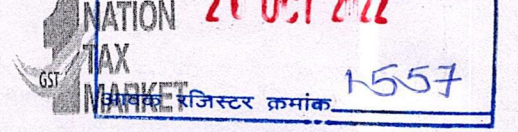




आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलीफैक्स 07926305136

आयुक्त परामर्शदाता
 केन्द्रीय वस्तु एवं सेवा कर, अल्प मात्रा उत्तर.
 सीआरयू/CRU



DIN: 20220964SW000011161A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1272/2022-APPEAL / 3 अ 55
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-33/2022-23**
 दिनांक Date : **16-09-2022** जारी करने की तारीख Date of Issue 21.09.2022
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **GST-06/Refund/15/AM/Ganesh/2021-22** दिनांक:
25.01.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Ganesh Housing Corporation Ltd.
Ganesh Corporate House, 100 ft., Hebatpur-Thaltej Road,
Nr. Sola Bridge, Off. S.G. Highway, Ahmedabad – 380054

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
North , 7th Floor, B D Patel House, Nr Sardar patel Statue, Naranpura
Ahmedabad - 380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

**भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(iii) 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.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

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

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

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

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

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



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

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

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. Ganesh Housing Corporation Ltd., Ganesh Corporate House, 100 ft Hebatpur-Thaltej Road, Nr. Sola Bridge, Off S.G.Highway, Ahmedabad-380054 (hereinafter referred to as "the appellant") against Order-in-Original No. GST/06/Refund/15/AM/Ganesh/2021-22 dated 25.01.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST and Central Excise, Division-VI, Ahmedabad North (hereinafter referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the appellant who are engaged in construction of residential and commercial complex had filed a refund claim for Rs.10,54,766/- on 29.10.2021, pursuant to cancellation of certain units on which service tax was paid by them. The appellant, however, failed to clarify whether the cancelled units have been sold subsequently to some other buyers; whether the cancellation of the units were made prior to issuance of BU permission or otherwise; whether the service tax collected was deposited in the government treasury or otherwise as no challan evidencing payment of the same was produced and whether the same units were subsequently sold to some other buyer before or after issuance of BU permission was not forthcoming. Further, it was also observed that the claimant failed to reverse the cenvat credit attributed to those cancelled units for which refund was claimed and also that the claim was hit by limitation.

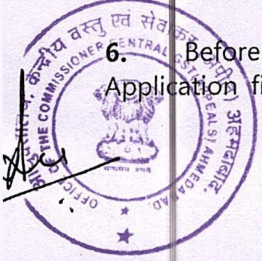
2.1 Accordingly, SCN bearing No.GST-06/04-1810/R-Ganesh/2021-22 dated 02.12.2021 was issued to the appellant proposing rejection of refund of Rs.10,54,766/- under Section 11B of the CEA, 1944. The adjudicating authority had subsequently vide the impugned order sanctioned refund of Rs.6,48,454/- after deducting proportionate cenvat credit of Rs.4,06,312/-.

3. Aggrieved with the impugned order, the appellant preferred the present appeal. The appellant on 23.06.2022 also filed an application seeking Condonation of Delay (COD), in terms of the judgment passed by Apex Court in Misc. Appl.No.21/2022 in MA 665/2021 in SMW(C) No.03/2020 dated 10.01.2022, which specifies that the limitation period shall be counted by excluding the period upto 28.02.2022 and, therefore, there is a delay of only 27 days.

4. Personal hearing in the matter of COD was granted on 26.07.2022 in virtual mode. Shri Rahul Patel, Chartered Accountant, appeared and represented the case on behalf of the appellant. Shri Patel stated that there was mis-interpretation of Hon'ble Apex Court's order and therefore requested to condone the delay.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 25.01.2022 and the same was received by the appellant on 01.02.2022. The present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 25.05.2022. Thereafter, the appellant on 23.06.2022 filed a Miscellaneous Application seeking condonation of delay in terms of Hon'ble Supreme Court judgment, where the period starting from 15.03.2020 to 28.02.2022 shall be excluded while calculating the limitation period. They, therefore, contended that 60 days period for filing appeal shall start from 01.03.2022 and ends on 28.04.2022, thus there was a delay of 27 days. Further, they claim that due to divergent interpretation of the decision of Hon'ble Apex Court, there was delay in filing the appeal, and hence, may be condoned.

6. Before going into the merit of the case, I will first deal with the Miscellaneous Application filed by the appellant seeking condonation of delay in filing the present



appeal. Appellant have relied on the Hon'ble Apex Court's decision passed vide Order dated 10.01.2022.

6.1 Section 85 of the Finance Act, 1994, provides that the appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Relevant text of Section 85 is reproduced below:

SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). — [(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the [Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal.....in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [, **made before the date on which the Finance Bill, 2012, receives the assent of the President**]:

Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

*[(3A) An appeal shall be presented within **two months** from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter.:*

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

Thus, in terms of Section 85 of the Finance Act, 1994 and Chapter V, Section 6 of Relaxation of Time Limit under Certain Indirect Tax Laws 2020, the limitation period of two months for filing the appeal in the present case shall start from 1st February, 2022 and the appellant were required to file the appeal on or before 2nd April, 2022. However, the appeal was filed on 25.05.2022, after a delay of 52 days.

6.2 Hon'ble Supreme Court, keeping in view the difficulties faced by litigants due to restrictions on movement and in an attempt to reduce the transmission of the deadly virus, extended the limitation period under the general law of limitation or under any special laws (both Central and/or State) on the filing of all appeals, suits, petitions, applications and all other quasi proceedings vide its Order dated 23th March, 2020, from March 15, 2020 till further orders. Subsequently, vide Orders dated March 08, 2021, April 27, 2021, 23, September, 2021 and January 10, 2022, the Hon'ble Apex Court held that the period from March 15, 2020 till February 28, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. Therefore, considering the guidelines issued by the Apex Court, the due date of filing appeal starts from 01.03.2022 and 60 days period ends on 29.04.2022 however, the appellant filed appeal on 25.05.2022 i.e. after a delay of 27 days. It is also noticed that the Miscellaneous Application seeking condonation of delay was filed after almost one month of filing the appeal that too without showing any reasonable cause for such delay.

6.3 Considering, the legal provisions under Section 85(3A) of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay of only one month provided he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. The appellant have



stated that the delay was caused as they mis-interpreted Hon'ble Apex Court's judgment. I do not find such argument to be convincing. The impugned order was received by the appellant on 01.02.2022 and going by the limitation period prescribed in Section 85 as well as the relaxation granted by Hon'ble Apex Court by extending the limitation, the appellant had enough time to file the appeal but considerable delay is noticed in filing the appeal as well as the COD application. It appears that legal provisions relating to condonation of delay was taken very casually and presumed that condonation of delay will be granted as a matter of right without any proper explanation. I find that the appellant in the facts and circumstances discussed above has not explained the delay in filing the instant appeal. Accordingly, I reject the application seeking condonation of delay. Hence the appeal also has to be rejected.

6.4 In view of the above discussion, without expressing any opinion on the merits of the case, I reject the appeal filed by the appellant on the grounds of limitation.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

Akhil Kumar
16th September,
(अखिलेश कुमार) 2022.
आयुक्त (अपील्स)

Date: 9.2022



Attested

Rekha Nair

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Ganesh Housing Corporation Ltd.,
Ganesh Corporate House,
100 ft Hebatpur-Thaltej Road,
Nr. Sola Bridge, Off S.G.Highway,
Ahmedabad-380054

Appellant

The Deputy Commissioner,
CGST and Central Excise, Division-VI,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.