



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 : 20230464SW000000B1AD

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2725/2022 / 63 - 34
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-06/2023-24  
दिनांक Date : 20-04-2023 जारी करने की तारीख Date of Issue 24.04.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 63/WS08/AC/HKB/2022-23 दिनांक: 01.07.2022 passed by Assistant  
Commissioner, CGST, TAR Section, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Ghanshyambhai Bhikhabhai Bhaliya  
A-304, Anand Mangal Apartment,  
Near Alka Park Stand, Jivraj Park,  
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 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, 4<sup>th</sup> 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 हैं।

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 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 रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

14ण 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:

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



ORDER-IN-APPEAL

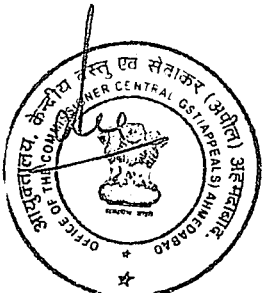
The present appeal has been filed by M/s. Ghanshyambhai Bhikhabhai Bhaliya, A-304, Anand Mangal Apartment, Near Alka Park Stand, Jivraj Park, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. 63/WS08/AC/HKB/2022-23 dated 01.07.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, TAR Section, H.Q., Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax department. They are holding PAN No. AITPB7131Q. As per the information received from the Income Tax Department, the appellant had earned income amounting to Rs. 16,43,611/- from services during F.Y. 2014-15. However, they did not obtain service tax registration and did not pay service tax on such income from service. The appellant were called upon to submit documents. However, the appellant failed to submit the required details/documents. Therefore, the appellant were issued Show Cause Notice bearing No. CGST/Div-VIII/O&A/TPD/154/AITPB7131Q/2020-21 dated 21.09.2020 wherein it was proposed to :

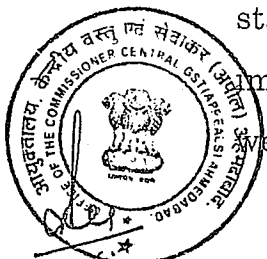
- a) Demand and recover the service tax amounting to Rs. 2,03,150/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- b) Impose penalty under Sections 77(1), 77(2) and 78 of the Finance Act, 1994.

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

- I. The demand of service tax amounting to Rs. 2,03,150/- was confirmed along with interest.
- II. Penalty amounting to Rs. 10,000/- each was imposed under Sections 77(1) and 77(2) of the Finance Act, 1994.
- III. Penalty amounting to Rs. 2,03,150/- was imposed under Section 78 of the Finance Act, 1994.



4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal along with application for condonation of delay in filing appeal on the following grounds :
- i. During the impugned period, they had provided Construction services which falls under Works Contract Services.
  - ii. They had provided services to individual for house enhancement/construction to Bharatbhai Hansrajbhai Mori for 1<sup>st</sup> floor extension, RCC and Plastering, Flooring and Kitchen amounting to Rs. 16,00,000/-. The said service is exempted in terms of Sr.No.1 (v) (bb) of Notification No. 25/2012-ST dated. 20.06.2012:
  - iii. Reliance is placed upon the judgment in the case of Regional Manager, Tobacco Board Vs. Commissioner of C.Ex., Mysore – 2013 (31) STR 673 (Tri.-Bang.); Anvil Capital Management (P) Ltd. Vs. Commissioner of Service Tax, Mumbai – 2010 (20) STR 789 (Tri.-Mumbai); Commissioner of Service Tax, Ahmedabad Vs. Purni Ads. Pvt. Ltd. – 2010 (19) STR 242 (Tri.-Ahmd.); Sify Technologies Ltd. Vs. Commissioner of Service Tax, Chennai – 2009 (16) STR 63 (Tri.-Chennai); Bhogilal Chhagulal & Sons Vs. Commissioner of Service Tax, Ahmedabad – 2013 (30) STR 62 (Tri.-Ahmd.); Baba Construction Pvt. Ltd. Vs. Commissioner of C. Ex. & ST, Ghaziabad – 2018 (15) GSTL (Tri.-All.); Macro Marvel Projects Ltd. Vs. Commissioner of Service Tax, Chennai – 2008 (12) STR 603 (Tri.-Chennai).
  - vi. The SCN covers the period from 01.04.2014 to 31.03.2015 and was issued on 21.09.2020 by invoking the extended period of limitation. The SCN has baldly alleged suppression of facts. However, they are regularly filing Income Tax Returns. Extended period cannot be invoked as there is no suppression, wilful mis-statement on their part.
  - vii. Penalty cannot be imposed under Section 78 of the Finance Act, 1994. They have demonstrated that they have not suppressed any information from the department and there was no wilful mis-statement on their part. The impugned order has not brought any evidence which can establish that they had suppressed anything from the department. Hence, the present case is not the case of fraud; suppression, wilful mis-statement of facts etc. Hence, penalty under Section 78 cannot be imposed. They are entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the



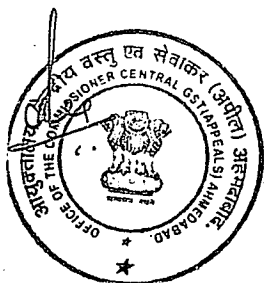
department. They rely upon the decision in the case of Steel Cast Ltd. – 2011 (21) STR 500 (Guj.).

- viii. Penalty cannot be imposed under Section 77 of the Finance Act, 1994 as there is no short payment of service tax. They have been and are under the bona fide belief that they are not liable to pay service tax. There was no intent to evade payment of service tax. Therefore, penalty is not imposable.
- ix. Reliance is placed upon the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa – AIR 1970 (SC) 253; Kellner Pharmaceuticals Ltd. Vs. CCE – 1985 (20) ELT 80; Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC) and CCE Vs. Chemphar Drugs and Liniments – 1989 (40) ELT 276 (SC).
- x. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon & Engg. Co Ltd. Vs. Commissioner of C.Ex., Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs. Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur – 2001 (129) ELT 458 (Tri.\_Del).

5. In the application for condonation of delay, the appellant have submitted that in the impugned order, it is mentioned that the appeal is to be filed in APL-01 whereas the demand was under Service Tax. So, initially there was some confusion regarding the form under which the appeal had to be filed.

6. Personal Hearing in the case was held on 14.02.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in application for condonation of delay. He stated that the appellant are not registered with the department and they had confusion regarding manner of filing appeal.

7. Personal hearing in the case was held on 16.02.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for hearing. He reiterated submissions made in the appeal memorandum. He also submitted a written submission during hearing.



7.1 In the written submission dated 16.02.2023, the appellant have reiterated the submissions made by them in the appeal memorandum.

8. 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 for service tax amounting to Rs. 2,03,150/- along with interest and penalties. The demand pertains to the period F.Y. 2014-15.

9. Before dealing with the merits of the case, I proceed to take up the matter of condonation of delay in filing the appeal by the appellant. It is observed from the records that the present appeal was filed by the appellant on 27.09.2022 against the impugned order dated 01.07.2022, which the appellant claimed to have received on 05.07.2022. It is also observed that the preamble to the impugned order states that the appeal is to be filed within three months from the date of its communication. From the materials available on record, it is observed that the appellant is not registered with the Service Tax department.

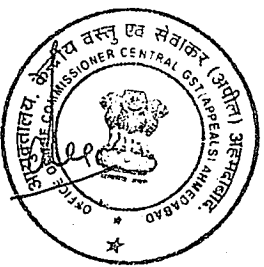
9.1 It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994.

The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

9.2 In the instant case, the impugned order is dated 01.07.2022 and the appellant have received it on 05.07.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 05.09.2022. The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal, ends on 05.10.2022.

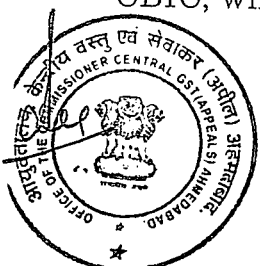


9.3 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

9.4 The appellant was required to file the appeal on or before 05.09.2022 i.e. two months computed from 05.07.2022. Further, the condonable period of one month, in terms of Section 85 (3A) of the Finance Act, 1994 ends on 05.10.2022. The present appeal filed on 27.09.2022, is, therefore, within the condonable period. Keeping in view the fact that the appellant is not registered with service tax department and the fact that the preamble to the impugned order states that the appeal is to be filed within three months, I am of the considered view that the appellant have shown sufficient cause for condonation of delay in filing appeal. Accordingly, the delay of 22 days in filing the appeal by the appellant is condoned.

10. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the nature of the activities carried out by the appellant as a service provider appears to be covered under the definition of service and appears to be not covered under the Negative List of services as per Section 66D of the Finance Act, 1994. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Finance Act, 1994. No cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

10.1. I find in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that :





“It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.”

10.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

11. Coming to the merits of the case, it is observed that the appellant have claimed exemption from payment of service tax on the grounds that they had provided Works Contract Service to individual, which is exempted in terms of Entry No. 13 (bb) of Notification No. 25/2012-ST dated 20.06.2012. However, except for an Affidavit cum Declaration dated 26.09.2022 of Shri Bharatbhai Hansrajbhai Mori, the appellant have not submitted any other document in support of their contention regarding providing construction services to an individual.

11.1 It is further observed that in the impugned order there is no mention of any defense reply filed by the appellant and it has been mentioned at Para 12 of the impugned order that the appellant have not submitted any defense reply. The adjudicating authority has recorded at Para 12 of the impugned order that the appellant was called for personal hearing on 19/20.04.2022, 11/12.05.2022 and 26/27.05.2022 but the appellant did not turn up for the hearing. Thereafter, the case was adjudicated ex-parte by the adjudicating authority.

11.2 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.”

12. In view of the above and also considering the fact that the adjudicating authority did not have the opportunity of considering the submissions made by the appellant, in the appeal memorandum, while adjudicating the case, I am of the considered view that the matter is required to be remanded back to the adjudicating authority. The appellant is directed to file their written submissions along with copies of relevant documents before the adjudicating, within 15 days of the receipt of this order. The adjudicating authority shall considering the written submissions of the appellant, decide the matter afresh by following the principles of natural justice. The adjudicating authority is also directed to consider all the issues raised by the appellant in their written submissions and pass a speaking order covering all issues. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

13. 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.

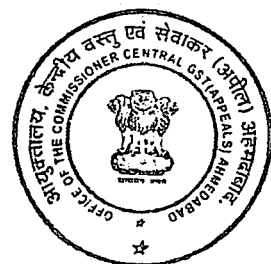
( Akhilesh Kumar )  
Commissioner (Appeals)

Date: 20.04.2023

Attested:

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

BY RPAD / SPEED POST



To

M/s. Ghanshyambhai Bhikhabhai Bhaliya,  
A-304, Anand Mangal Apartment,  
Near Alka Park Stand,  
Jivraj Park, Ahmedabad

Appellant

The Assistant Commissioner,  
CGST, TAR Section, H.Q.,  
Commissionerate : Ahmedabad South.

Respondent

Copy to:

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

