



: : आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क : :
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3:cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20221264SX000022C32

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/54/RAJ/2022	01/D/DC/2021-22	09-08-2021
	V2/10/EA2/RAJ/2021	01/D/DC/2021-22	09-08-2021

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-392 TO 393-2022

आदेश का दिनांक /
Date of Order: **14.12.2022** जारी करने की तारीख /
Date of issue: **14.12.2022**

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central
Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

**M/s. Marwadi Commodity Brokers Pvt Ltd, Marwadi Finance Plaza, Nana Mava
Main Road, Near iscon Mega Mall, Off 150 feet Ring Road, Rajkot-360001.**

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवासी, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of more than fifty Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवासी, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
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(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवासी, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
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(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवासी, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
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- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994 के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा सहायक, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई मूलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं-2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकरणों के समक्ष विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरिवर्तन के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए।
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (i) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।
In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के क्रेडिट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है।
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty:
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूडी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत माल की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं-2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समाप्त तिथि पर या बाद में पारित किए गए हैं।
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के तौर पर TR-6 की प्रति संलग्न की जानी 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 O.I.O 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.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पत्री कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



अपील आदेश /ORDER-IN-APPEAL

M/s Marwadi Commodity Brokers Pvt Ltd., 'Marwadi Financial Plaza', Nana Mava Main Road, Near Grand Central Mall, Rajkot (hereinafter referred to as the 'appellant') has filed appeal No.V2/54/RAJ/2022 against Order-in-Original No. 01/D/DC/2021-22 dated 09.08.2021 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central Excise & CGST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority'). Appeal No. V.2/10/EA-2/RAJ/2021 has also been filed by Deputy Commissioner, CGST, Division-I, Rajkot (hereinafter referred to as 'the Revenue') against the impugned order.

2. The facts of the case, in brief, are that during the course of audit of the records of the appellant, it was observed that the appellant was providing taxable as well as exempted service and did not maintain separate account for availment of Cenvat credit. Thus, the appellant was required to reverse an amount pertaining to credit of common inputs/input services as per Rule 6(3A) of Cenvat Credit Rules, 2004. However, on scrutiny of records it was observed that the appellant had not paid the amount as required under Rule 6(3A) *ibid*. Therefore, a show cause notice dated 11.04.2019 was issued demanding amount of Rs.8,97,977/- under rule 14 of Cenvat Credit Rules, 2004 read with Section 73(1) of the Finance Act 1994 and to appropriate the amount of Rs.3,78,801/- already paid by them. The notice also proposed to charge interest under Section 75 of the Finance Act 1994 and to appropriate the amount of Rs.2,42,478/- already paid. Further, it was also proposed to impose penalty under Section 77 of the Finance Act 1994 and under rule 15(3) of the Cenvat Credit Rules, 2004 and to appropriate amount of Rs.56,820/- already paid. The adjudicating authority, in the impugned order, has confirmed the demand of Rs.8,97,977/- under rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act 1994 and ordered to appropriate the amount of Rs.3,78,801/- already paid by them. The adjudicating authority confirmed the interest under Section 75 of the Finance Act 1994 and ordered to appropriate the amount of interest of Rs.2,42,478/- already paid by them. The adjudicating authority has imposed penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994/- but imposed penalty of only Rs.78,000/- under rule 15(3) of the Cenvat Credit Rules, 2004 and appropriated amount of Rs.56,820/- already paid.

3.1 Being aggrieved, the appellant has filed appeal along with application for condonation of delay wherein they, *inter alia*, contended that the appellant was engaged in sale and purchase of shares in Cash and Future



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and Option (F&O) segment under two categories. The first category is 'Clients Accounts' from whom they charged brokerage and other charges whereas in the second category, they sold and purchased shares in cash as well as F&O segments in their own account. The appellant charged brokerage and other charges from the clients and paid service tax on such charges.

3.2 The appellant has submitted that they have utilized the credit of service tax paid under the Stock Exchange service for payment of service tax liability under the stock broker service. They contended that it is clear from the definition of the term 'input service' that services which are specifically enumerated and similar activities which qualify as 'activities related to business' would fall within the purview of the definition of 'input service'. The appellant submitted that the service of Stock Exchanges is activity related to business of the appellant.

3.3 The appellant has submitted that in the present case service provider and service recipient are same as in activity of transaction in own account, there is no other person to whom service was provided or by whom service was received. It is admitted fact by department that as far as transaction with regard to own accounts were concerned, it was observed that no service portion is involved, no service tax is payable and it is not output service.

3.4 The appellant has contended that Rule 6 of CENVAT Rules comes into play only when there is presence of taxable as well as exempted service. It is apparent that 'self service' is not covered under the definition of exempted service by virtue of explanation to Rule 2(e) of Cenvat Credit Rules, 2004 and it is not 'taxable service'. Therefore, since an activity is not covered under the definition of service then question of either it is a taxable service or an exempted service does not arise and provisions of rule 6 of Cenvat Credit Rules, 2004 is illegal.

3.5 The appellant has submitted that the appellant has disclosed the facts in relevant service tax returns about availment of Cenvat credit. Even otherwise, the appellant submitted that, there is no statutory obligation to disclose and hence the allegation of suppression etc is not sustainable. They relied upon the case of *Ultratech Cement, Final Order No.52015-17/2014 dated 08.05.2014 (CESTAT-Del)* and *Kumar Organics, Final Order No.20546/2014 (CESTAT-BANG)* in this regard. The appellant further submitted that extended period of limitation is not invocable, if the details and the relevant facts were in the knowledge of the Department. They relied upon a *catena* of decisions in this regard.



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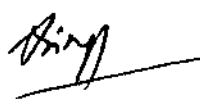
3.6 The appellant has further contended that the onus is on the department to prove that the appellant have willfully suppressed facts with intent to evade payment of duty. The authority has failed to prove that the appellant have acted with mala fide intent. The appellant submitted that mere failure of declare does not amount to mis-declaration as held in the case of *Pahwa Chemicals-2005 (189) ELT.257 (SC)*

3.7 The appellant has submitted that they have not contravened any of the provisions of Cenvat Credit Rules, 2004 and therefore interest and penalty are not applicable. They have contended that they have always been and are still under the bona fide belief that they have rightly availed Cenvat credit of input services based on the invoices issued by the NSE and other stock exchanges and, therefore no penalty is to be imposed on them. They relied upon the case of *Hindustan Steel Ltd V State of Orissa reported in AIR 1970 (sc) 253* which was followed by the Tribunal in the case of *Kellner Pharmaceuticals Ltd-1985 (20) ELT.80*. They have also contended that provisions of Section 80 will apply in the present case.

4. The revenue has filed appeal on the ground that the adjudicating authority ought to have imposed penalty under rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994, equivalent to the amount confirmed.

5. Chartered Accountant Chetan Dethaniya appeared for Personal hearing on 09.11.2022 and reiterated the submission made in the Appeal Memorandum. He submitted that since the invoices are in the name of self, there is no trading activity and there is no element of service since the service provider and the service recipient have to be two distinct persons. He further submitted that in the matter of interpretation of law, allegation for suppression or fraud does not survive. He referred to the case laws relied by them. Therefore, he requested to set aside the Order-in-Original.

6. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum filed by the appellant. The appellant, in the present appeal, has challenged the confirmation of demand under Rule 14 of Cenvat Credit Rules 2004 and penalty imposed. The revenue, in their appeal, has challenged the quantum of penalty imposed under rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78 ibid. Therefore, the question to be answered in this appeal is whether the confirmation of demand and amount of penalty imposed by the adjudicating authority is proper or otherwise.





7. First of all I would like to take up the application for condonation of delay filed by the appellant. I find that the date of communication of the order is 23.08.2021 and the appeal has been filed on 22.04.2022 and thus there is delay in filing appeal. However, as per Order dated 10.01.2022 of Hon'ble Supreme Court in Misc. Application No.21 of 2022 in Misc. Application No.665 of 2021 in Suo Moto Writ Petition (C) No.3 of 2020, the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. Since the present appeal is filed within 90 days from 01.03.2022, I consider the appeal to have been filed within prescribed time limit as per Finance Act, 1994 and proceed to decide the appeal on its merits.

8. Coming to the contention of the appellant that the adjudicating authority has failed to prove that the appellant have acted with mala fide intent and hence the demand is hit by limitation, I find some substance in the same. The Board in its Circular No. 1053/2/2017-CX., dated 10-3-2017 has clearly mentioned that onus of establishing that the ingredients for invoking extended period are present in a given case is on the revenue and these ingredients need to be clearly brought out in the show cause notice. The board, at paragraph 3.2 of the circular, clarified as under:

3.2 **Ingredients for extended period** : Extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on revenue and these ingredients need to be clearly brought out in the Show Cause Notice alongwith evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.

8.1 In the present case, the show cause notice has not brought out the ingredients for invoking extended period. Hon'ble Supreme Court in various decisions had held that mere failure to give information is not suppression. There should be some positive misstatement with an intention to evade payment of duty. In the case of **Continental Foundations Jt. Venture – 2007 (216) E.L.T. 177 (S.C)** the Apex Court has held that;

10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.



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8.2 In the case of **Mysore Kirloskar Ltd – 2008 (226) E.L.T.161 (S.C)**, Hon'ble Supreme Court has held that on the basis of vague allegation, neither the larger period could have invoked nor the penalty could have imposed. In the said order Apex Court held that;

"The order of the Commissioner does not indicate adequate reasons to invoke proviso to Section 11A(1). On the basis of vague allegations made in the show cause notice neither the proviso to Section 11A(1) could have been invoked nor penalty could have been imposed upon the respondent under Rule 173Q of the Central Excise Rules."

8.3 It is held by Hon'ble Supreme Court that there should be intent to evade payment of duty so as to invoke extended period of limitation. In the case of **Cosmic Dye Chemical – 1995 (75) E.L.T.721 (S.C) (Exhibit-O)** Hon'ble Supreme Court has held that;

"6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "willful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be willful."

8.4 Hon'ble Supreme Court in the case of **H.M.M Limited – 1995 (76) E.L.T.497 (S.C)** held that the show cause notice must put the assessee to notice which of the various commissions or omission stated in the proviso is committed to extend the period to 5 years. In the present case there is no mention of omissions or commissions made by the appellant with intent to evade tax. The appellant filed periodical returns and the same were subjected to scrutiny by the department. As such no suppression can be alleged on the part of the appellant. In view of the above, I am of the view that the demand beyond the normal period of limitation under Section 73 of the Finance Act 1994 is time barred and not sustainable. As per facts available on record, the show cause notice was issued on 12.04.2019 for the period from October 2013 to June 2017. As per Section 73, the demand is to be served on the person within 30 months from the relevant date. The 'relevant date' under Section 73(6)(1) is the date on which periodical return is filed. Therefore, the demand for the period 2013-14 to 2015-16 is beyond the normal period of limitation and hence not sustainable.

9. Now, coming to the merits of the case, the appellant has contended that provisions of Rule 6 of Cenvat Credit Rules, 2004 are not applicable in their case as they have provided service to self and no element of service is involved. In this regard, I find that, the appellant has availed Cenvat credit



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of service tax paid by NSE / MCX / NCDEX and these services were consumed for the stock exchange service provided by the appellant as well as for purchase and sale of shares on their own account. According to the appellant, there is no element of service involved in the purchase and sale of shares on their own account as there are no two distinct persons involved. In this regard, I find that as per definition of the term 'service' given under Section 65B of Finance Act, 1994 it is an activity carried out by a person for another person for consideration. The said definition is reproduced as under:

"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
(a) an activity which constitutes merely,—
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;
(b) a provision of service by an employee to the employer in the course of or in relation to his employment;
(c) fees taken in any Court or tribunal established under any law for the time being in force."

The appellant, being a provider of 'Stock Broker service', said to have provided a service only when he buys or sells stock on behalf of his client. In other words, if he buys and sells stock by his own, there is no element of service as no other person is involved in such cases. When the activity of buying and selling of stocks by his own is not a service at all, it cannot be considered that the appellant has provided taxable exempted service.

10. I find that rule 6(3A) of Cenvat Credit Rules, 2004 comes into play only when a manufacturer or a provider of output service uses inputs or input services in the manufacture of exempted goods or exempted services. In the present case, when the activity carried out by the appellant by way of purchase and sale of stock for his own purpose cannot be considered as a service at all, the question of providing any exempted service by the appellant does not arise. As such, I am of the considered view that the provision of Rule 6(3A) is not applicable in the present facts and circumstances of the case and there was no obligation on the part of the appellant to maintain separate record or to reverse any Cenvat credit under the said rules. Therefore, I hold that the impugned order is not sustainable on merits also.

11. Now coming to the appeal filed by the Revenue regarding quantum of penalty imposed under Section 78 of the Finance Act, 1994, I have already given my findings that impugned order is not sustainable on merits, the



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question of enhancing penalty under Section 78 of the Finance Act, 1994 does not arise. Therefore, the appeal filed by the department is rejected.

12. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant. The appeal filed by the department is hereby rejected.

१३. अपीलकर्ता एवं डिपार्टमेंट द्वारा दर्ज की गई दोनों अपील का निपटारा उपरोक्त तरीके से किया जाता है।

13. Appeals filed by appellant and the Revenue are disposed off as above.

सत्यापित / Attested


Superintendent
Central GST (Appeals)
Rajkot


(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To सेवा में, मे० मारवाड़ी कोममोडिटी ब्रोकर्स प्राइवेट लिमिटेड 'मारवाड़ी फाइनेंशियल प्लाज़ा', नाना मावा मईन रोड, नियर ग्रांड सेंट्रल मॉल राजकोट	M/s Marwadi Commodity Brokers Pvt Ltd., 'Marwadi Financial Plaza', Nana Mava Main Road, Near Grand Central Mall, Rajkot
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट।
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रमंडल-1, राजकोट।
- 4) रण्ड फाइल।

