



रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230464SX0000777B8B

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	GAPPL/COM/STP/2301/2022	11/JC/VM/Sub-Commr/2020-21	19-01-2021

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

**RAJ-EXCUS-000-APP-097-2023**

आदेश का दिनांक / Date of Order:	<b>19.04.2023</b>	जारी करने की तारीख / Date of issue:	<b>20.04.2023</b>
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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 / गांधीधाम। 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. The Post Master,, Head Post Office, Jamnagar.**

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, 1994 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 मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पारम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Param, 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 (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 360016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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 की चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 नियमावली, 1994 के नियम 9(1) के तहत निर्धारित प्रपत्र S.T-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उपरोक्त से एक प्रति प्रामाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- 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/-.



(1) दित अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994 के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी 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 उपायुक्त, 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.

(2) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 33एफ 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 हैं

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत 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 आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी 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.

(3) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India:  
इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 (1) 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 छूट (रिबेट) 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 ज्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य 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 समयावधि 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 हैं, इस आदेश के संप्रेषण 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 साक्ष्य 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 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.

(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.

(vii) यदि इस आदेश में कई मूल आदेशों का सम्मिश्रण है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी दो लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(viii) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 8.50 रुपये का न्यायालय शुल्क टिकिट 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.

(ix) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को 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.

(x) उच्च अपीलीय प्राधिकारी को अपील दायिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)



**:: अपील आदेश / ORDER-IN-APPEAL ::**

M/s. The Post Master Jamnagar HO, Jamnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 11/JC/VM/Sub-Commr/2020-21 dated 19.01.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST Sub Commissionerate, Jamnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Directorate General of GST Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as 'DGGI' for sake of brevity) vide letters dated 20.02.2019, 19.03.2019, 05.04.2019, 25.04.2019 and 21.05.2019 addressed to the Postmaster General Rajkot Region initiated inquiry relating to Service Tax. The Appellant vide letter dated 16.05.2019 submitted the details of the various services rendered by them including month wise details of consideration received by them, amount of Service Tax collected and paid, S.T.-3 returns filed for the period from April-2014 to March-2017. The Appellant have paid the Service Tax through book adjustment mode for the period April-2014 to March-2017. They have utilized Cenvat for the period from October-2014 to June-2017. Letters dated 28.08.2019, 09.09.2019 & 22.10.2019 were issued to the Appellant seeking various details including month wise copy of Part-II (Receipts), cash account which reflects the consideration received towards taxable as well as non-taxable/ exempt services, detailed description of services provided, category wise tax paid, details of Cenvat credit availed, details of life insurance premium deducted from the salary of Department of Post employees (month wise), details of agency service provided to persons other than government and copy of agreement signed with the various service recipients (in respect of entities other than government agencies). By subsequent email and letters, the Appellant was requested to give the details of the unclassified receipts shown in Part-II (Receipts) cash account submitted by them, so that taxability of the services under the head unclassified receipts can be arrived at.

3. The Appellant vide email dated 07.01.2020 and letter dated 10.01.2020 submitted category wise taxable services from the period April-2014 to June-2017, month wise copy of unclassified receipts (UCR) schedule and Cash Account "Part-II (Receipts)" for the period April-2014 to June-2017. They also submitted details of premium deducted month wise towards postal life insurance from the salary of the Department of Posts and amount of the Service Tax collected from them as well as abbreviations used in "Part-II (Receipts)" vide their email dated 20.02.2020. The Appellant vide their letter dated 28.02.2020 submitted details of Cenvat Credit availed. The Appellant mentioned that the Service Tax was paid



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through book adjustment upto June-2017 and the book adjustment/ transfer of the tax was not done by themselves but it was being done by the Office of the General Manager (Finance), Ahmedabad and the date of such adjustment is not known to them. The Appellant submitted that information of agency service provided to the BSNL, Gujarat Gas and PGVCL for the period from FY 2014-15 to FY 2017-18. The Appellant further stated that the documents related to Cenvat credit availed are not available with them since they have been submitted to the Office of the General Manager (Finance), Ahmedabad. The Appellant vide email dated 26.12.2019 submitted copy of "Part-II (Receipts)" Cash Book for the month of Septebmer-2016, details of premium deducted month wise towards postal life insurance from the salary of the Department of Posts. They also submitted details of UCR (Unclassified Receipts) for the period from October-2014 to June-2017.

4. After 01.07.2012, services provided by Government or a local authority, excluding certain services specified under clause (a) of Section 66D of the Finance Act, 1994 (hereinafter referred to as 'the Act') are covered by the Negative List. As per Section 66D(a)(ii) such exclusion covers services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government and are therefore, taxable. Further, Section 66D(a)(iv) as it existed prior to 01.04.2016 excludes only "support services" provided by Government or local authorities to business entities from the negative list [except services covered under clauses (i) to (iii) of Section 66D(a)] and therefore, such support service provided by the government of local authority was also taxable. The Section 66D(a)(iv) was amended with effect from 01.04.2016 and word "support services" was replaced with "any service" and all such services became taxable unless otherwise exempted by Notification. Many of the services provided by the Appellant like Speed post, Express post parcel etc. are excluded from Negative list as per section 66 D (a) (i) and are therefore, taxable. Further, services wherein consideration in the form of commission/charges is received from Gujarat Electricity Board(GEB) for collection against bills (Retail Post), sale of judicial and non-judicial stamp papers and sale of speed post envelope; "Business post", service which is given on chargeable basis for additional services to various entities for bulk posting of articles; "Bill mail Service", for which charges are received from BSNL for posting of telephone bills; "Mobile Money Transfer Service Commission" which is received for mobile money transfer service; "Business post cash on delivery fee" which is collected against cash on delivery (COD)fees on delivery of Business Post Articles etc. rendered by Appellant are in the nature of "support services" and are excluded from negative list as per section 66 D (a) (iv) both prior to and after 01.04.2016 and are hence, taxable.



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5. The Appellant was engaged in providing taxable as well as non-taxable services but the nature of account head and whether it was related to a taxable or non-taxable services was not clear. Therefore, the Appellant was issued with a Show Cause Notice dated 30.03.2020 to the Appellant, demanding Service Tax and Cess to the tune of Rs. 73,69,441/- under Section 73(1) of the Act alongwith interest under Section 75 of the Act. The amount of Rs. 3,41,900/- Cenvat Credit availed by them denied and demanded under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of the Act. It was also proposed to impose penalties under Section 76 and/ or 78 and 77(1)(b) of the Act upon the Appellant. It was also proposed to impose penalty under Rule 15(1) and 15(3) read with Section 76 and/or Section 78 for wrong availment and utilisation of Cenvat Credit.

6. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 73,69,441/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 73,69,441/- under Section 78 of the Act and imposed a penalty of Rs. Rs. 10,000/- under Section 77(1)(b) of the Act. He also disallows the Cenvat credit of Rs. 1,15,183/- and ordered to recover the same under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of the Act alongwith interest and also imposed penalty of Rs. 1,15,183/- under Rule 15(1) and 15(3) of the Cenvat Credit Rules, 2004 read with proviso to Section 78 of the Act.

7. Being aggrieved, the Appellant has preferred the present appeal on various grounds as stated below:

(i) The ACES website was inactive after GST implementation but they had already submitted the figures of revenue and Service Tax collected. Due to inactive site, they were not able to file the said return but the same was submitted by them. For Cenvat credit availed, the relevant supporting documents such as invoices and bills were not available with them as they were submitted to the General Manager, Finance, Ahmedabad for audit purpose. However, the details of Service Tax collected on speed post, express parcel post, postal life insurance etc. were already submitted. The commission has not been found taxable by Service Tax authorities in Vadodara region and the same had been fully exempted. The payment of Service Tax was made by book. The Service Tax should be paid electronically through internet banking by the 6<sup>th</sup> of the month immediately following the period when the tax is due. However, as per the Section 65(105) of the Act, it was clearly mentioned that Director General of Posts and Telegraph, India is liable to pay Service Tax by book adjustment and the Service Tax can also be paid by government cheque as per CBEC clarification dated 22.07.2016.



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(ii) The UCR (unclassified receipts) were fully exempted but the same was not accepted. The tax liability was calculated after considering many account head receipt, which were not the revenue of the Appellant. Under UCR head, the actual tax liability is Rs. 5,20,434/- as per the calculation.

(iii) The Adjudicating Authority has imposed Service Tax liability on them as per Table-A, B & C as mentioned in the impugned order. The Table-A as mentioned in Para 12.3 of the Order-In-Original speaks about wrongful availment of Cenvat credit for the year October-2014 to June-2017. They have duly followed the provisions of the Act for availing Cenvat credit. The findings of the Adjudicating Authority that S.T.-3 returns were not admissible, are absolutely wrong on the ground that the same is not available. They could not produce the proof of documents at the material time but now they submitted as Annexure-E. Table-B speaks about imposing Service Tax liability on the income received by them under the head Speed Post Revenue/ BNP (S. Post), SPCODC, EPCODC, BPCODC, EPP Revenue, Business Posts etc. and according to negative list Section 66D of the Act, the services by the Department of Post by way of Speed Post, Express Parcel Post, Life Insurance and Agencies services provided to a person other than Government, is taxable. The services provided by them to the Government is not liable for Service Tax and out of total income of Rs. 6,25,46,079/-, they gave said services to the Government to the tune of Rs. 67,07,775/- which is not taxable as per Annexure-F and Annexure-G.

(iv) The second head is 'unclassified receipts' on which Service Tax has been proposed to demand by the Department. They received numbers of receipts which is the income either reimbursement of expenses, certain unclassified receipts lying in the cash ledger and other such receipts, which are not identified as income. All such receipts which are not considered essentially as income are put under the head 'unclassified receipts' and hence, Service Tax is not counted and paid on the same.

8. The matter was posted for hearing on 24.03.2023. Advocate Ms. Zeel Raval appeared for personal hearing online in virtual mode. She reiterated the submissions and submitted that the appeals, except in case of Post Master, Surendranagar got delayed due to reconciliation of various reports and returns received from various post offices and the Covid restrictions. She submitted that the appellant could not produce proof of documents to original authority and the same in respect of credit of Rs. 1,62,993/- are enclosed as Annexure-C. As detailed in Annexure-D, income of Rs. 76,55,320/- pertains to service to government organization, which is exempt as per Section 66D of Finance Act, 1994. She submitted that unclassified receipts under Annexure-E, being reimbursement of expenses are not taxable. She submitted that the 1<sup>st</sup> year



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premium and premium on renewal of insurance are taxable at different rates as per details in Annexure-F. Further, the appellant has already paid Service Tax of Rs. 91,93,083/- by book transfers as per details of E-Lekha in Annexure-G. Therefore, she requested to set aside the impugned order.

9. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that the issue to be decided in the case on hand is whether the Appellant has short/not paid the Service Tax on activity carried out by them or otherwise. Before going into merits of the case I would like to examine whether the appeal has been filed within the stipulated time and is admissible under section 85 of Finance Act, 1994.

10. I find that the impugned order was issued on 19.01.2021 by the adjudicating authority. As stated by the Appellant in appeal memorandum, the date of communication of the impugned order is 28.01.2021. It is on record that the Appellant has received the impugned order on 28.01.2021 and the Appellant has filed Appeal on 05.08.2022. The Appellant has not filed application for condonation of delay. The Appellant was required to file appeal within 60 days from the receipt of the said order as stipulated under Section 85(3A) of the Act. As per proviso to Section 85(3A) *ibid*, this appellate authority has powers to condone delay of one month in filing of appeal, over and above two months, if sufficient cause is shown. I find that there is a delay of more than 16 months in filing the appeal from the date of receipt of impugned order over and above the normal period of 2 months. Thus, the appeal filed beyond the normal time limit of 2 months plus condonable time limit of 1 month prescribed under Section 85(3A) *ibid*, cannot be entertained.

11. This appellate authority is a creature of the Statute and has to act as per the provisions contained in the Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the Act. When the legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

(i) The Hon'ble Supreme Court in the case of Singh Enterprises reported as 2008 (221) E.L.T. 163 (S.C.) has held as under:

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the



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*Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

(ii) In the case of Makjai Laboratories Pvt Ltd reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.

(iii) The Hon'ble High Court of Delhi in the case of Delta Impex reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

12. I find that the provisions of Section 85 of the Finance Act, 1994 are *pari materia* with the provisions of Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.

13. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 85(3A) of the Act. Thus, the appeal filed by the Appellant is required to be dismissed on the grounds of limitation. I, accordingly, dismiss the appeal.

14. In view of discussions and findings, I reject the appeal filed by the Appellant as inadmissible on grounds of limitation, without going into merits of the case.

15. In view of discussions and findings, I reject the appeal filed by the Appellant as inadmissible on grounds of limitation.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

*Delegem*

के. जी. सावलाणी / K. G. SAVLANI  
अधीक्षक / Superintendent

के. व. एवं सेवा कर अपीलस, राजकोट

(शिव प्रताप सिंह) / (Shiv Pratap Singh),

आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D. CGST Appeals, Rajkot

To,  
M/s. The Post Master,  
Head Post Office, Jamnagar.

सेवा में,  
मे. ध पोस्ट मास्टर, हेड पोस्ट ऑफिस,  
जामनगर।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद



- को जानकारी हेतु।
- 2) प्र. आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
  - 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, उप आयुक्तलय जामनगर को आवश्यक कार्यवाही हेतु।
  - 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल-1, जामनगर को आवश्यक कार्यवाही हेतु।
  - 5) गार्ड फाइल।



