



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in

75
आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000717525

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3850/2023 / 636
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-171/23-24 and 22.12.2023
(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	04.01.2024
(ङ)	Arising out of Order-In-Original No. CGST/A'bad North/Div-VII/REF/DC/846/BPC/2022-23 dated 15.02.2023 passed by The Deputy Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	BPC Project and Infrastructure Pvt. Ltd. Darshak, 14A-A, Swastik Society Punjabhi Hall Lane Ahmedabad - 380009

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

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

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

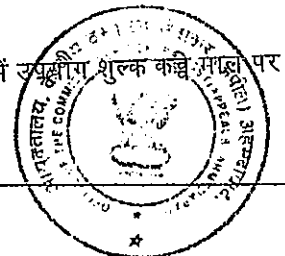
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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

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

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

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

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

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-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 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.

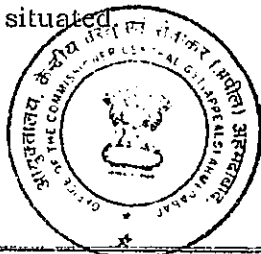
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 बताया अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 पढ़ी 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 संबोधित 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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)

- (16) खंड (Section) 11D के तहत निर्धारित राशि;
- (17) लिया गलत सेनवैट क्रेडिट की राशि;
- (18) 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:

- (xvi) amount determined under Section 11 D;
- (xvii) amount of erroneous Cenvat Credit taken;
- (xviii) 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. BPC Projects And Infrastructure Pvt. Ltd, 14A-A, Swastik Society, Punjabi Hall Lane, Ahmedabad - 380009 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/REF/DC/846/BPC/2022-23 dated 15.02.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

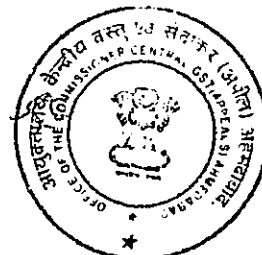
2. Briefly stated, the facts of the case are that the appellant, holding STC No. AADCA0018LST001 has filed refund application on dated 10.10.2022 of excess payment of service tax of Rs. 38,17,807/- on ground of OIO No. CGST/A'bad North/Div-VII/ST/DC/62/2021-22 dated 11.10.2021 under the provisions of Section 11B of the Central Excise Act, 1994.

2.1 Considering the refund application time barred, the appellant were issued a Show Cause Notice No. Div-VII/Refund-ST/BPC/2022-23 dated 21.12.2022 and the rejection of the refund claim was proposed on the ground of limitation.

2.2 Subsequently, the Show Cause Notice was adjudicated, vide the impugned order by the adjudicating authority wherein the refund claim was rejected on the grounds of limitation.

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

- The appellant submitted that the Assessing Officer has erred in passing the order and the same is not in accordance with the law. They have filed the refund application based on the assessment order issued by the Deputy Commissioner on 11-10-2021. The refund application was filed on 10.10.2022, within the time period stipulated in the law i.e. one year from the date of order.
- The appellant submitted that the case laws issued by the Delhi Tribunal in case of Oriental Insurance Co. reported in 2023-VIL-45-CESTAT-Delhi-ST have not been considered in right spirit while passing the impugned order. Other points mentioned in the refund application have not been taken into consideration by the adjudicating authority. Non-applicability of 11b was also not considered by the learned adjudicating authority while passing the order.



- The appellant stated that in the present case the tax has been collected without authority and the same is violation of the Article 265 of the Constitution of India. They further submitted that the refund application was filed on the basis of favourable Order in Original dated 11-10-2021 in which it was mentioned that the Noticee has paid excess service tax. In spite that, the amount retained by the revenue authority today is without authority of law and therefore, it is required to be refunded to the them. Further it is clearly established by the Noticee that the burden of service tax is not passed on to the customers. Therefore, the appellant are entitled for the refund as the same is arising out of the audit assessment by the revenue authority.
- The appellant placed rely on the CESTAT New Delhi case in case of Oriental Insurance Co. reported in 2023-VIL-45-CESTAT-Delhi-ST wherein it is held as under: *Service Tax - Section 83 of Finance Act, 1994 - Payment of excess tax -Rejection of refund claim - Appellant is engaged in provision of general insurance and re-insurance services - As Appellant was not able to determine its tax liability, Appellant filed returns on provisional basis and requested Department to finalize its assessment - Department finalized assessment and confirmed demand along with interest - Feeling aggrieved, Appellant filed appeal before Commissioner (Appeals) - Commissioner (Appeals) set aside demand for reason that Appellant had paid more tax than what was required to be paid - Pursuant to order passed by Commissioner (Appeals), Appellant filed refund claim seeking refund of service tax which it had paid in excess - Adjudicating authority as well as Commissioner (Appeals) rejected refund claim on ground of limitation and also on account of unjust enrichment - HELD - Perusal of Section 11B of Excise Act as made applicable to service tax under Section 83 of Finance Act make it clear that any person claiming refund may make an application for refund of duty and interest before expiry of one year from relevant date - In case where duty becomes refundable as a consequence of an order or direction of appellate Tribunal, relevant date would be the date of order or direction - Limitation of one year for filing refund claim under Section 11B of the Central Excise Act, 1944 would commence from order passed by Commissioner (Appeals) dated 17-10- 2012, as it is this date on which Appellant became entitled to refund of amount -Lower authorities have erred in calculating limitation of one year for filing refund claim from date of final assessment, i.e. 13-7-2011 - Second reason mentioned by authorities for rejecting refund claim is on account of unjust enrichment - There can be no question of passing tax burden to customers, as tax was paid on a higher value and balance amount of tax was claimed by Appellant in refund application - Order passed by Commissioner (Appeals) rejecting refund claim cannot be sustained and is set aside - Appellant is entitled to refund of amount with interest-appeal is allowed.*
On the basis of the above the time of one year would start from the date of order of the original adjudicating authority i.e.11.10.2021.The appellant further submitted that

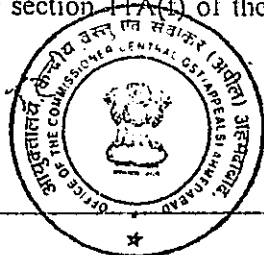


their case fall in the condition Sr. no. 18[(ec) of the section 11B of the Central Excise Act,1944 which reads as under:

(B) *Relevant date means,-*

"in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction"

- Further the appellant submitted that as their case falls under the category of above clause (ec) of the section 11B of the Central Excise Act,1944,the relevant date for claiming the refund would be the date of the order of adjudicating authority i.e.11.10.2021 and the refund application is filed well within time. Therefore, the refund cannot be rejected on the ground of time bar in their case.
 - The appellant stated that the time limit is not applicable in the present Case as the refund is being sought of the amount which was paid in excess of the actual liability. The excess paid amount cannot be construed as "service tax" and for the same reason the time limit prescribed under Section 11B of the Central Excise Act, 1944 would not be applicable in the case and the appellant is entitled to refund. Further they submitted that as per Section 142(3) of CGST Act, 2017, the refund which is arising under Section 11B of the Central Excise Act, 1944 then only unjust enrichment is required to be seen and nothing else. The tax was paid from the pocket of the appellant and it is not recovered from the customers, therefore unjust enrichment is not applicable in this case. CA certificate in this regard is also furnished. The appellant requested that their appeal may be allowed in light of the above.
4. Personal hearing in the matter was held on dated 12.12.2023. Shri Nirav Parikh,C.A., appeared on behalf of the appellant. He reiterated the written submission and requested to allow their appeal.
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, denying the refund of excess paid service tax on limitation ground, in the facts and circumstance of the case, is legal and proper or otherwise.
6. I find that in the OIO in question, the adjudicating authority held that the appellant was required to file their refund claim within a year period from the date of payment made in excess as per section 11A(D) of the Central Excise Act,1944 made applicable to service tax



matters vide section 83 of the Finance Act,1994. It is seen that during the course of departmental audit of the appellant for the period from 2014-15 to 2017-18(upto June-17), short payment of service tax amount Rs. 37,43,665/-was noticed by the auditors. As the appellant didn't agree with the observation they were issued SCN and the appellant filed their submission & reconciliation in response of the same in which they claimed that they have made excess payment of service tax of Rs. 38,17,807. Considering the submission made by the noticee, the adjudicating authority dropped the proceeding started vide above SCN and the department accepted the said OIO also. From the above it is evident that the subject of the above SCN and OIO was short payment of service tax not the excess payment made by the appellant. The option of the refund filing was always available to the appellant and has no relation with the OIO vide which the proceeding were dropped.


The appellant could have filed the refund application at anytime within one year of the date of excess payment but the appellant failed to assess its liability correctly and paid excess amount. At the time of departmental enquiry the appellant knew about the excess payment and only basis of the same it can't be held that they became eligible only after the OIO dated 11.10.2021. Therefore, I am in the agreement with the view of the adjudicating authority that the appellant failed to file their refund application within the prescribed time limit.

7. In view of above, I up hold that the impugned order passed by the adjudicating authority denying the refund of amount Rs.38,17,807/- filed by the appellant on the ground of limitation of time.

8. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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

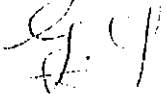
Attested


(Manish Kumar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

BPC Projects And Infrastructure Pvt. Ltd,



(जगनचंद जैन)

आयुक्त (अपील)

Date : 22/11/23



Appellant

14A-A, Swastik Society, Punjabi Hall Lane,
Ahmedabad - 380009

The Deputy Commissioner,
CGST, Division-VII,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- 5) Guard File
- 6) PA file

