



सत्यमेव जयते

**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 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



07926305065-

टेलीफैक्स 07926305136

NATION  
TAX  
MARKET

रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:20210664SW0000777C0B)

क फाइल संख्या : File No : GAPPL/COM/STP/471/2021/16724 T 0 16728

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP- 13/2021-22

दिनांक Date : 31-05-2021 जारी करने की तारीख Date of Issue 16-06-2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No PLN/AC/STAX/REF/02/2020-21 dated 06.08.2020 issued by Assistant Commissioner, CGST & Central Excise, Palanpur Division, Gandhinagar.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s Tanu Motors Private Limited, Opp. Dharti Resort, Abu Highway, Palanpur-385001.**

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 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 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, 4<sup>th</sup> 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 :

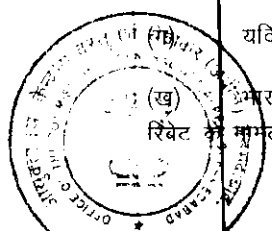
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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.

(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.

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

(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 मामले 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.

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।

(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 जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-**

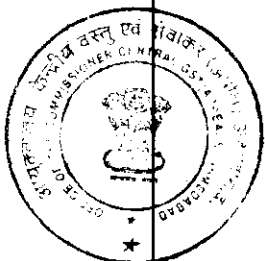
Under Section 112 of CGST act 2017 an appeal lies to :-

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 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 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.

- (44) 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)

- (45) 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:

(lxxxii) amount determined under Section 11 D;

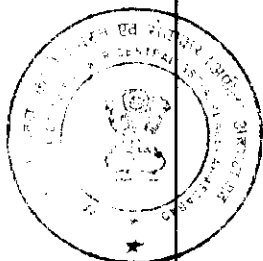
(lxxxiii) amount of erroneous Cenvat Credit taken;

(lxxxiv) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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 appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



**ORDER-IN-APPEAL**

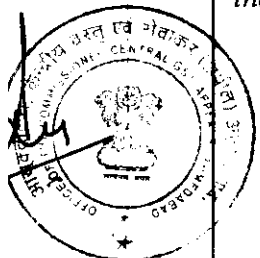
M/s. Tanu Motors Pvt. Ltd., Opp. Dharti Resort, Abu Highway, Palanpur-385001 (Distt-Banaskantha) (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order-in-Original No. PLN/AC/STAX/REF/02/2020-21 dated 06.08.2020 (*hereinafter referred as 'impugned order'*) passed by the Asstt. Commissioner, CGST & Central Excise, Palanpur Division, Gandhinagar Commissionerate (*hereinafter referred as 'adjudicating authority'*) .

2(i). The facts of the case, in brief, are that the appellant was holding Service Tax Registration No.AACCT6023BST001 for providing various services. A refund claim amounting Rs.16,06,503/- was submitted by them on 03.03.2017 for the excess service tax paid by them during the Financial Year 2015-16. It was the contention of the appellant that they had provided service to Insurance Companies in relation to insurance of vehicles sold by them and Insurance Companies had given them commission, which was included in income under labour charges and they paid service tax inadvertently. As per Srl. No.1 of Notification No.30/2012-ST, in case of service provided by any person carrying the insurance business, 100% liability to pay service tax lies on the recipient, i.e. the Insurance Companies. However, they paid the service tax by mistake though the liability of the payment of said tax was on the insurance companies.

2(ii). The adjudicating authority vide the Order-in-Original No.127/Ref/AC/S.Tax-2017-18 dated 07.11.2017, (i) rejected the refund amount of Rs.11,89,519/- pertaining to the period April-2015 to January-2016 on the ground that the same is hit by time limitation under Section 11B of the Central Excise Act, 1944 and (ii) rejected the remaining amount of refund amounting Rs.4,16,984/- on the ground of non-submission of document/invoices related to 'Insurance Auxiliary Service' for which the subject refund claim was filed.

2(iii). Being aggrieved with the said Order-in-Original, the appellant preferred an appeal before the then Commissioner (Appeals) who vide its Order-in-Appeal (*hereinafter referred as 'OIA'*) No. AHM-EXCUS-003-APP-0229-17-18 dated 28.02.2018 held as under :

*"Hence the fact that there is excess payment of service tax in the matter is fairly evident. Now, whether this excess payment of service tax was the amount of service tax paid on the income from insurance auxiliary service or some other income is not forthcoming*



from the documents submitted, however, that is perhaps possible to ascertain from the sample invoices that were submitted before the adjudicating authority but not considered by him. Therefore, prima facie a case for refund of excess amount paid as service tax is made out by the appellant before me as far documentary part is concerned and it was not correct on part of the adjudicating authority to ignore the documents already submitted by the appellant vide letter dated 05.06.2017. In fact, in the spirit of natural justice, the adjudicating authority should have issued a show cause notice before rejecting the claim as urged by the appellant. Therefore, not considering or discussing the documents already submitted by the appellant and which seem to favour the appellant's case is not proper and for this reason, the matter needs to be sent back to the adjudicating authority for fresh decision in the matter after following the principles of natural justice.

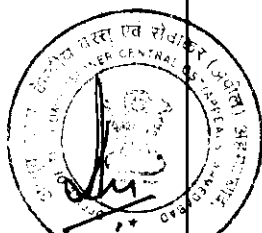
5.2 With regard to applicability of time lime prescribed in Section 11B of the Central Excise Act, 1944, I find that Bombay High Court's decision in the case of *Parijat Construction v/s. Commissioner of C.Ex., Nashik* [2018(359)ELT 113(Bom.)] is applicable where tax is paid under mistake of law. Hon'ble High Court has held in this case that limitation prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to refund claims for service tax paid under mistake of law. Now the question whether case on hand is about refund of service tax paid under mistake of law or not has to be decided in the facts of the case to be ascertained by the adjudicating authority. Therefore, for this reason also, the matter needs to be remanded.

6. In view of above, I set aside the impugned order and remit the matter back to adjudicating authority for a fresh decision. The appeal is accordingly allowed by way of remand."

2(iv). In the remand proceedings, the adjudicating authority vide the impugned order, rejected the refund claim of the appellant on the ground that as per the Chartered Accountant's statement, the Balance Sheet of the appellant has been revised exhaustively, however, the same was not produced before the adjudicating authority. It has also been mentioned in the impugned order that the appellant has not produced samples invoices raised for 'Insurance Auxiliary Services' in the name of insurance companies, not produced ledgers maintained in the name of insurance companies.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds :

- (i) that the impugned order has been passed without following the Commissioner(Appeals) order and without following the directions contained therein;
- (ii) that the Commissioner(Appeals) has conceded that there is excess payment of service tax in the matter and the same is required to be verified from the copy of invoices already submitted by them;
- (iii) that the documentary evidences in the form of copy of sample invoices, ledger duly certified by the Chartered Accountant for the amounts booked under insurance has not been considered and no comments on it has been made;



- (iv) *that liability of the adjudicating authority was limited to verification of documents and to compute the tax payable and tax already paid;*
- (v) *that chartered accountant's certificate is also submitted to the effect that service tax paid in excess has not been recovered from the customers;*
- (vi) *neither defect in the documents, submitted by them, have been pointed out nor the authenticity of the documents are in question;*
- (vii) *case law in the matter of M/s. 3F Industries Ltd. reported at 2020(373)ELT 463-Mad has been relied upon under which it has been held under para-7 that judicial discipline may be observed and followed and merely accounting entries or methodology of accounting should not be majorly considered.*

4. Personal hearing in the matter was held on 17.02.2021 in virtual mode. Shri M.H.Raval and Shri Mohanan V.V., both consultants, attended the hearing for the appellant. They stated that adjudicating authority has gone beyond the direction of Commissioner (Appeals) while deciding the matter in remand proceeding. They reiterated the submissions made in appeal memorandum and submitted additional submissions on 19.02.2021 under which they again submitted that the commission received from insurance companies had been included by them inadvertently in the labour charges and payment of service tax was made by them. It was further contended that excess payment of service tax has not been disputed by the adjudicating authority in first round of litigation. It was further argued that Commissioner (Appeals) has accepted the excess payment of service tax and also held that limitation is not applicable. It was argued that the direction of the Commissioner (Appeal) was to verify as to whether the excess payment of service tax was pertaining to Insurance Auxiliary Service or some other service. It was argued that there was no other ground for rejection of refund amounting Rs.11,89,519/- except time-limit under the earlier order-in-original and that for the remaining amount, documents have been submitted with adjudicating authority.

5(i). I have carefully gone through the facts of the cases, the records/documents available in the matter and the submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. I find that the issue regarding the admissibility of Refund to the appellant has already been dealt with by the then Commissioner (Appeals) under the OIA supra. The matter was remanded back to the adjudicating authority with specific direction to consider documents already submitted by the appellant before the then adjudicating authority. It was also directed to ascertain whether case on hand is about refund of service tax paid under mistake of law or not. The adjudicating authority has not discussed and given his findings about what was directed under the OIA supra. Hence, he has committed judicial indiscipline in as much as he has not complied with the direction of Commissioner(Appeals) in the remand



proceeding. The case law in respect of M/s. 3F Industries Ltd. reported at 2020(373)ELT 463-Mad, has also been relied upon by the appellant. Hence, the matter needs to be remanded back to the adjudicating authority to comply with the directions of Commissioner (Appeals) contained in OIA No. AHM-EXCUS-003-APP-0229-17-18 dated 28.02.2018.

5(ii). In view of above discussion, it would be prudent that the matter is remanded back to the adjudicating authority to pass an order afresh in the matter keeping in mind the direction imparted in the earlier OIA supra and the direction contained in this order and in view of the provision of Section 11B of the Central Excise Act, 1944 as made applicable to the service tax under Section 83 of the Finance Act, 1994.

6. The appeal of the appellant is disposed of accordingly.

Date : .05.2021.

Attested

  
16/06/21

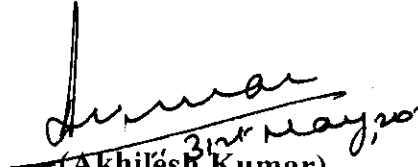
(Jitendra Dave)  
Superintendent (Appeal)  
CGST, Ahmedabad.

**BY R.P.A.D. / SPEED POST TO :**

M/s. Tanu Motors Pvt. Ltd.,  
Opp. Dharti Resort, Abu Highway,  
Palanpur-385001

**Copy to :-**

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Palanpur Divn, Gandhinagar Comm'rate.
- ✓ 5. Guard File.
6. P.A. File.

  
(Akhilesh Kumar)  
Commissioner (Appeals)

