHM-EXCUS-001-APP-067/2022-23 dated 25.10.2022 set aside the said OIO and remanded the matter back to the adjudicating authority to decide the matter afresh after complying with the directions contained in para 10.5 of OIA No. AHM-EXCUS-001-APP-088/2020-21 dated 30.03.2021 as well as the observations contained at para 8.2 of the OIA No. AHM-EXCUS-001-APP-067/2022-23 dated 25.10.2022. Thereafter the appellant has filed present refund application for Rs. 20,27,540/- on 25.11.2022 on the basis of OIA No. AHM-EXCUS-001-APP-067/2022-23 dated 25.10.2022 passed by the Commissioner (Appeals) CGST, Appeal Commissionerate, Ahmedabad. In view of the directions of the Commissioner (Appeals), CGST, Appeal Commissionerate a show cause notice vide F.No. CGST/WS06/Ref.13/Addor/2022-23 dated 27.01.2023 was issued to the appellant.

4. The SCN was adjudicated vide the impugned order wherein the adjudicating authority rejected refund of Rs. 20,27,540/- to the appellant under Section 11B of Central Excise Act, 1944 as made applicable in case of Service Tax matter vide Section 83 of the Finance Act, 1994 read with Section 142(3) of Central Goods and Service Act, 2017.

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

- The adjudicating authority has no right to recover CENVAT Credit against the refund claim. On plain reading of the provision of Section 83 of the Finance Act, 1994 and Section 11B of Central Excise Act, 1944 nowhere empowers the adjudicating authority to recover any dues from the assessee who applies for a refund under the said provisions.



- The said provisions do allow the adjudicating authority a right to verify the claim and grant the refund only after it is found to be eligible.
 - The adjustment of the amount of CENVAT credit against the refund is arbitrary and without any authority on the part of adjudicating authority.
 - It is clear from the Circular No. 1053/2/2017-CX dated 10.03.2017 the adjudicating authority can recover only confirmed demand from refund.
 - Ignoring the above said circular dated 10.03.2017 the adjudicating authority passed an order to adjust the CENVAT credit against the refund claim.
 - They had also submitted in their reply to the SCN that the Hon'ble High Court of Gujarat had in the case of Principal Commissioner Vs. Alembic Limited held that CENVAT credit once availed is not required to be reversed at a later date. The facts of the present case are similar to that in the said case and they are not required to reverse CENVAT credit. The adjudicating authority has not given any finding as to why the judgment in Alembic Limited would not apply in their case.
 - CENVAT credit is not required to be reversed. In order to determine the adjudicating authority raised a SCN. However the SCN was issued with a predetermined notion that the CENVAT credit is required to be reversed. No explanation as to why the CENVAT Credit should be reversed was provided.
6. Personal hearing in the case was held on 18.09.2023. Shri Abhishek Shah, Chartered Accountant appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the adjudicating authority has rejected the refund claim in

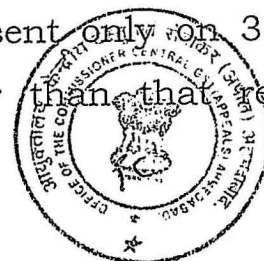


utter disregard of the directions of the Commissioner Appeal in the Order in Appeal. It was clearly stated in para 8.2 of the Order in Appeal that deduction of CENVAT credit from the refund amount was not permissible in absence of any confirm dues or separate proceedings in this regard. To cover the same, the adjudicating authority had issued a show cause notice after submission of the refund claim in pursuance to the Order in Appeal wherein, deliberately adequate opportunity to defend the refund against the show cause notice was not provided. It may be seen that the hearing was granted on 3rd February 2023 and the notice for hearing was sent only on 31st January, that too on an email id other than that registered for communication purpose. Further, he submitted that regarding unit number 209, the cancellation process and discussion was initiated in the year 2016 but finally it was cancelled in 2018 only and the financial transaction had taken in 2018 only. A copy of ledger extract in this regard is enclosed. In view of above he requested to sanction the refund with interest.

6.1 In pursuance to the transfer and posting of the Commissioner (Appeals), fresh hearing was conducted, in which the earlier oral and written submissions were reiterated.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and materials available on record. The issue before me to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, adjusting an amount of Rs. 20,27,540/- from the refund claim of Rs. 53,41,867 in terms of Rule 6(3) of the Cenvat Credit Rules, 2004, in the facts and circumstance of the case, is legal and proper or otherwise.

8. I find that in the oral submission the appellant has contended that the adjudicating authority granted the hearing on 3rd February 2023 and the notice for hearing was sent only on 31st January, 2023, that too on an email id other than that registered for



communication purpose. Further, I find that the order has been passed ex-parte. Hence it is found that the requirement of natural justice has not been met. Therefore, it is in the fitness of the thing that the matter is remanded back.

9. Accordingly, in view of my foregoing discussions and finding, the impugned OIO is set aside and the appeal filed by the appellant is allowed by way of remand. Needless to say the adjudicating authority will provide adequate opportunity to the appellant to present their case. Specific finding will be given as to why CENVAT credit is not admissible. The appellant are directed to submit the necessary documents and information to establish their claim for eligibility and admissibility of CENVAT credit.

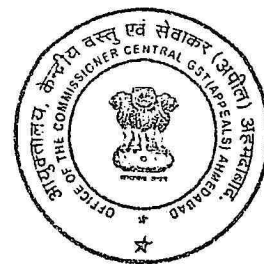
10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

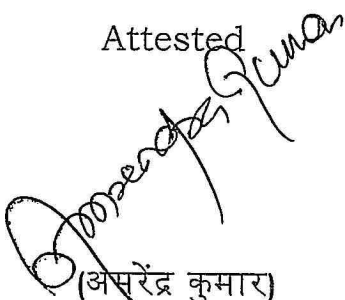


ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 24.01.2024



Attested



(असुरेंद्र कुमार)
अधीक्षक (अपील्स)
सी. जी. एस. टी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s. Addis Infrabuild LLP,
32,3rd Floor,
Roopa Building, Sona Roopa,
Opp. Lal Bungalow, CG Road, Ahmedabad-9.

Copy to :

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



