

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 1

SERVICE TAX APPEAL NO. 10714 OF 2020

(Arising out of Order-in-Appeal No VAD-EXCUS-02-APP-043-2020-21 dated 30.06.2020 passed by Commissioner (Appeals), CGST & Central Excise -Vadodara)

SHRI GOVIND GURU UNIVERSITY

S-09, INDIABULLS MEGAMALL, JETALPUR ROAD
VADODARA, GUJARAT- 390020

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-VADODARA-II

1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT- 390023

.....Respondent

APPEARANCE:

Shri Abhay Y Desai, Advocate appeared for the Appellant

Shri Mihri G Rayka, Additional Commissioner (AR) appeared for the Respondent

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

FINAL ORDER NO. 10111/2026

DATE OF HEARING /DECISION: 20.01.2026

SATENDRA VIKRAM SINGH

In the instant case, appeal was rejected by the Commissioner (Appeals) on the ground that mandatory pre-deposit was not made. It appears that the appeal papers were returned to the party and final appeal was later filed which was viewed to be beyond time and therefore, appeal filed by the appellant Shri Govind Guru University was rejected. This practice is incorrect and is not even followed in Tribunal where defect memo is issued to allow the party a chance to cure the defect in the appeal.

2. The learned Advocate appearing for the party states that the amount was paid at the stage of Commissioner (Appeals) also, but instead of issuing defect memo and rectifying first appeal, the papers were returned. He seeks to rely on decision of Hon'ble High Court of Gujarat in the case of Ramesh Vasantbhai Bhojani Vs. Union of India reported at 2017 (357) E.L.T. 63 (Guj.), in which Hon'ble Gujarat High Court has made distinction between the word "entertain" used in Section 129E and "filing" an appeal under Section 128 of

the Customs Act, 1962. It is held that the appeal under Section 128, has to be filed within the time limit, as the case may be within condonable time limit. This order was also relied in the matter of West Asia Maritime Limited Vs. Commissioner of Central Tax- Visakhapatnam vide final order No. A/30652/2019 dated 04.10.2019. Similar, view was taken by the coordinate Bench in the matter of Conart Engineers Limited Vs. Commissioner of Central Excise and Service Tax, Vadodara-I vide final order No. 11937/2024 dated 02.09.2024.

3. We are of the view that filing of an appeal clearly indicates intention of the party to litigate the matter, therefore, the defect exist on scrutiny. The same needs to be addressed by correspondence and not by way of returning the appeal. The procedure indicated as in consonant to the procedure being followed by this Tribunal also as well as by various High Courts and the Supreme Court. In view of the foregoing, at this stage and even earlier, the deposit having been made, we are of the view that the appellant deserves a chance to be heard on merits. Accordingly, the matter is being remitted to Commissioner (Appeals) to decide issue on merits.

4. Appeal allowed by way of remand.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)