
 सत्यमेव जयते	केन्द्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX वस्तु एवं सेवा GST Building, 7 th Floor, कर भवन Near Polytechnic, सप्तमी मंजिल, पॉलिटेक्निक के पास, Ambavadi, Ahmedabad आम्बावाडी, अहमदाबाद-380015	 टेलीफ़ैक्स : 079-26305136
	079-26305065	

9108/09113

क फाइल संख्या : File No : V2/153/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-167-18-19

दिनांक Date : 31-12-2018 जारी करने की तारीख Date of Issue:

21/1/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. Jule

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-STX-003-JC-AKS-002-18-19 दिनांक : 07-08-2018 से सृजित

Arising out of Order-in-Original: AHM-STX-003-JC-AKS-002-18-19, Date: 07-08-2018
 Issued by: Joint Commisisoner, CGST, Div:RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Vishal Infraglobal Pvt. Ltd

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

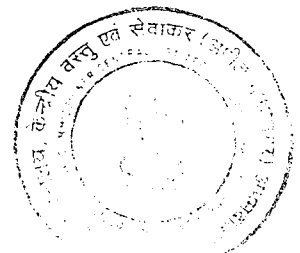
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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

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

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट गान्य 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।

(d) 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- षोबी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस राहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 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 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 bear 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.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Vishal Infraglobal Pvt. Ltd., Apple Avenue, Behind Dharti Flats, Opp. Gayatri Temple, Mehsana-384002 (in short 'appellant') against Order-in-Original No.AHM-STX-003-JC-AKS-002-18-19 dated 07.08.2018 (in short 'impugned order') passed by the Joint Commissioner, Central GST & C.Ex., Gandhinagar Commissionerate (in short 'adjudicating authority').

2. Briefly stated that the adjudicating authority confirmed demand of service tax of Rs.66,12,299/- alongwith interest, under the head "Transport of goods by road/Goods Transport Agency" as specified under Section 65(105)(zzp) of the Finance Act, 1994, under Section 73(1) and 75ibid respectively; ordered for recovery of late fees for filing ST-3 returns under Rule 7(iii) of the Service Tax Rules, 1994; imposed penalty of Rs.10,000/- and Rs.6,60,000/- under Section 77(2) and 76ibid respectively.

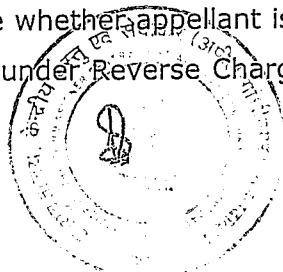
3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, pleaded that:

- Whether they were liable to pay service tax on purchase of consumable material accounted under the head "Transportation expenses" or not under the goods transport operator service.
- Whether they were liable to pay service tax on the bills of individual transporter under the goods transport operator service or not.
- Whether it is revenue neutral situation or nor.
- Whether extended period can be invoked or not.
- Whether penalty u/s 76, 77(2) of the Finance Act, 1994 and u/r 7C of STR, 1994 can be imposable or not.
- The issue involved in the present case is of interpretation of statutory provisions. For that reason also, penalties cannot be imposed.

4. Personal hearing in the matter was held on 12.12.2018. Shri Vipul Khandhar, CA, appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have gone through the appeal memorandum, submission made by the respondent at the time of personal hearing and evidences available on records. The main issue to be decided is whether the impugned order is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.

6. First, I have to examine whether appellant is liable to pay service tax on GTA services availed under Reverse Charge Mechanism

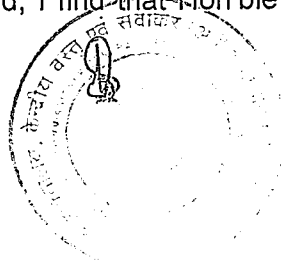


or otherwise. I find that the appellant is engaged in the road construction work and has availed services of goods transport agency/individual truck owners for carting of goods viz. Sand, Kapchi, Greet etc. being recipient of service. This fact is not in dispute. I find that appellant being body corporate established under the law is liable to pay service tax as recipient of Goods Transport Agency service in terms of Notifn. No.30/2012-ST dated 20.06.2012.

6.1 As regards the contention of the appellant regarding whether they were liable to pay service tax on the bills of individual transporter, I find that the issue revolves around whether the bills raised by the disputed individual truck owners can be considered as 'consignment note' or otherwise and accordingly whether the appellant is liable to pay service tax under RCM for availing services of inward transportation i.e GTA. I find that the terms 'consignment note' is defined in Rule 4B of the Service tax Rules, 1994 which is reproduced below for the sake of ease:

"Explanation. - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.]"

In view of the above, I find that any document which contains above details can be termed as 'consignment note'. In the instant case, I find that individual truck owners have issued bills for carting of goods for the appellant. The evidences placed before me indicates that bills have pre-printed serial numbers, name of the recipient of goods, quantity transported and its rate. I find that all vital element stated in the explanation is present in the bills raised by the individual truck owners except mentioning about person liable for paying service tax whether consignor, consignee or the goods transport agency. I find that these individual truck owners may be having lack of knowledge of taxation and can be considered as procedural lapse and needs to be condoned. But as recipient of service, the appellant cannot refuse service tax payment liability under RCM just because truck owner/operator violates provisions of Rule 4Bibid. In this regard, I find that Hon'ble CESTAT, Hyderabad in



case of M.L. Agro Products Ltd. Vs. CCE&ST, Guntur[2017(6) GSTL-96(Tri. Hyd.)] has held as under:

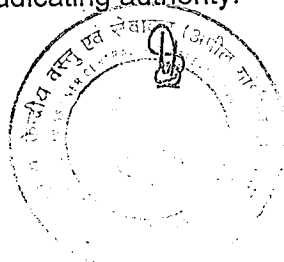
“Goods Transport Agency Service - Recipient of service - Transportation of tobacco by private truck operators and payment of freight charges - Consignment note not issued - HELD : Consignment notes may be issued in any form, as seen from definition of GTA in Section 65(50)(b) of Finance Act, 1994 - Sample vouchers/invoices available describing truck number, amount and load - Assessee recipient of service paying freight charges - Department rightly applied GTA and demanded Service Tax - Without accompanying paper/document, goods cannot be received and document forms basis of amount for payment - No reason to interfere with impugned orders - Impugned order sustains - Section 65(50)(b) of Finance Act, 1994 and Rule 2(1)(d)(v) of Service Tax Rules, 1994. [para 6.3]”

Accordingly, I hold that bills issued by the individual truck operators fulfill the vital elements to be ‘consignment note’ and accordingly, the respondent is liable for service tax under RCM.

6.2 As regards the plea of the appellant regarding revenue neutrality, I find that even if there is revenue neutrality, the appellant cannot escape from the mandatory responsibility casted on him under Notifn. No.13/2012-ST issued under Section 68(2) ibid and if that has been the case then the purpose of issuing such notification would be of no use. Hence, the plea of the appellant is not tenable.

6.3 As regards the plea of the appellant regarding invocation of extended period, I find that no extended period under Section 73(1) of the Finance Act, 1994 is invoked in the subject SCN dtd.21.04.2017. I also find that no evidence of having filed periodical returns of periodical returns have been produced either before the adjudicating authority or before this appellate authority at any point of time. Further, I also find that period covered in the said SCN is 30 months from the relevant date in terms of provision contained in section 73(1)ibid read with Rule 7 of the Service Tax Rules, 1994. So, I find that the subject SCN is issued well within the time limit prescribed in Section 73ibid.

6.4 As regards the imposition of penalties u/s 76, 77(2) and Rule 7Cibid, I find that the appellant has failed to comply the responsibility casted on him and discharge duty liability under the various provisions of the Act and the rules made thereunder. Hence, I do not find it proper to set-aside the findings of the adjudicating authority.



6.5 Lastly, as regards the plea of appellant regarding interpretation of statutory provisions, I find that if the appellant had any doubt on any issue, he could have approached the jurisdictional authority. I find that there is nothing on record having approached the any jurisdictional authority for clarification in the subject matter by the appellant. In absence of such documentary evidence, the plea of the appellant cannot be accepted.

7. In view of the above discussion and findings, the appeal filed by the appellant is set-aside and the impugned order is upheld.

8. अपीलकर्ता 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.

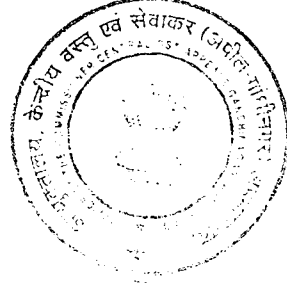
उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested

by
TR/21/19
(B.A. Patel)
Superintendent (Appeals)
CGST, Ahmedabad



BY SPEED POST TO :

M/s. Vishal Infraglobal Pvt. Ltd.,
Apple Avenue, Behind Dharti Flats,
Opp. Gayatri Temple,
Mehsana-384002.

Copy to:

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Gandhinagar.
3. The Joint Commissioner, CGST, Gandhinagar.
4. The Asstt. Commissioner, CGST, Division Mehsana.
5. The Assistant Commissioner(System),CGST, Gandhinagar.
(for uploading the OIA on website.)
6. ~~Guard File.~~
7. P.A. File.

