



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 : 20230764SW000031843A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2568/2023 *13389 - 9n*
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-63/2023-24
दिनांक Date : 14-07-2023 जारी करने की तारीख Date of Issue 19.07.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of OIO No. 56/CGST/Ahmd-South/JC/MT/2022-23 दिनांक: 14.12.2022 passed by
Joint Commissioner, CGST, HQ, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Asif Shafi Mohammed Mediwala
[Proprietor of M/s Ameer Calendar]
Near Mandalwala Process,
Sikandar Market, Maharajno Khetar,
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 :

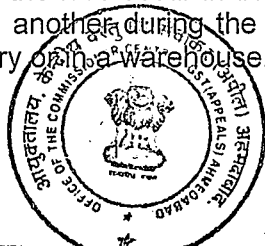
Revision application to Government of India:

(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, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.



- ७) 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 इका मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

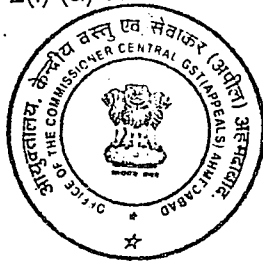
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is 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 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.

61प 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;
इप लिया गलत सेनवैट क्रेडिट की राशि;
बप 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.

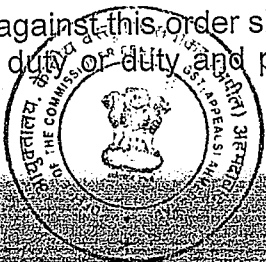
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xlix) amount determined under Section 11 D;
(l) amount of erroneous Cenvat Credit taken;
(li) 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."



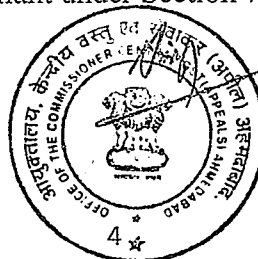
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Asif Shafi Mohammed Mediwala, Proprietor of M/s. Ameer Calendar, Near Mandalwala Process, Sikandar Market, Maharajno Khetar, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 56/CGST/Ahmd-South/JC/MT/2022-23 dated 14.12.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST H.Q., Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ABIPM7857N. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that the appellant had earned an income of Rs. 3,97,97,845/- during the FY 2015-16 and Rs. 3,90,81,577/- during the FY 2016-17, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. STC/04-03/O&A/Asif/21-22 dated 22.04.2021 demanding Service Tax amounting to Rs. 1,16,32,925/- for the period FY 2015-16 to FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fee for late filing of ST-3 Returns under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 77(1), and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,16,32,925/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 to FY 2016-17. Further (i) Penalty of Rs. 1,16,32,925/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Recovery of Late fees of Rs. 80,000/- from the appellant was ordered for non submission of ST-3 Returns for the FY 2015-16 to FY 2016-17 under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994.



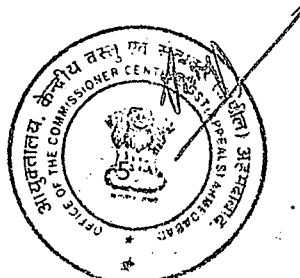
3. Being aggrieved with the impugned order, the appellant have filed their appeal under Section 85 of the Finance Act, 1994 on 13.03.2023, without submitting the proof of pre-deposit stating that they could not paid the challan due to technical problem and difficulties and assure to pay the same on or before 31.03.2023. The appellant vide their letter dated 16.03.2023 received by this office on 23.03.2023 submitted copy of challan dated 05.03.2023 for Rs. 8,72,470/- paid under CGST Act, 2016 as pre-deposit in terms of Section 35F of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994.

3.1 The CBIC, consequent to the rollout the integrated CBIC-GST Portal, vide Circular No. 1070/3/2019-CX dated 24.06.2019 directed that from 1st July, 2019 onwards, a new revised procedure has to be followed by the taxpayers for making arrears of Central Excise & Service Tax payments through portal "CBIC (ICEGATE) E-payment". Thereafter, CBIC, vide Instruction dated 28.10.2022, issued from F.No.CBIC-240137/14/2022-Service Tax Section-CBEC, also instructed that the payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under Section 35F of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994.

4. Further, I find that in terms of Section 35F of the Central Excise Act, 1944, *"the Tribunal or Commissioner (Appeals), as the case may be, shall not entertain any appeal (i) under sub-section (1) of Section 35, unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute"*. These provisions have been made applicable to appeals under Section 85 of the Finance Act, 1994.

5. Further, I find that as per the provisions of sub-section (5) of Section 85 of the Finance Act, 1994, *"Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944)"*.

6. Therefore, the appellant, vide letter dated 31.05.2023 was requested to make the pre-deposit in the above appeal, in terms of Board's Circular No.1070/3/2019-CX dated 24.06.2019 and submit the document evidencing payment within 10 days of the receipt of the said letter. It was also informed to the appellant vide the said letter that failure to submit evidence of pre-deposit would result in dismissal of the appeal for non-compliance in terms of Section 35F of the Central Excise Act, 1944. As no reply received from the appellant in response to the aforesaid letter dated 31.05.2023, vide another letter dated 05.07.2023, the appellant was again informed to submit the proof of pre-deposit paid in the above appeal within a week time and also informed that failure to submit evidence of pre-deposit would



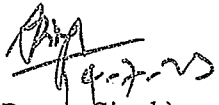
result in dismissal of the appeal for non-compliance in terms of Section 35F of the Central Excise Act, 1944. However, till date, the appellant has not submitted any intimation or proof of the payment of the said pre-deposit, if any, made by them. Hence, the appellant have failed to comply with the requirement of payment of pre-deposit.

7. The Commissioner (A) shall not entertain any appeal unless the appellant has deposited 7.5% of the duty (where duty or duty and penalty are in dispute) or 7.5% of penalty (where the penalty is in dispute) under Section 35F of the Central Excise Act, 1944. In terms of Board Instruction dated 28.10.2022, I find that the pre-deposit made vide GST Challan was invalid payment. Though sufficient time was granted to the appellant to make the revised payment in terms of Circular No. 1070/3/2019-CX dated 24.06.2019, they failed to furnish proof of revised payment of pre-deposit of 7.5% of the duty made. I, therefore, dismiss the appeal filed by the appellant for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide sub-section (5) of Section 85 of the Finance Act, 1994.

8. In view of the above, the appeal filed by the appellant is dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide sub-section (5) of Section 85 of the Finance Act, 1994.


9. 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)

Date : 14.07.2023

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Asif Shafi Mohammed Mediwala,
Proprietor of M/s. Ameer Calendar,
Near Mandalwala Process,
Sikandar Market, Maharajno Khetar,
Ahmedabad

Appellant

The Joint Commissioner,
CGST, HQ,
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, HQ, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division IV, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- 6) Guard File
- 7) PA file

