



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजदीका  
अमृत महात्सव

**By SPEED POST**

DIN:- 20240564SW000000C7B3

(क)	फ़ाइल संख्या / File No.	1. GAPPL/COM/STP/5227/2023 2. GAPPL/COM/STP/5228/2023 3. GAPPL/COM/STP/5229/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-22 to 24/2024-25 and 30.04.2024
(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 Nos. AC/BAP/02/REF/Div-V/2023-24 dated 04.08.2023 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s SHREERAM CO-OPERATIVE SOCIETY LTD., Vishwakarma Estate, Nr. Khodalldham Society, Singarva Kathwada Road, Ahmedabad-382430

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, 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 :-

(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 हों।

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

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 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।

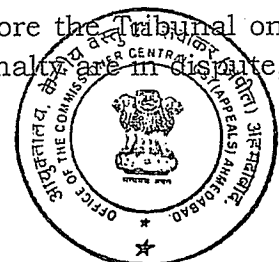
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Shreeram Co-operative Society Ltd., Vishwakarma Estate, Nr. Khodaldham Society, Singarva Kathwada Road, Ahmedabad- 382430 (hereinafter referred to as the "appellant") against Order in Original No. AC/BAP/02/REF/Div-V/2023-24 dated 04.08.2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Ahmedabad South (hereinafter referred to as "adjudicating authority").

2. The appellant filed refund claims of Rs. 21,66,876/-, Rs. 1,75,350/- & Rs. 3,79,453/- on 31.12.2020 on account of non-applicability of service tax on society on which service tax has been paid by them to the Govt. for the period April 2016 to March 2017. Accordingly after verification of claimant refund claims, show cause notices bearing no. V.84/20-05/REF/2020-21, V-84/20-04/REF/2020-21, V-84/20-06/REF/2020-21 respectively all dated 25.01.2021 were issued to them. All the said show cause notices were adjudicated vide order-in-original no. 05/Div-V/IC/2021-22, 04/Div-V/IC/2021-22, 06/Div-V/IC/2021-22 dated 25.3.2021 by Joint Commissioner (In-situ), CGST, Division-V. Ahmedabad rejected their refund claims. The appellant being aggrieved filed the appeals against said orders-in-original passed by Joint Commissioner (In-situ), CGST, Division-V Ahmedabad before Commissioner (Appeals) Central GST. Appeal Commissionerate, Ahmedabad. The Commissioner (Appeal) Central GST Appeal Commissionerate. Ahmedabad vide OIA No.AHM-EXCUS-001-APP-23 to 25/2022-23 dated 13.06.2022 decided all the three claims filed by the claimant and remanded back refund cases to the adjudicating authority with directions to decide the cases afresh after considering the submissions of the appellant and after granting them the opportunity of personal hearing. Accordingly the appeals filed by the appellant are allowed.



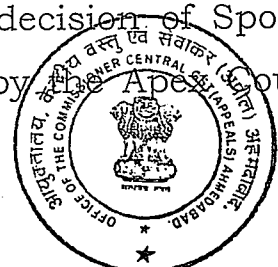
by way of remand. Accordingly the appellant filed instant refund applications vide their letter dated 28.06.2022. The adjudicating authority vide the impugned order dated 04.08.2023, has rejected the refund claims of Rs. 21,66,876/-, Rs. 1,75,350/- & Rs. 3,79,453/-.

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

➤ When levy of the service tax held as ultra vires said judgment is applicable to all the service providers having provided said services. Honorable Gujarat High Court in case of Commissioner of Central Excise & Customs, Surat V. Surat Tennis Club [2016] 42 STR 821 (Gujarat) held as under:

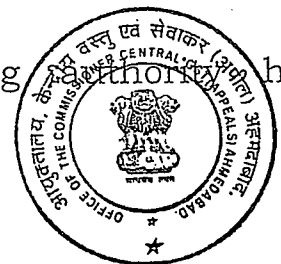
*The decision of Sports Club of Gujarat Ltd. declares the statutory provision ultra vires qua the petitioners before the Court alone, is a rather curious contention and needs to be recorded only for summary rejection. We are not conscious of any concept where a Court would declare a provision unconstitutional and make its application in personam. When a declaration of unconstitutionality is made by the Court, it operates in rem. Even in case of Sports Club of Gujarat Ltd. (supra), there was no intention of the Court ever to declare the provision ultra vires and apply the same only to the petitioners before the Court. What was sought to be conveyed in the reproduced paragraph 8 of the judgment was that to the extent such provisions seek to levy service tax in respect of services provided by the club to its members, is impermissible and, therefore, ultra vires."*

➤ Accordingly, in the given case the decision of Sports Club of Gujarat Ltd. has been affirmed by the Apex Court



The said judgement applies to the assessee as they have deposited service tax on members contributions.

- Thus ratio laid down and quoted (para 24 of OIO) in case of M/s. Mafatlal industries Limited (1997(89) ELT 247(S.C.) is not applicable in this matter.
- Hence having declared leviability of service tax on contributions received from the members by the registered co-operative societies, club etc. ultra vires to the Act; the appellant is eligible for the refund as far as paid on contributions received from the members.
- The appellant have paid the amount as deposit with the department.
- Impugned order in original cannot travel beyond the SCN. In the given case Show cause notice issued Dt. 25th January, 2021 asking as to why refund claim should not be rejected on the ground that the same has not been filed within a period of one year from the relevant date under section 11B of the Central Excise Act, 1944 made applicable to service tax matters vide section 83 of the Finance Act, 1994.
- Vide Para 15 of the Impugned OIO the adjudicating authority has observed that refund claim filed is within the time limit provided vide section 11B of the Central Excise Act, 1944.
- As mentioned in the Facts, Para No. 16; the impugned OIO proposed to reject the refund claim on the two grounds which are never raised in SCN.
- Thus evidently, the adjudicating authority have



travelled beyond the scope of show cause notice.

➤ The show-cause notice is the foundation of any demand as settled in the case of CCE. Bangalore Vs. Brindavan Beverages (P) Ltd. [2007(213) ELT 487 (SC)] and therefore to divert from the allegations made in the show-cause notice and confirm demands on new grounds is wholly incorrect. Thus, the impugned order is bad on this score alone. The reliance is placed on R.R. Paints (P.) Ltd. where CESTAT Mumbai has held that order cannot travel beyond the show-cause notice.

➤ The order in original has all travelled beyond the show-cause notice which is not permitted by law as settled by the Hon'ble Supreme Court in the following decisions:-

i. *CCE&Cus., Surat Vs. Sun Pharmaceuticals Inds. Ltd.* [2015(326) ELT 3 (SC)]

ii. *Caprihans India Ltd. Vs. CCE* [2015(325) ELT 632 (SC)]

iii. *CC, Mumbai Vs. Toyo Engineering India Ltd.* [2006(201) ELT 513 (SC)]

➤ In view of the above discussion, the OIO issued rejecting the refund claim of the appellant is required to be quashed down.

➤ Vide issuing impugned order dated 04<sup>th</sup> August, 2023; the adjudicating authority has not adhered to the directions issued by Commissioner (Appeals)

➤ Adjudication of the SCN is required to be done within 1year/6months form the date of Notice.

4. Personal Hearing in the case was held on 20.03.2024. Shri Bishan Shah, Chartered Accountants, appeared for DIT on behalf



of the appellant. He reiterated the contents of the written submission. He further informed that the OIO has travelled beyond the SCN. In addition, he further submitted the Kolkata Sports Club Case and Surat Tennis Club case are also applicable in their case. He therefore requested o allow their appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and submission made at the time of personal hearing.

6. I find that the appellant argued that the impugned order cannot travel beyond the SCN dated 25.01.2021. Two issues in the proposed SCN were: (1) verification of whether the appellant actually availed the benefit of VCES 2013, (2) whether relaxation of time limits by the Hon'ble Supreme Court and the Government have been considered.

6.1 As per the para 15 of the impugned order I find that the adjudicating authority acknowledged the refund claims of Rs. 21,66,876/-, Rs. 1,75,350/- & Rs. 3,79,453/- were filed within time limit provided vide Section 11B of Central Excise Act,1944 made applicable in Service Tax matter vide Section 83 of Finance Act, 1994. It is also noticed that the adjudicating authority certified that the appellant did never opt VCES Scheme.

7. Further, it is found that the refund claims of Rs. 21,66,876/-, Rs. 1,75,350/- & Rs. 3,79,453/- were filed by the appellant on the basis of judgment of the Hon'ble Supreme Court dated 03.10.2019 decided in Civil Appeal No. 4184 of 2009 in the case of State of West Bengal & Ors. (Appellants) vs. Calcutta Club Limited (Respondent) and Civil Appeal No. 7497 of 2012 in the case of Chief Commissioner of Central Excise and Service Tax & Ors. (Appellants) vs. M/s. Ranchi Club Limited (Respondent) and many other Civil Appeals mentioned in the order dated 03.10.2019.

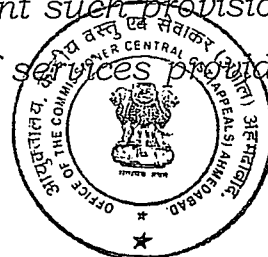




7.1 The adjudicating authority rejected the refund claim of the appellant, stating that the refund claim filed on the basis of judgement of the Hon'ble Supreme Court dated 03.10.2019 is not applicable in the case of the appellant. The adjudicating authority cited the case of M/s Mafatlal Industries Limited vs. Union of India [1997 (89) ELT 247 (S.C.)]. The adjudicating authority was of the opinion that the instant refund claims had been filed on the basis of judgment of other taxpayer and not on the basis of judgment in their own case as per the judgment of Hon'ble Supreme Court in the case of Mafatlal Industries Limited.

7.2 However, the appellant asserted that the ratio laid down in the case of M/s Mafatlal Industries Limited (Supra) is not applicable in the instant matter. The appellant relied on the judgement the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise & Customs, Surat vs. Surat Tennis Club [(2016) 42 STR 821 (Gujarat)] which has been affirmed by the Hon'ble Supreme Court judgment dated 03.10.2019 (Supra) , wherein it is held as under:

*"The decision of Sports Club of Gujarat Ltd. (supra), declares the statutory provision ultra vires qua the petitioners before the Court alone, is a rather curious contention and needs to be recorded only for summary rejection. We are not conscious of any concept where a Court would declare a provision unconstitutional and make its application in personam. When a declaration of unconstitutionality is made by the Court, it operates in rem. Even in case of Sports Club of Gujarat Ltd. (supra), there was no intention of the Court ever to declare the provision ultra vires and apply the same only to the petitioners before the Court. What was sought to be conveyed in the reproduced paragraph 8 of the judgment was that to the extent such provisions seek to levy service tax in respect of services provided*



*by the club to its members, is impermissible and, therefore, ultra vires."*

7.3 On reading the above para, I find that the argument claiming a specific decision only applies to the parties involved in the case is not valid. When a judgment by the Hon'ble Court declares something unconstitutional, it applies to everyone, not just the people directly involved in the case. So, even though the decision mentioned is about a specific club herein as Sports Club of Gujarat Ltd., it applies to similar situation involving service tax and clubs providing services to their members.

8 In view of the above discussion and finding, the impugned order is set aside and the appeal is allowed with consequential relief.

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

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

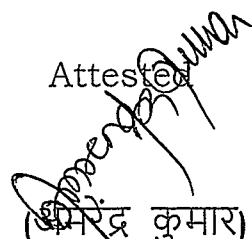


(ज्ञानचंद जैन)  
आयुक्त (अपील्स)

Date : 30.04.2024



Attested



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

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Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, Div-V, Central GST, Ahmedabad South
- 4) The Supdt. (Appeals),CGST, Ahmedabad (For uploading the OIA)
- ~~5) Guard File~~
- 6) PA file



