



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



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240264SW000000D5AC

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1175/2023 / 3050 - 58
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-286/2023-24 and 26.02.2024
(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	28.02.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem-98/Apexa/AC/DAP/2022-23 dated 09.12.2022 passed by The Assistant Commissioner, Central GST, Division-VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Apexa Information Systems Pvt. Ltd., 403, Wall Street Avenue, Near Gujarat College, Kavi Nanalal Marg, Ellisbridge, Ahmedabad

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:

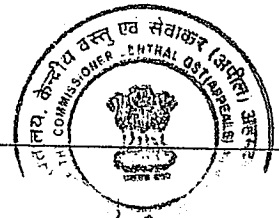
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 प्रक्रिया 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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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. Apexa Information System Pvt. Ltd., 403, Wallstreet Avenue, near Gujarat College, Kavi Nanalal Marg, Ellisbridge, Ahmedabad -382405 (hereinafter referred to as "*the appellant*") against Order-in-Original No. CGST-VI/Dem-98/Apexa/AC/DAP/2022-23 dated 09.12.2022(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. Briefly stated, the facts of the case are that the appellant, registered with the Service Tax Department having Service Tax Registration No. AADCA0267DSD003. The CERA audit officers noted that according to Rule 9(2) of the CENVAT Credit Rules, 2004, amended through Notification No. 28/2012-CE (N.T.) dated 20.06.2012, CENVAT credit cannot be claimed unless all prescribed particulars from either the Central Excise Rules, 2002, or the Service Tax Rules, 1994, are present in the documents. During scrutiny of the CENVAT records from 2013-14 to 2015-16, it was discovered that the appellant not only claimed CENVAT credit for input services at its registered premises but also for services invoiced to unregistered locations like Makarba, Bhopal, Satellite in Ahmedabad, Baroda, etc. Since these services were received at unregistered premises, the CENVAT credit was deemed ineligible. The audit revealed that the appellant claimed a total CENVAT credit of Rs. 2,29,383/- for services received at unregistered premises. Consequently, the incorrect claim of CENVAT credit amounting to Rs. 2,29,383/- needed to be recovered, along with interest.

The definition of "Input Service" under Rule 2(1) of the CENVAT Credit Rules, 2004 underwent changes with the substitution of new activities related to business, excluding "setting up" of office premises of service providers. This change took effect from April 1, 2011, as per Notification No. 03/2011-CE (N.T) dated 01.03.2011.



Consequently, CENVAT credits utilized for setting up office premises ceased to qualify as input service from the mentioned date. Additionally, health insurance and rent-a-cab were explicitly excluded from being considered as input service under Rule 2(l) of CCR, 2004. Rule 3 specifies that CENVAT credit for input service can only be availed if it is used in providing taxable service, not by an individual. During scrutiny of the Cenvat records from 2013-14 to 2015-16, it was discovered that the appellant incorrectly availed Cenvat credits totaling Rs. 1,26,921/-. This included credits for renting immovable property, utilized by an individual (Shri Maulik R. Patel), health insurance for employees, and rent-a-cab expenses, which were deemed ineligible as per CENVAT rules. These erroneous claims necessitated recovery along with interest. The assessment revealed that the appellant wrongly claimed CENVAT credits amounting to Rs. 1,26,921/- between 2013-14 and 2015-16. These credits were obtained for expenses not covered under the definition of input services, such as renting immovable property, personal use, health insurance for employees, and rent-a-cab services. Additionally, they claimed credits for services received at unregistered premises and services not defined as "Input service" under the CENVAT Credit Rules, 2004. This contravened Rule 4 of the CENVAT Credit Rules, 2004. The total wrongly claimed CENVAT credit amounted to Rs. 3,56,304/-, utilized for paying Service Tax duty during 2013-14 to 2015-16. They were liable to repay this amount along with interest, penalty under Rule 5(3) of the CENVAT Credit Rules, 2004, and Section 78 of the Finance Act, 1994. Additionally, penalty under Section 77(1)(c) of the Finance Act, 1994, was applicable.

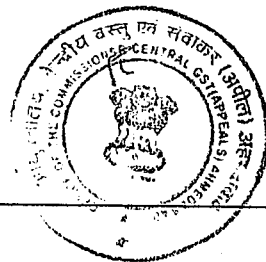
The appellant failed to file their returns on time for the years 2013-14, 2014-15, and 2015-16, resulting in late fees. As per Rule 7(c)(1), late fees are applicable for delays in filing returns. For delays up to fifteen days, the late fee is Rs. 500, beyond fifteen days but not later than thirty days, it's Rs. 1000, and beyond thirty days, it's Rs. 1000



- The Adjudicating Officer (A.O.) wrongly invoked the extended period under Rule 14 of the CENVAT Credit Rules 2004, as the appellant did not commit any fraud, collusion, willful misstatement, or suppression of facts to evade service tax payment. The AO's justification for invoking the extended period was based on the appellant's alleged contravention of Rule 4 of the Cenvat Credit Rule 2004.
- The appellant argues against the AO's contention that they contravened Rule 9(2) of the Cenvat Credit Rules. The appellant asserts that all necessary particulars required by the rule were contained in the documents, thus complying with Rule 9(2).
- The AO's interpretation of Rule 2(1) of the Cenvat Credit Rules is contested by the appellant. The appellant argues that their actions were in line with the rules, and the AO's invocation of the extended period for issuing the Show Cause Notice (SCN) is unwarranted.
- The appellant provides detailed facts about their business operations, including commercial training and coaching services, distributorship for Vodafone products, and rent-a-cab services. They argue that the expenses claimed for Cenvat credit were legitimately incurred in providing taxable services.
- The appellant contests the AO's findings from the CERA Audit, asserting that they have provided all necessary details and complied with the rules. They argue that the SCN was issued without proper consideration of the facts and without providing adequate opportunity to respond.

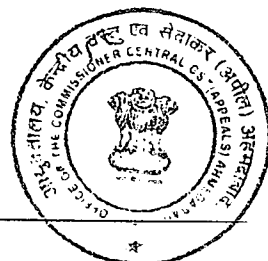


- The appellant cites relevant case law and judgments to support their claims and argues that their actions were in good faith, without any intent to evade tax or contravene the law. They request the tribunal to dismiss the SCN and revoke the AO's decision.
- In summary, the appellant challenges the AO's interpretation of the rules and contends that their actions were legitimate and in compliance with the law. They seek relief from the tribunal based on their genuine belief and good faith in utilizing Cenvat credit.
- They requested details or verification of Cenvat credit amounting to Rs. 2,29,283, wrongly alleged in the show cause notice (SCN). Despite repeated requests during pre-scrutiny and adjudication proceedings, the details were not provided. Consequently, the input credit was disallowed in the Order-in-Original (OIO) without proper opportunity for the appellant to present facts, violating principles of natural justice. Additionally, the SCN disallowed input credit of Rs. 3,56,304, including various items such as renting immovable property, individual consumption, health insurance, and rent-a-cab services. The appellant responded to all points raised, requesting details especially regarding the Rs. 229,383/- credit, but these were not provided during pre-scrutiny, adjudication, or even during the personnel hearing. Despite repeated requests, the appellant was denied proper opportunity to defend their case, violating principles of natural justice.
- The case involves disallowed CENVAT credit totaling Rs. 126,921/-, comprising credit on rent of immovable property, credit consumed by an individual, credit on health insurance of employees, and credit on rent-a-cab, which were deemed



inadmissible. The appellant, engaged in commercial training for Vodafone sellers and distributors, contested the disallowance. They argued that the rented premises were integral to their business operations, citing judicial precedents supporting credit on renting immovable property. Additionally, they justified the health insurance premium as necessary for employee well-being and business continuity, referencing relevant case law. The appellant also contested the disallowance related to individual consumption of credit and rent-a-cab, citing lack of evidence.

- The appellant challenges the decision of the Assessing Officer (AO), arguing errors in both law and fact regarding the disallowance of Cenvat credit, imposition of interest, and penalty. The appellant contests the disallowance of Cenvat credit amounting to Rs. 2,29,383/-.
 - Regarding the imposition of interest amounting to Rs. 3,51,906/-, the appellant contends that it is unwarranted, as there was no willful attempt to claim incorrect input. Similarly, the appellant challenges the penalty of Rs. 3,51,906/- imposed under Rule 15(3) of Cenvat Credit Rules, 2004, and Section 78 of the Finance Act 1994. The appellant asserts that there was no fraud, collusion, willful misstatement, or suppression of facts, as evidenced by the bonafide belief in the legitimacy of the Cenvat credit claim, supported by various judgments and submissions. Therefore, the appellant urges the deletion of the interest and penalty imposed.
4. The appellant were given opportunities for Personal Hearing on 22.01.2024. Shri Deepak Kumar Gupta, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the contents of the written submission and requested to allow their appeal.



Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

7. On reading the above provision I find that Rule 9(2) of CENVAT credit Rule, 2004 prohibits taking Cenvat Credit unless all prescribed particulars are contained in the documents they submitted. I am of the opinion the appellant needed to register all premises with the service tax department before taking Cenvat Credit. Thus, the appellant seems to have failed to register those premises whose address was Makarba, Bhopal, Satellite in Ahmadabad, Baroda, etc.. However, they availed CENVAT credit improperly on those input service invoices issued to the aforesaid premises address. Hence, I find that the appellant are held liable to reverse/pay the wrongly availed and utilized CENVAT credit to the amount of Rs. 2,29,383/-

8. As regard to the second issue I find reading the impugned order the appellant availed Cenvat credit on various input services during 2013-14 to 2015-16, including renting of immovable property, services consumed by individuals, health insurance for employees, and cab rental services. I find that following the amendment in 2011 in CENVAT Credit Rules, 2004, the definition of "service" in Rule 2 (1) of the CENVAT Credit Rules, 2004 no longer includes terms like "setting up" and "activities related to business." Consequently, CENVAT credits for setting up office premises come

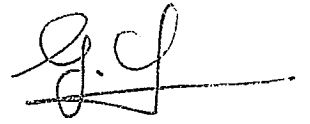


to an end to be considered input services. Additionally, as per Rule 2 (1)(c), health insurance and rent-a-cab services are excluded from the definition of input services. Rule 3 specifies that Cenvat credit for input services can only be availed if they are used in providing taxable output services and not by an individual. I find in the submission of the appellant that they contend that the issue of (A) wrong avaiement of CENVAT Credit of Rs. 2,29,383/-and (B) wrong avaiement of CENVAT Credit of Rs. 1,18,080/- on renting on the immovable property service are similar and credit of renting of immovable property services as shown in sr. no. (B) are included in the issue (A) ie. Rs. wrong avaiement of CENVAT Credit of Rs. 2,29,383/-. However, upon reviewing the submission on record, it was noted that there is no evidence to establish that the amount of Rs. 1,18,080/- is included in the CENVAT credit amount of Rs. 2,20,383/-. Therefore, in the absence of any evidence the contention made by the appellant is deemed unacceptable. Hence, I Hence, I find that the appellant are held liable to reverse/pay the wrongly availed and utilized CENVAT credit to the amount of Rs. 1,26,921/-

9. In view of the foregoing discussion and finding, the order is upheld.

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)

Dated: 26.02.2024



सत्यापित / Attested:

(अहमद कुमार)

अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

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- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Deputy/Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 2) 6) PA file

