

291
12/04/22

URGENT

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(Tech)



MOST URGENT
RTI MATTER

GOVERNMENT OF INDIA
OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST & CENTRAL TAX:
KOLKATA-NORTH COMMISSIONERATE, CGST BHAWAN:
1ST FLOOR:180, SHANTIPALLY, RAJDANGA MAIN ROAD, E.M BYPASS KOLKATA-700107
C. No. V(30)35/RTI/HQ/CGST & CX/Kol-North/2022 Dated: -

To
Shri Vasudevan,

Sir/Madam,

Sub: Information under the RTI Act, 2005 — Regarding.

Please refer to your RTI applications having Registration No. GSTKT/R/E/22/00043 dated-18.03.2022, GSTKT/R/E/22/00044 dated-18.03.2022 & GSTKT/R/E/22/00046 dated-22.03.2022 which were received in this Commissionerate on 23.03.2022. Subsequently the said RTI applications were registered at this office vide Registration No.34-36/RTI/Kol-North/2022 dated- 24.03.2022.

The desired informations as received from the AC(T&R), CGST&CX Kolkata North Commissionerate is enclosed herewith.

If you are aggrieved or dissatisfied with the above information, you may prefer an appeal within 30 (thirty) days of receipt of the information before the 1st Appellate Authority namely **Ms Mohsina Tabassum**, Joint Commissioner & FAA, CGST & CX, Kolkata-North Commissionerate, O/o The Principal Commissioner of CGST & CX, 2nd Floor, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

Encl- 03(Three) Sheets.

Yours faithfully,

(Indu Bikash Das)
CPIO & Assistant Commissioner
HQ, RTI Cell
CGST: Kol-North Comm'te.

Dated : 11 APR 2022

C. No. As above/ 795
Copy forwarded for information to: -

1. The Assistant Commissioner (Systems), Computer Cell, CGST & CX, Kolkata North Commissionerate with a request to upload the RTI applications dated-18.03.2022, 18.03.2022 & 22.03.2022 Shri Vasudevan,
(enclosed Twenty one sheets).
2. The CPIO & Assistant Commissioner, O/o the Pr. Chief Commissioner CGST & CX, Kolkata Zone.

(Indu Bikash Das)
CPIO & Assistant Commissioner
HQ, RTI Cell
CGST: Kol-North Comm'te.

606A
31/03/22

Sup (RTI) 31/3/22



GOVERNMENT OF INDIA

OFFICE OF THE PR. COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX & CX
KOLKATA NORTH COMMISSIONERATE, HDQR. TRIBUNAL & REVIEW UNIT
CGST BHAWAN, 180, SHANTIPALLY, RAJDANGA MAIN ROAD, KOLKATA-700107

C.No: V(30)64/T&R/GST/Kol(N)/RTI/2017-18 | 28 794

date-31.03.2022

31 MAR 2022

To,
The Assistant Commissioner
RTI Section
CGST&CX, Kolkata North Comm'te

Sub: RTI application dated 18.03.2022, 18.03.2022 & 22.03.2022 filed by Shri Vasudevan ,
being transferred
under Sec. 5(4) of the RTI Act, 2005-Reg.

Please refer to the RTI application under C.No.(30)35/RTI/HQ/CGST&CX/Kol North/2022/28395
dated 24.03.2022 which was received at this section on 28.03.2022.

The details of information as sought by the applicant are as follows:

Name of Case /Order No & Dated	(i)Date of Acceptance of the above Order:	(ii)If, not date of preferring appeal against the said order	(iii)If accepted, kindly provided the order passed by the Committee of Commissioners: Copy enclosed
Hon'ble CESTAT Final Order No. 75903/2021 dt 29.12.2021 in case of M/s Ambuja Realty Development Ltd.	The issue is under process		
Hon'ble CESTAT Final Order No. 75331/2020 dated 28.02.2020 in case of M/s Ashirwad Foundries.	28.08.2020	NA	Acceptance letter enclosed
Hon'ble CESTAT Final Order No 75799/2021 dated 27.08.2021 in case of M/s Asian Hotels (East) Ltd.	07.01.2022	NA	Acceptance letter enclosed

This is for your kind information please.

Encl: As above (2 sheets)

(P. Muralikrishna)
Assistant Commissioner HQ T&R
CGST&CX, Kolkata North Comm'te



GOVERNMENT OF INDIA
OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST & CX,
KOLKATA NORTH COMMISSIONERATE, GST BHAWAN (2nd FLOOR),
180, SHANTIPALLY, RAJDANGA MAIN ROAD, KOLKATA-700107.

C.No. V(30)167/Review/Ashirwad/T&R/ST-I/Kol/2016/17115

Date : 14/09/2020

14 SEP 2020

To
The Deputy/Assistant Commissioner, CGST & CX,
Hdqr. Adjudication,
Kolkata North Commissionerate.

Sir.

Sub: Acceptance of **Final Order 75331/2020, Dated 28/02/2020** Appeal No.
ST/75639/2019, passed by the CESTAT, EZB, Kolkata –case of **M/s. Ashirwad
Foundries Pvt. Ltd. – Reg.**

Kindly refer to the subject mentioned above.

In this connection, it is to inform that the Acceptance of **Final Order 75331/2020, Dated 28/02/2020** Appeal No. ST/75639/2019, passed by the CESTAT, EZB, Kolkata, arising out of Order-in-Appeal bearing No. 577/S.Tax-I/Kol/18, Dt. 24/10/2018 in respect of OIO No. 110/ADC/ST-I/Kol/2015-16, Dated 29/03/2016, is duly accepted by the Ld. Pr. Commissioner of CGST & CX, Kolkata North Commissionerate on 28.08.2020.

This is for your kind information and necessary action please.

Encl: Three (3) sheets

Yours faithfully,

Subramaniam Mondal

Superintendent HQ (T&R)
CGST & CX, Kolkata North Comm'te.

14.09.2020

C.No. as above

17116-17 14 SEP 2020

Date: 14/09/2020

1. The Dy./Asst. Commissioner CGST & CX, BBD Bag-II Division, Kolkata North Commissionerate for kind information and necessary action please.
2. The Dy./Asst. Commissioner CGST & CX, Hqrs. TAR, Kolkata North Commissionerate for kind information and necessary action please.

Encl: Three (3) sheets

Subramaniam Mondal
Superintendent HQ (T&R)
CGST & CX, Kolkata North Comm'te.

14.09.2020

01



GOVERNMENT OF INDIA

OFFICE OF THE PR. COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX & CX

KOLKATA NORTH COMMISSIONERATE, HDQR TRIBUNAL & REVIEW UNIT

CGST BHAWAN, 180, SHANTIPALLY, RAJDANGA MAIN ROAD, KOLKATA 700107

C.No. GEXCOM/RTV/ST/TRIB/1070/2021-I and R

Date: 07.02.2022

74920

07 FEB 2022

To,

The Dy. Assistant Commissioner

Bidhannagar Division

CGST & CX

Kolkata North Commissionerate

Sir,

Sub: CESTAT's Final Order no.75799/2021 dtd. 27.08.2021-reg

This is to bring to your kind notice that the CESTAT Final order mentioned above in the subject (enclosed below) passed by the CESTAT EZB, Kolkata in respect of M/s Asian Hotels East Ltd., Hyatt Regency Kolkata, Plot JA-1, Sector-III, Salt Lake, Kolkata, West Bengal- 700098 arising out of OIO no. 488/ST-II/Kol/2018 dated 26.07.2018 has been duly accepted by the Hon'ble Pr. Commissioner, CGST&CX Kolkata North Commissionerate on dated- 18.12.2021.

This is for your kind information and further compliance at your end please (if any).

Yours faithfully,

Encl: As above (07 sheets)

0/4

07/02/2022
Superintendent (Hdqs. T&R)

CGST & CX, Kolkata North

Commissionerate

391 A

23/03/22

Sup (RTI)
23/03/22



भारतसरकार

GOVERNMENT OF INDIA

प्रधान मुख्य आयुक्त का कार्यालय

OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER

केन्द्रीय वस्तु एवं सेवा कर, कोलकाता क्षेत्र

CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE, KOLKATA ZONE

केन्द्रीय वस्तु एवं सेवा कर भवन, दुसरा तल, 180, शांतिपल्ली, आर. बी. कनेक्टर, कोलकाता - 700 107

GST Bhawan (2nd Floor), 180 Shanti Pally, R. B. Connector, Kolkata - 700 107

Phone No. 033-2441-6797/6842; Fax No. 033- 2441-6834/6798



F. No. GCCO/RTI/APP/282/2022-O/o. Pr CC-CGST-ZONE-Kolkata/ 3693 Date: 23/03/2022.

To,
The CPIO,
CGST & CX Kolkata North Commissionerate,
Kolkata

Sir,

Sub: RTI Applications filed by Shri vasudevan under Right to Information Act, 2005 - reg.

Please find enclosed herewith 03(three) RTI applications having registration No. GSTKT/R/E/22/00043 dated 18.03.2022, GSTKT/R/E/22/00044 dated 18.03.2022 & GSTKT/R/E/22/00046 dated 22.03.2022, (application filed along with PDF attached) filed online by Shri vasudevan,

Gujarat. It appears that the informations sought by the applicant pertains to your Commissionerate. Hence, the above mentioned RTI Applications are transferred to your office under section 6(3) of the RTI Act, 2005.

You are requested to provide the information directly to the applicant within the stipulated time under RTI Act, 2005 under intimation to this office.

Encl: As Above.

Yours faithfully,

(B. Krishna) 23/3/22

Assitant Commissioner (CPIO)
Pr. CCO, Kolkata Zone

F. No. GCCO/RTI/APP/282/2022-O/o. Pr CC-CGST-ZONE-Kolkata/

Date: /03/2022.

Copy for information to:-

Shri vasudevan,

Sir, in case of filing RTI first appeal, you are requested to apply it directly before the First Appellate Authority of the Commissionerate where your RTI application is being transferred u/s. 6(3) of the RTI Act, 2005 as this office cannot transfer RTI First Appeal application to another First Appellate Authority [Reference: The FAA, CIC in the matter of Sri Freddy Pareira file No. CIC/AA/A/2013/22-Decision dated 23/02/2013].

(B. Krishna)

Assitant Commissioner (CPIO)
Pr. CCO, Kolkata Zone

34-36 RTI/Kol North/2022 dt. 24/03/2022

RTI REQUEST DETAILS

Registration No. : GSTKT/R/E/22/00043

Date of Receipt : 18/03/2022

Type of Receipt : Online Receipt

Language of Request : English

Name : vasudevan

Gender : Male

Address :

State : Gujarat

Country : India

Phone No. : +

Mobile No. : +91-

Email :

Status(Rural/Urban) : Urban

Education Status : Above Graduate

Is Requester Below Poverty Line ? : No

Citizenship Status : Indian

Amount Paid : 10)

Mode of Payment : Payment Gateway

Does it concern the life or Liberty of a Person ? : No(Normal)

Request Pertains to :

Sir

Kindly provide the information requested under the RTI application attached

Information Sought : Thanking you

yours faithfully

K.S. Vasudevan

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The Commissioner,
Central Excise & CGST,
Kolkatta.

Dated: 18.03.2022

Sir,

Sub: Information under RTI Act 2005 -reg -

Please refer to the order of the Hon'ble CESTAT in Final Order No.75903/2021 dt. 29.12.2021 [in Service Tax Appeal No.78154/2018] in the matter of Ambuja Realty Development Ltd vs Commissioner of CGST & CX, Kolkata [Ref: 2022-TIOL-35-CESTAT-KOL]

Sir, kindly provide the following information.

1. Date of acceptance of the above order.
2. If not, date of preferring appeal against the said order.
3. If accepted, kindly provide the order passed by the Committee of Commissioners.

Yours faithfully,

Vasudevan Konda



2022-TIOL-35-CESTAT-KOL

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, KOLKATA
COURT NO. II

Service Tax Appeal No. 78154 of 2018

[Arising out of Order-in-Appeal No. 298/S.Tax-I/KOL/2018, Dated: 18.04.2018
Passed by Commissioner (Appeal I) of CGST & Excise, Kolkata]

Date of Hearing: 08.09.20
Date of Decision: 29.12.20

M/s AMBUJA REALTY DEVELOPMENT LTD
ECOSPACE BUSINESS PARK, BLOCK 4B, 6TH FLOOR,
PREMISES NO. IIF/11, ACTION AREA II,
NEW TOWN, KOLKATA-700156

Vs

COMMISSIONER OF CGST AND EXCISE,
KOLKATA NORTH, 180, SHANTIPALLY, RAJDANGA MAIN ROAD,
KOLKATA-700107

Appellant Rep by: Shri Pulak Saha, CA

Respondent Rep by: Shri J Chattopadhyay, AR

CORAM: P K Choudhary, Member (J)

ST

- Appellant is engaged in business of construction of real estate properties for purpose of selling out same or for letting out on rent - They are availing the benefit of Cenvat credit under provisions of Cenvat Credit Rules, 2004 - SCN was issued by invoking extended period of limitation to dispute the availment of input service credit on the ground that the same has been used for construction of properties which do not attract output service tax - Appellant has informed the entire facts relating to availment of credit to Department vide their letters - Department was duly informed with regard to disclosure at the time of adjudication as well as in first appeal, which has not been dealt by both the authorities below - Authorities below have not disputed the fact of disclosures made by appellant - The Commissioner (Appeals) in impugned appeal has merely reiterated the findings of original authority without specifically dealing with submissions made by appellant on limitation - In positive evidence has been adduced in SCN to show any wilful suppression of fact on the part of appellant with an intent to evade payment of tax - Entire period in dispute is covered under extended period of limitation, which is not available to Department in the absence of any element of fraud or wilful suppression and therefore, impugned demand cannot be sustained and hence, same is set aside in entirety: CEST

Appeal allowed

FINAL ORDER NO. 75903/2021

Signature: P K Choudhary:

The present appeal has been filed by the Appellant, M/s. Ambuja Realty Development Limited, against Order-in-Appeal dated 18.04.2018 issued by the Ld. Commissioner (Appeals), Kolkata, whereby the original adjudication order dated 22.01.2016 demanding service tax of Rs.

alongwith interest and penalty have been upheld. The period in dispute in the present appeal is 2009-10 to 2012-

Appellant is engaged in the business of construction of real estate properties for the purpose of selling out the same or for letting c
nt for which it is duly registered with the Service Tax Department. The Appellant is availing the benefit of Cenvat credit under tl
visions of the CENVAT Credit Rules, 2004 (Credit Rules). Show Cause Notice dated 16.04.2015 (SCN) was issued by invoking extend
period of limitation to dispute the availment of input service credit on the ground that the same has been used for construction of properti
which do not attract output service tax.

2.2 In the course of adjudication, the Appellant disputed the demand on the ground of limitation as well on merits. It was submitted that th
have already reversed the entire credit availed on inputs and that credit on input services have been proportionately reversed as soon tl
constructed portion of the property is sold out. They also submitted that credit has effectively been utilised for payment of output service tax
Letting out of the constructed properties. They have also submitted detailed calculation to show the credit amount availed by them, cre
reversed at the time of sale of properties and the credit amount actually utilized for payment of output service tax liability arising on provision
Renting Services.

2.3 It was also stated that the entire facts relating to availment of credit in the above manner has been duly informed to the department vi
their letters dated 24.10.2008 and 24.04.2009, apart from the disclosures made in the periodical Service Tax Return

2.4 The demand proposed in the SCN was confirmed vide the adjudication order dated 22.01.2016. The appeal filed by the assessee also c
not find favour of the First Appellate Authority, against which the assessee is in appeal before the Tribunal.

3. Heard Sri Pulak Saha, Learned Chartered Accountant for the Appellant and Sri J. Chattopadhyay, Ld. Authorised Representative for th
Department through video conferencing and perused the appeal records in detail.

4. I find that the instant issue can be decided on limitation itself. I find that the appellant has informed the entire facts relating to availment
credit to the Department vide their letters dated 24.10.2008 and 24.04.2009, which are duly appearing on Page no. 127 and 128 of the Appe
Paper Book. The Appellant has duly informed to the Department with regard to the above disclosure at the time of adjudication as well as
the first appeal, which has not been dealt by both the authorities below. In the said letters, they have categorically stated that they are availi
Cenvat credit of input and input services and that the same would be utilised for payment of output liability arising at the time of Renting
properties and in case the properties are sold out, they would reverse the portion of credit attributable to such sale.

5. I find that the authorities below have not disputed the fact of disclosures made by the Appellant vide the above letters. The L
Commissioner (Appeals) in the impugned appeal order has merely reiterated the findings of the original authority without specifically deali
with the submissions made by the Appellant on limitation. I further find that no positive evidence has been adduced in the SCN date
16.04.2015 to show any wilful suppression of fact on the part of the Appellant with an intent to evade payment of tax. I also find that the ent
period in dispute in the instant case is covered under the extended period of limitation, which in my view is not available to the Department
the absence of any element of fraud or wilful suppression and therefore, the impugned demand cannot be sustained and hence, the same
set aside in entirety.

6. Since I have decided the issue on limitation, I refrain from making any observation in respect of merits of the case. The appeal is allow
with consequential relief as per law, if any.

(Pronounced in the open court on 29.12.2021)

(DISCLAIMER

*: Though all efforts have been made to reproduce the order correctly but the access and circulation is subject to the condition that
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RTI REQUEST DETAILS

Registration No. : GSTKT/R/E/22/00044 Date of Receipt : 18/03/2022

Type of Receipt : Online Receipt Language of Request : English

Name : vasudevan Gender : Male

Address :

State : Country : India

Phone No. : Mobile No. : +91-

Email :

Status(Rural/Urban) : Urban Education Status : Above Graduate

Is Requester Below Poverty Line ? : No Citizenship Status : Indian

Amount Paid : 10) Mode of Payment : Payment Gateway

Does it concern the life or Liberty of a Person ? : No(Normal) Request Pertains to :

Sir

Information Sought : Kindly provide the information sought under RTI application attached
thanking you

yours faithfully
k s vasudevan

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RTI application copy

From: vasudevan konda (ksvrti1959@gmail.com)

To: cckolkatazone@yahoo.co.in

Date: Tuesday, 22 March, 2022, 01:51 pm IST

The Commissioner,
CGST Kolkata North,
Kolkatta.

Dated: 18.03.2022

Sir,

Sub: Information under RTI Act 2005 -reg -

Please refer to the order of the Hon'ble CESTAT in Final Order No.75331/2020 dt. 28.02.2020 [in Service Tax Appeal No.75639/2019] in the matter of Ashirwad Foundaries Pvt. Ltd vs Commissioner of CGST & CX, Kolkata-North [Ref: **2021-TIOL-825-CESTAT-KOL**]

Sir, kindly provide the following information.

1. Date of acceptance of the above order.
2. If not, date of preferring appeal against the said order.
3. If accepted, kindly provide the order passed by the Committee of Commissioners.

Yours faithfully,

Vasudevan Konda

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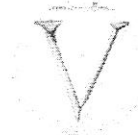
22

RTI application copy

Yahoo/Inbox



vasudevan konda <ksvrti1959@g To: cckolkatazone@yahoo.co.in Tue, 22 Mar at 1:51 pm



Vasudevan Konda ksvrti1959@gmail.com + Add to contacts

The Commissioner, CGST Kolkata North, Kolkatta. Dated: 18.03.2022

Sir,

Sub: Information under RTI Act 2005 -reg -

Please refer to the order of the Hon'ble CESTAT in Final Order No.75331/2020 dt. 28.02.2020 [in Service Tax Appeal No.75639/2019] in the matter of Ashirwad Foundaries Pvt. Ltd vs Commissioner of CGST & CX, Kolkata-North [Ref: 2021-TIOL-825-CESTAT-KOL]

Sir, kindly provide the following information.

1. Date of acceptance of the above order.
2. If not, date of preferring appeal against the said order.
3. If accepted, kindly provide the order passed by the Committee of Commissioners.

Yours faithfully,

Vasudevan Konda



Reply, Reply all or Forward

Thank you.

Got it.

Cool.



- Inbox
- Unread
- Starred
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- Sent
- Archive
- Spam
- Deleted Items
- Less
- View
- Hide
- Folders
- Hide
- New folder
- 12.05.21
- Annual Report
- ANS & asko
- Recruit Com
- Char Propon
- CUSTOMS REV...
- E-way bill & Fa...
- GST
- GST COMM
- GST COMMISS...
- Number CGST
- Individual Offi...
- Legal
- MIGRATION
- Monthly Report...
- MTR
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- Rectification-S...
- RFD RTI
- Service Tax Cell
- S...
- Mrs CCO
- Pr CCO

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

S. Tax Appeal No. 75639 of 2019

Arising out of Order-in-Appeal No.577/S. Tax-I/Kol/18 dated 24-10-2018 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.

M/s. Ashirwad Foundaries Pvt. Ltd.

46, 47 & 48 'E' Road,
Belgachia, Howrah-711105

Respondent (s)

VERSUS

**Commissioner of CGST & Central Excise, Kolkata North
Commissionerate**

180, Rajdanga Main Road,
Shantipally, Kolkata-700107

Appellant (s)

APPEARANCE :

Mr. Jitin Singhal, Advocate for the Appellant
Mr. H. S. Abedin, A. R. for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75331/2020

Date of Hearing : 07 February 2020
Date of Decision : 28 February 2020

PER P. K. CHOUDHARY:

The appellant has filed the present appeal against the impugned dated 24.10.2018 passed by the learned Commissioner (Appeals).

2. The appellant is manufacturer of excisable goods and duly registered with the central excise department. During the course of audit of the appellant, it was noticed that the appellant has paid an amount towards transportation of goods, therefore liable to pay service tax under the category of "Goods Transport Agency" (GTA) being a service recipient under RCM. A show cause notice dated 18.09.13 invoking extended period of limitation issued to the appellant, demanding service tax of Rs. 8,96,545/- along with interest and penalty. The appellant contested the allegations levelled in the show cause notice, however, the learned

S. Tax Appeal No. 75639 of 2019

(A) vide the impugned order. Hence, the present appeal before the Tribunal.

3. The learned Counsel appearing for the appellant has vehemently argued that the impugned order is liable to be set aside on the following grounds:

3.1 If the appellant is liable to pay service tax on GTA, then the appellant would be entitled to get CENVAT credit of the same, hence, making the entire situation revenue neutral. The appellant would like to rely upon the judgment of this Tribunal in the case of Star Alloys & Chemicals Pvt. Ltd., 2019 (21) GSTL 174 (Tri-Del.).

3.2 It is well settled law that, extended period of limitation cannot be invoked in the case of revenue neutral situation. It is further submitted that no mala fide can be attributed to the appellant, when the entire tax payable is available as credit and placed reliance on following judgment:-

- (i) Reliance Industries Vs CCE, Mumbai, 2016 (44) STR 82 (Tri-Mum).

3.3 It is well settled law that, in order to invoke extended period, the department has to prove mala-fide on the part of the appellant by adducing cogent evidence. It is further submitted that the issue being of interpretation as well. The appellant would like to rely upon the following judgments:-

- i. Deccan Printers Vs CCE&ST, Mumbai, 2019 (21) GSTL 509 (Tri-Chennai)
- ii. Uniworth Textiles Ltd. Vs CCE, Raipur, 2013 (288) ELT 161 (SC)

3.4 He argued that it is well settled law that legal issues can be raised for the first time before this Tribunal also. It is further submitted that the limitation being a legal plea and a jurisdictional issue, which can be raised at any time. The appellant would like to rely upon the following judgments:-

- i. Shree Bhagwati Steel Rolling Mills Vs CCE, 2015 (326) ELT 209 (SC)
- ii. CCE Vs. Monsanto Manufacturer Pvt. Ltd., 2014 (35) STR 177 (All.)
- iii. CCE Vs Hiner, 1989 (41) ELT 322 (Tri) by 3 Judges Bench

S. Tax Appeal No. 75639 of 2019

- iv. Kusum Ingots & Alloys Vs CCE, Indore, 2001 (137) ELT 550 (Tri-Del.)
- v. Eagle Flask Industries Ltd Vs CCE, Chennai-II, 2007 (220) ELT 173 (Tri-Chennai)
- vi. CCE Vs. Remington Road of India Ltd. 1991 (56) ELT 435 (Tri)

3.5 He argued that, even for the period, which falls within limitation period, no tax is payable, inasmuch the entire situation is revenue neutral. It has been held by the Hon'ble Supreme Court in the following cases, that if there is no revenue implication involved, then no tax is required to be paid. It has been further held that, if for the same assessee, tax paid is modavable/cenvatable, then no tax is required to be paid.

- i. CCE, Pune Vs Coca-Cola India Pvt. Ltd., 2007 (213) ELT 490 (SC)
- ii. CCE, Vadodara Vs Narmada Chematur Pharmaceuticals Ltd., 2005 (179) ELT 276 (SC).

3.6 He further submitted that, if the tax is not sustainable, then the interest and penalty are liable to be set aside on this ground alone.

4. The learned AR appearing for the revenue, reiterated the findings of the impugned order and submitted that the impugned order passed by the learned Commissioner (A) is a well-reasoned order and require no interference.

5. I have heard both the parties at length and perused the material on record.

6. I find that legal plea can be raised at any time and the limitation being a legal plea and jurisdictional issue can be raised before this Tribunal also for the first time as held by the Hon'ble Supreme Court in the case of Shree Bhagwati Steel Rolling Mills Vs CCE, 2015 (326) ELT 209 (SC).

6.1 I observe that the appellant is entitled to get the benefit of cenvat credit on the GTA services, therefore, making the situation revenue neutral. It is further observed that this Tribunal in the case of Star Alloys & Chemicals Pvt. Ltd., 2019 (21) GSTL 174 (Tri-Del.), wherein in identical situation has held that in the case of GTA service, cenvat credit is available, therefore extended period cannot be invoked. I further find that the Tribunal in the case of Reliance Industries Vs CCE, Mumbai, 2016 (44) STB 82 (Tri-Mum) has held that in case of revenue neutral situation

S. Tax Appeal No. 75639 of 2019

of mala fide on the part of the appellant, hence extended period of limitation cannot be invoked as held by Supreme Court in the case of Uniworth Textiles Ltd. Vs CCE, Raipur, 2013 (288) ELT 161 (SC). I further find that the present show cause notice is barred by limitation.

6.2 As far as the issue covered under normal period of limitation is concerned, I find that the Hon'ble Supreme Court in the case of CCE, Pune Vs Coca-Cola India Pvt. Ltd., 2007 (213) ELT 490 (SC) and CCE, Vadodara Vs Narmada Chematur Pharmaceuticals Ltd., 2005 (179) ELT 276 (SC), has held that if there is no revenue implication involved, then no tax is required to be paid. It has been further held that, if for the same assessee, tax paid is modavable/cenvatable, then no tax is required to be paid. Therefore, I find that the appellant is not liable to pay tax for normal period of limitation as well.

6.3 I further find that the appellant has deposited an amount of Rs. 6,50,002/- during the course of investigation, and on specific query, it has been replied by the appellant that they have taken CENVAT Credit on the same. Therefore, that amount needs to be confirmed, as they have already taken the credit. Therefore, I find that the balance service tax demand along with interest and penalty are not sustainable in the eyes of law and is hereby set aside

7. In view of the above discussion, I set aside the impugned order by allowing the appeal of the appellant on merits and as well as on limitation, with consequential relief to the appellant except for the confirmation of amount of Rs.6,50,002/- as discussed above.

(Pronounced in open Court on 28 February 2020)

Sd/-

(P. K. Choudhary)

Member (Judicial)

RTI REQUEST DETAILS

Registration No. : GSTKT/R/E/22/00046 **Date of Receipt :** 22/03/2022

Type of Receipt : Online Receipt **Language of Request :** English

Name : vasudevan **Gender :** Male

Address :

State : Details not provided **Country :** India

Phone No. : **Mobile No. :** +91-

Email :

Status(Rural/Urban) : Urban **Education Status :** Above Graduate

Is Requester Below Poverty Line ? : No **Citizenship Status :** Indian

Amount Paid : 10) **Mode of Payment :** Payment Gateway

Does it concern the life or Liberty of a Person ? : No(Normal) **Request Pertains to :**

Sir

find enclosed my RTI application attached

Information Sought : Kindly provide the information requested

thanking you

k.s. vasudevan

Print

Save

Close

reg RTI KOT NADAL 2022 dt. 24/03/22.

The Commissioner,
CGST Kolkata North,
Kolkatta.

Dated: 22.03.2022

Sir,

Sub: Information under RTI Act 2005 -reg –

Please refer to the order of the Hon'ble CESTAT in Final Order No.75799/2021 dt. 27.08.2021 [in Service Tax Appeal No.75077/2019] in the matter of Commissioner of CGST & CX, Kolkata-North vs Asian Hotel (East) Ltd [Ref: 2021-TIOL-825-CESTAT-KOL]

Sir, kindly provide the following information.

1. Date of acceptance of the above order.
2. If not, date of preferring appeal against the said order.
3. If accepted, kindly provide the order passed by the Committee of Commissioners.

Yours faithfully,

Vasudevan Konda

2021-TIOL-825-CESTAT-KOL

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH, KOLKATA**

**Service Tax Appeal No. 75077 of 2019
& Cross Objection No. 75726 of 2019**

[Arising out of Order-in-Appeal No. 488/ST-II/2018, Dated: 26.07.2018
Passed by Commissioner (Appeals) of CGST & Excise, Kolkata]

**Date of Hearing: 27.08.2021
Date of Decision: 27.08.2021**

**COMMISSIONER OF CGST AND EXCISE,
KOLKATA NORTH, 180, SHANTIPALLY, RAJDANGA MAIN ROAD,
KOLKATA-700107**

Vs

M/s ASIAN HOTEL EAST LTD
HYATT REGENCY KOLKATA, PLOT-JA-I, SECTOR III
SALT LAKE CITY, KOLKATA-700098

Appellant Rep by: Shri J Chattopadhyay, AR
Respondent Rep by: Shri Ankit Kanodia, Adv.

CORAM: P K Choudhary, Member (J)
Raju, Member, (T)

ST - The assessee was issued an SCN proposing certain tax demand - On adjudication, the demand was confirmed - On appeal, the Commissioner (Appeals) allowed partial relief, where the demand raised under Rule 6 of Cenvat Credit Rules, 2004 was dropped, with the remaining tax demand being sustained - The interest component and penalty was upheld too, with an option to the assessee to pay reduced penalty as per Section 78 of the Finance Act, 1994 - Hence the Revenue's appeal.

Held - Regarding the Revenue's appeal on the issue of reversal of Rule 6 of Cenvat Credit Rules, 2004 on the abated value of Restaurant Services by taking the same as exempted services and applying 6% on the value of exempted services so determined to raise the demand of recovery of common Cenvat credit, it is seen that the issue is no more *res-integra* in view of CBIC's Circular No. **213/3/2019-Service Tax**, dated July 05, 2019 wherein it has been clarified by the board that there is no requirement of reversal under Rule 6 of the CCR, 2004 for provision of restaurant services. Thus, the Revenue's appeal to that extent is liable to be dismissed and we order to do so - Regarding imposition of penalty on the service tax paid by the assessee in course of audit before issuance of SCN, the lower authorities erred in sustaining penalty, considering settled principle that when tax is paid along with interest before issuance of SCN (other than cases of suppression or willful mis-statement), the Department cannot issue SCN in terms of section 73(3) of the Finance Act - Hence the Revenue's appeal is dismissed and the order of the Commissioner (Appeals) is modified to extent of deleting the penalty imposed: CESTAT

Revenue's appeal dismissed

Case laws cited:

POPULAR CATERERS Vs COMMISSIONER OF CGST, MUMBAI WEST - 2019-TIOL-1417-CESTAT-MUM... Para 3...Referred

FAIRFEST MEDIA LTD vs. CGST AND EXCISE KOLKATA SOUTH, - 2020-TIOL-1113-CESTAT-KOL... Para 3....Followed

DLF PROJECT LIMITED Versus C.C.E. & S.T., GURGAON-I - 2020-TIOL-870-CESTAT-CHD ... Para 3...Referred

ARCGATE Versus COMMISSIONER OF C. EX., JAIPUR-II - 2017-TIOL-2025-CESTAT-DEL ... Para 3 ...Referred

Santhi Casting Works v. CCE - 2009-TIOL-161-CESTAT-MAD ... Para 3 ...Referred

Commissioner of CGST, Howrah Vs. M/s. Kolkata West International City Pvt. Ltd - 2019-TIOL-2715-CESTAT-KOL ... Para 3 ...Referred

Bhoruka Aluminium Limited versus Commissioner of C. Ex. &ST. ,Mysore - 2016-TIOL-3060-CESTAT-BANG ... Para 3...Referred

Sen brothers Versus Commissioner of Central Excise, Bolpur - 2013-TIOL-1783-CESTAT-KOL ... Para 3 ...Referred

FINAL ORDER NO. 75799/2021

Per: P K Choudhary:

The demand was confirmed by the lower authority as proposed in the SCN. The Respondent filed an appeal before the first appellate authority who allowed the appeal of the Respondent to the extent of dropping the demand of Rs.65,82,774/- under Rule 6 of the CCR, 2004 and confirmed the demand of Rs.10,61,419/- along with interest and penalty with an option to pay reduced penalty @ 25% as laid down in proviso to Section 78 of the Finance Act, 1994.

2. The Revenue is in appeal against the above order of the first appellate authority to the extent of dropping of demand under Rule 6 of the CCR, 2004. The Revenue is also in appeal against the option of reduced penalty of 25% given by the Ld. Commissioner (Appeals). The Respondent has filed cross objection only for the penalty confirmed by the first appellate authority though Service Tax and interest have already been paid by the Respondent during service tax audit and they are not disputing it any more.

3. The Ld. Advocate appearing on behalf of the Respondent states that the departmental appeal to the extent of dropping of demand of Rs.65,82,774/- has become infructuous as the CBIC (vide CIRCULAR NO. **213/3/2019-Service Tax**, dated: July 05, 2019) has clarified that there is no requirement of reversal in case of Restaurant Services as below:

"Subject: Provisions in the Cenvat Credit Rules 2004 regarding reversal of credit-

I am directed to draw your attention to the legal provisions regarding reversal of Cenvat credit in the case of services and to analyse some issues which have arisen in this context.

2.0 Issue: Is reversal under rule 6(3) of the Cenvat Credit Rules 2004 additionally required for all the services specified in notification 26/2012-Service Tax dated 20- 6- 2012."

He further relies on the judgment of the *M/s POPULAR CATERERS Vs COMMISSIONER OF CGST, MUMBAI WEST - 2019-TIOL-1417-CESTAT-MUM* whereby in similar circumstances, the demand under Rule 6 of CCR, 2004 has been quashed.

Further as regards imposition of penalty on amounts already paid by the Respondent during the spot memo stage before issuance of SCN, the Ld. Advocate states that it is a settled principle that in case of payment before issuance of SCN, the SCN should not be issued in terms of Section 73 of the Finance Act, 1994. He relied upon the following decisions in support of his submissions :

(a) M/s FAIRFEST MEDIA LTD vs. CGST AND EXCISE KOLKATA SOUTH, - 2020-TIOL-1113-CESTAT-KOL

(b) DLF PROJECT LIMITED Versus C.C.E. & S.T., GURGAON-I 2020 (38) G.S.T.L. 56
(Tri. - Chan.) = **2020-TIOL-870-CESTAT-CHD**

(c) ARCGATE Versus COMMISSIONER OF C. EX., JAIPUR-II (2017 (5) G.S.T.L. 281
(Tri. - Del.) = **2017-TIOL-2025-CESTAT-DEL**

(d) Santhi Casting Works v. CCE [2009 (15) STR 2019 (Tri - Chennai)] = **2009-TIOL-161-CESTAT-MAD**

(e) Commissioner of CGST, Howrah Vs. M/s. Kolkata West International City Pvt. Ltd.
In FO No. 75640/2018 = **2019-TIOL-2715-CESTAT-KOL**

(f) Bhoruka Aluminium Limited versus Commissioner of C. Ex. & ST., Mysore 2017 (51)
STR.418 (TRI. - Bang.) = **2016-TIOL-3060-CESTAT-BANG**

(g) Sen brothers Versus Commissioner of Central Excise, Bolpur 2014 (33) STR 704
(Tri. - Kolkata) = **2013-TIOL-1783-CESTAT-KOL**

4. The Id.D.R. appearing on behalf of the Revenue, reiterates the grounds of appeal and agrees to the submission made by the Ld. Advocate as regards demand under Rule 6 of the CCR, 2004 is concerned.

5. Heard both sides through video conferencing and perused the appeal records.

6. As regards the departmental appeal on the issue of reversal of Rule 6 of CCR, 2004 on the abated value of Restaurant Services by taking the same as exempted services and applying 6% on the value of exempted services so determined to raise the demand of recovery of common Cenvat credit, we find that the issue is no more *res-integra* in view of CBIC's CIRCULAR NO **213/3/2019-Service Tax**, dated July 05, 2019 (supra) wherein it has been clarified by the board that there is no requirement of reversal under Rule 6 of the CCR, 2004 for provision of restaurant services. Thus, the Revenue's appeal to that extent is liable to be dismissed and we order to do so.

7. Next, as regards imposition of penalty on the amounts of Service Tax already paid by the Respondent during the course of audit before issuance of SCN, we find that both the lower authorities have erred in confirming the penalty as it is a settled principle that when tax is paid along with interest before issuance of SCN (other than cases of suppression or willful mis-statement), the Department cannot issue SCN in terms of section 73(3) of the Finance Act, 1994 which states as-

"(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid....."

In the instant case of the Respondent, the Department has mechanically issued SCN alleging suppression of facts without according any reasons for such allegation. We

find that the Tribunal in the case of *M/s FAIRFEST MEDIA LTD vs. CGST AND EXCISE KOLKATA SOUTH*, - **2020-TIOL-1113-CESTAT-KOL**, held as-

"5. I find that the present issue involved in this appeal is no more *res-integra* in view of the decision of the Tribunal in the case of *Bhoruka Aluminium Limited Vs. CCEX. & S.Tax, Mysore* reported in 2017 (51) STR 418 (Tri.Bangalore) = **2016-TIOL-3060-CESTAT-BANG** The relevant paras of the said decision are reproduced below :

"4. The learned counsel for the appellant submitted that imposition of penalty under Section 78 of the Finance Act is contravention to the provisions of Section 73(3) of the Finance Act, 1994. He further submitted that service tax along with interest has already been paid by the appellant before issuance of show cause notice. He also submitted that Section 73(3) of the Finance Act, in unambiguous terms states that when an assessee has paid service tax either on his own or on the basis of the officer's ascertainment and informs the officer of such payment, then the said Section does not give any power to such officer to issue a show cause notice in respect of the tax so paid and such issuance of show cause notice is *sans force of law* and accordingly, not sustainable and tenable. The learned counsel relied upon the decision of this Tribunal in the case of *South India Paper Mills Ltd. v. C.C.E. & S.T.* reported in - **2016-TIOL-2294-CESTAT-BANG** wherein in the similar circumstances, the penalty under Section 78 of the Finance Act was dropped in toto. He also relied upon the following case laws :

(i) *Intercontinental Consultants & Technocrats Pvt. Ltd. v. U.O.I.* [2013 (29) S.T.R. 9 (Del.)] = **2012-TIOL-966-HC-DEL-ST**

(ii) *Amit Sales v. C.C.E.* [2009 (13) S.T.R. 165 (Tri.-Del.)] = **2008-TIOL-1749-CESTAT-DEL**

(iii) *Jindal Saw Ltd. (IPU) v. C.C.E.* [2013 (30) S.T.R. 490 (Tri.- Ahmd.)]

(iv) *C.S.T., Bangalore v. Motor World* [2012 (27) S.T.R. 225 (Kar.)] = **2012-TIOL-418-HC-KAR-ST**

(v) *Hindustan Petroleum Corporation Ltd. v. C.C.E., Mumbai-II* [2012 (25) S.T.R. 161 (Tri.-Mumbai)]

(vi) *C.C.E. & S.T., LTU, Bangalore v. Adeco Flexione Workforce Solutions Ltd.* [2012 (26) S.T.R. 3 (Kar.)] = **2011-TIOL-635- HC-KAR-ST**

(vii) *Reliance Industries Ltd. v. Commissioner of Customs, Rajkot* [2013 (287) E.L.T. 433 (Tri.-Ahmd.)].

6. On the other hand, the learned AR submitted that the appellant is guilty of suppression of facts as he failed to inform the Department regarding availment of irregular Cenvat credit and, therefore, the lower authority has rightly imposed the penalty under Section 78 of the Finance Act, 1994.

7. After considering the submissions by both the parties and perusal of the provisions of Sections 73, 76 and 78 of the Finance Act, 1994 and the judgments relied upon by the appellant cited *supra*, I find that Section 73(3) is very clear as it says that if tax is paid along with interest before issuance of the show cause notice, then in that case, show cause notice shall not be issued. In this case, I find that the contention of the appellant that he bona fide believed that he is not liable to pay service tax but during the audit, the audit party informed him that he is liable to pay service tax, then he

immediately paid the entire service tax along with interest. Except mere allegation of suppression, the Department did not bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax. Consequently, in my opinion, the imposition of penalty under Section 78 of the Act is not justified and bad in law. Moreover, in the impugned order, the learned Commissioner (Appeals) has not recorded any finding on suppression of facts by the appellant with an intention to evade tax. In view of the above discussion, I set aside the impugned order by allowing the appeal of the appellant."

6. I find that the facts of the present case are squarely covered by the aforesaid decision of the Tribunal.

7. In view of the above, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefit."

8. We find that the facts of the present case are squarely covered by the aforesaid decision of the Tribunal. Thus, the appeal of the Revenue to the extent of imposition of penalty on the Respondent is also dismissed.

9. In view of the above, the Departmental appeal is dismissed in entirety and the order of the first appellate authority is modified to the extent of deleting the imposition of penalty. Cross objection is also disposed of in terms with the above directions.

(Operative part of the order was pronounced in the open Court)

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