



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:- 20240564SW000000F01E

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4495/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-08/2024-25 and 24.04.2024
(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	03.05.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Ref-01/Aura/DAP/2023-24 dated 28.04.2023 passed by The Assistant Commissioner, CGST, DIV-VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s AURA BUSINESS VENTURE LLP, 1st Floor, Akshay Building, Behind Vadilal House, 53 Shrimali Society, Navrangpura, 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) 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 :-

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 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 रूपये या उससे कम होतो रूपये 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 2ndfloor, 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 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।

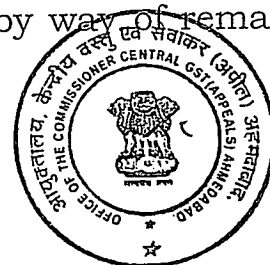
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

The present appeal has been filed by M/s Aura Business Venture LLP, 1st Floor, Akshay Building, Behind Vadilal House, 53 Shrimali Society, Navrangpura, Ahmedabad-380009 (hereinafter referred to as the “*appellant*”) against Order in Original No. CGST-VI/Ref-1/AURA/AC/DAP/2023-24 dated 28.04.2023 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South (hereinafter referred to as “*adjudicating authority*”) rejecting refund of Rs. 21,88,324/-.

2. Briefly stated, the facts of the case are that the appellant had filed a refund claim for an amount of Rs. 21,88,324/ of Service Tax and Rs. 30,54,248/ of GST in respect of which services were not provided either wholly or partially. The appellant had submitted that they were service recipient and had booked Villa No. Sapphire - 4, 5 & 6 on 23.01.2017 under Arvind Uplands project of Ahmedabad East Infrastructure LLP (hereinafter referred to as AEIL), who had paid service tax at regular intervals. AEIL had booked income of Rs. 7,40,81,550/ and on the said amount, discharged service tax amounting to Rs. 21,88,324/- and GST amounting to Rs.30,54,248/-. However, the appellant had received refund of only Rs. 7,40,81,550/-. As discrepancies were noticed in the refund claim filed by the appellant, they were issued Show Cause Notice bearing No. CGST/WS06/REF-20/AURA/2021-22 dated 07.12.2021 wherein it was proposed to reject the refund claim in terms of Section 11B of the Central Excise Act, 1944 and Section 54 of the CGST Act, 2017. The SCN was adjudicated vide the OIO dated 27.01.2022 wherein the claim for refund filed by the appellant was rejected. The appellant appealed against the said OIO before the Commissioner (Appeals), CGST Ahmedabad. The appeal was allowed by way of remanding



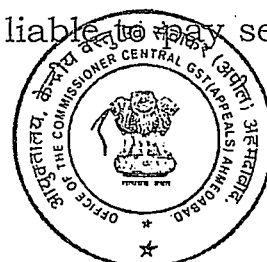
back the matter for fresh adjudication. Subsequently, the appellant filed a refund claim for Rs. 21,88,324/- of Service tax on 13.01.2023. Therefore a SCN F.No. CGST/WS06/Ref-21/ABVL/2022-23 dated 06.03.2023 was issued to the appellant. The said SCN was adjudicated vide the impugned order wherein the claim for refund filed by the appellant was rejected.

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

- The adjudicating authority failed to understand the present application for refund of service tax is made in accordance with Section 142(3), 142(5) of the CGST Act, 2017.
- Time limit specified under Section 11B(1) of the Central Excise Act, 1944 is not applicable to refund claimed under Section 142(3) and 142(5) of CGST Act, 2017.
- They contest that the case laws mentioned by the adjudicating authority in the impugned order does not applicable to the instant case.
- The appellant mentioned several tribunal cases.

4. Shri Jitendrakumar Chopra and Ms. Nancy Shah appeared for PH on behalf of the appellant. They reiterated the content of the written submission and requested to allow their appeal.

5. I observe that the adjudicating authority vide the impugned order rejected the refund claim amount of Rs. 21,88,324/-. The adjudicating authority found that the service tax was paid by the AEIL against the service falling within the meaning of 'service to be provided'. The service provided by them is continuous over a period of two to three years, and they are liable to pay service tax



on the advances received for construction services. Therefore, they had the opinion that the payment made by AEIL was not a deposit but Service tax. The adjudicating authority mentioned the statute, which does not specify the liability raised only after the service provided rather it states that the service provider are liable to pay service tax upon receipts of payments for taxable services. Consequently, its refund falls under the purview of Section 11B of the Central Excise Act, 1944, applicable to Service Tax refund as per Section 83 of the Finance Act, 1944. The adjudicating authority further finds that the appellant had filed refund claim after more than four years from the relevant date of the payment of service tax. AEIL had made payment of Service tax in 2017-18. Relying to the judgment of the Hon'ble CESTAT, Mumbai in the case of Benzy Tours & Travels Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai-1 reported in [2016(43)STR 625(Tri. Mumbai)] and the judgment of the Hon'ble High Court of Madras in the case of Asstt. Commr. of ST Chennai vs. Natraj and Venkat Associates reported in 2015(40)S.T.R. 31(Mad.), the adjudicating authority rejected the refund claim filed by the appellant as the claim is hit by limitation in terms of Section 11B of Central Excise Act, 1944.

6. I have also gone through the written submissions made by the appellant in their appeal memorandum and oral submission made at the time of personal hearing. I observe that the appellant have made submission that the claim for the refund of service tax fall under the transitional provisions of Section 142(3) and 142(5) of the CGST Act, 2017. These provisions override everything under the erstwhile law except Section 11B(2) of the Central Excise Act, 1944. Section 11B(2) of the Central Excise Act, 1944, does not contain any time limit regarding the filing of refund claims for duty or tax. Therefore, it can be said that the time limit specified in Section 11B(1) of the Central Excise Act, 1944, is not applicable to refund claims made under the transitional provisions mentioned in Section 142(3) and 142(5) of the CGST Act, 2017.

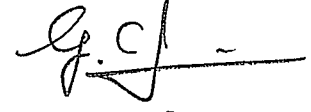


Upon reviewing the impugned order I find that the matter was not heard on the ground of the aforesaid submission made by the appellant. Hence, the matter is required to be remanded back for fresh adjudication.

7. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand.

8. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

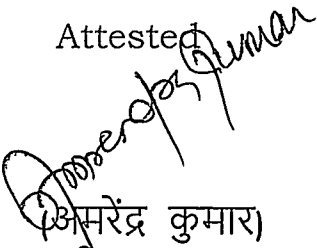
The appeal filed by the appellant stands disposed of in above terms.



(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date : 24.04.2024

Attested



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



By RPAD / SPEED POST

To,
M/s Aura Business Venture LLP,
1st Floor, Akshay Building,
Behind Vadilal House,
53 Shrimali Society, Navrangpura,
Ahmedabad-380009

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 Supdt. (Appeal), CGST, Ahmedabad South
(For uploading the OIA)
- 5) Guard File
- 6) PA file

