



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलीफैक्स 07926305136



DIN : 20211064SW0000999CBC

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/507/2020 / 14060 To 14064

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-35/2021-22
दिनांक Date : 24-09-2021 जारी करने की तारीख Date of Issue 20.10.2021

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 18/D/GNR/DK/20-21 दिनांक: 22.07.2020 issued by Deputy Commissioner (Prev) of CGST & Central Excise, Gandhinagar Commissionerate

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

M/s Effective Teleservices Pvt Ltd
1st Floor, IT Tower-4, Infocity,
Near Naroda Circle, Gandhinagar-382009

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 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 :

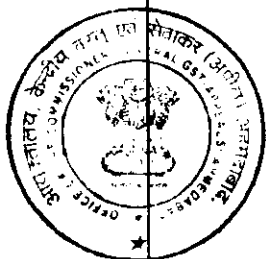
Revision application to Government of India :

(1) केंद्रीय 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, 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 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.



(क) 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।

(A) 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.

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

(B) 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 जोड्यूटीक्रेडिटमान्य 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।

(c) 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 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्नरकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा होतो 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-बी/35-इ के अंतर्गत:-

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

(क) उक्त लिखित 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004.

(a) 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 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 पड़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको 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 scrip.toria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रु.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

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) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

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

- (8) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेंमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

- (i) (Section) खंड 11D केतहतनिर्धारितराशि;
- (ii) लियागलतसेनवैटक्रेडिटकीराशि;
- (iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇒ यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.

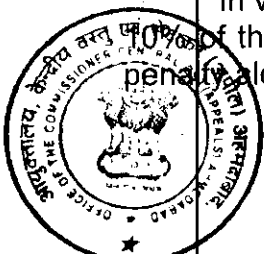
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (vii) amount determined under Section 11 D;
- (viii) amount of erroneous Cenvat Credit taken;
- (ix) amount payable under Rule 6 of the Cenvat Credit Rules.

इसआदेश 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. Effective Teleservices P Ltd, 101 to 103, 1st Floor, IT Tower-IV, Infocity, Gandhinagar, Gujarat-382 007 (hereinafter referred to as the appellant) against Order in Original No. 18/D/GNR/DK/20-21 dated 22-07-2020 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, Central GST, Commissionerate- Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant was having Service Tax Registration No. AAACE9318EST002 for providing "Business Auxiliary Service" and "Renting of Immovable Property Service". The appellant had filed refund claim for an amount of Rs.27,54,238/- in respect of the unutilized Cenvat Credit for the period from April-2006 to March-2007 under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 5/2006-CE (NT) dated 14.03.2006. A Show Cause Notice was issued to the appellant for rejecting their refund claim on several grounds and the same was adjudicated vide OIO No. 47/ST/Ref/DC/AK/2009-10 dated 31.12.2009. By the said order refund of Rs.2,91,642/- was sanctioned; refund of Rs.6,04,051/- was rejected as time-barred and refund of Rs.18,58,545/- was rejected on the ground that the services used in the export of good viz. Rent-a-Cab service, Outdoor Catering Service, Mobile/Telephone Service, Courier Service, Advertising and Marketing Service, Banking Service- HP Finance Service were not input service as these were not used in manufacturing/providing of output service.

3. Being aggrieved, the appellant filed appeal against the said OIO before the Commissioner (Appeals), Ahmedabad who vide OIA No. 115/2010(Ahd-III)/KCG/Commr(A)/Ahd dated 08.07.2010 upheld the said OIO. The appellant further appealed before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal vide Order No. A/11212/2017 dated 25.05.2017 held that the services viz. Rent-a-Cab service, Outdoor Catering Service, Mobile/Telephone Service, Courier Service, Advertising and Marketing Service, Banking Service- HP Finance Service were input service and Cenvat Credit was admissible. In respect of the refund barred on limitation, the matter was remanded back to the original adjudicating



authority to recalculate limitation on the basis of the decision in the case of BECHTEL India P. Ltd Vs. CCE, Delhi reported at 2014 (34) STR 437 (Tri.-Del).

4. The appellant vide letter dated 06.06.2017 applied for refund in view of the said order of the Hon'ble CESTAT. The Assistant Commissioner, CGST & C.Ex, Gandhinagar vide OIO No. 124/Ref/ST/NK/2017-18 dated 27.02.2017 rejected the refund amounting to Rs.3,11,902/- and sanctioned refund amounting to Rs.21,50,694/-. The department filed appeal against this OIO before the Commissioner (Appeals), Ahmedabad primarily on the grounds that :

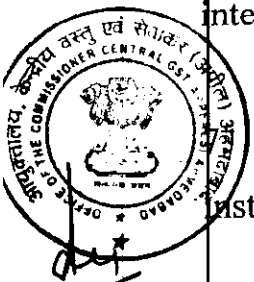
- 1) The adjudicating authority has not ascertained whether the appellant had taken double benefit by way of re-credit of the amount claimed as refund when the refund claim was rejected;
- 2) The adjudicating authority has not verified whether the appellant had balance in Cenvat account while filing refund claim.

4.1 The appellant had also filed appeal before the Commissioner (Appeals) in respect of the amount of refund which was rejected by the said OIO.

4.2 In view of the appeal filed before the Commissioner (Appeals), Ahmedabad, the appellant was issued a Show Cause Notice dated 13.08.2018 for recovery of the erroneously refunded amount along with interest.

5. The Commissioner (Appeals), Ahmedabad by OIA No. AHD-EXCUS-003-APP 57 & 58-18-19 dated 29.08.2018 remanded the case back to the adjudicating authority for looking into the matter afresh as per the contention raised by the department.

6. The Show Cause Notice dated 13.08.2018 was adjudicated vide OIO No. 18/D/GNR/DK/20-21 dated 22.07.2020 (the impugned order) and the amount erroneously refunded to the appellant was ordered to be recovered along with interest.



Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

- A. They were granted personal hearing but due to COVID-19 they could not attend the same. There were some technical glitches and thereby they could not attend the hearing. The impugned order was passed when the whole nation was under lockdown due to COVID. There was no effective hearing and order is passed in breach of the principles of natural justice.
 - B. They request that the impugned order be quashed and set aside on the short ground of breach of principles of natural justice and the proceedings be remanded back to the adjudicating authority as order was passed ex-parte.
 - C. The department has not challenged the original order but remand back adjudication order has now been challenged and additional ground taken which the department cannot now do so.
 - D. The department has already issued OIO which has been accepted by them, no appeal was preferred against the said OIO. After due appeal time, the department has issued new show cause notice and asked for recovery of refund which is not tenable when the OIO has been accepted. On the same matter new notice cannot be sustainable.
8. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri Vipul Khandhar, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum and the written submission filed for personal hearing.
9. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and evidences available on records. I find that the impugned order has been passed in a proceeding which was remanded back by the Commissioner (Appeals), Ahmedabad vide OIA No. AHD-EXCUS-003-APP 57 & 58-18-19 dated 29.08.2018. The relevant part of the said OIA reads as :-

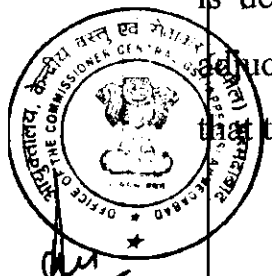
“The department requested that the matter may be remanded back to the adjudicating authority for proper verification of the claim as per grounds discussed in para-4 (of OIA) above. Mainly, the department has contended



that the adjudicating authority has not ascertained whether the respondent (present notice) has taken the double benefit by way of re-crediting the amount claimed as refund when the refund was rejected and again claiming cash refund. I find merit consideration in the said contention. I observe that the adjudicating authority has, while deciding the refund claim, vide the impugned order has not looked into the said situation which may lead to double payment. Further, the department has contended that the adjudicating authority has not verified from the Cenvat Account whether the appellant had in balance the amount of refund claimed at the relevant time and debited while filing the claim which is mandatory as per provisions of Rule 5 of CCT. I observe that neither the then jurisdictional Asstt./Dy Commissioner at the relevant time nor the adjudicating authority has discussed in the order dated 31.12.2009 or in the impugned order regarding balance outstanding in the Cenvat Account”.

10. I find that the matter was remanded back to the original adjudicating authority to verify whether the appellant had availed double benefit and whether they were in balance the amount refunded. In this regard, I find that the impugned order as well as the appeal memorandum filed by the appellant is silent regarding the outcome of the remand proceedings ordered in respect of the refund granted to the appellant.

10.1 I further find that the impugned order has also been passed without carrying out the verification ordered to be carried out in the remand proceedings. The adjudicating authority has recorded in the impugned order that the appellant was given multiple opportunities of personal hearing in the interest of natural justice but the same was not availed by the appellant. I find that the dates of the personal hearing are all around the period when the country was in the midst of the COVID-19 pandemic and lockdown. Be that as it may, the issue ought not to have been decided without carrying out the verification ordered in remand proceedings. The notice issued to the appellant was for recovery of erroneously granted refund. Unless necessary verification is caused and correctness or otherwise of the refund is decided, the demand for recovery of such refund already granted cannot be adjudicated. Without such verification the conclusion of the adjudicating authority that the refund was erroneously granted to the appellant is not sustainable.

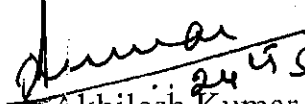


11. In view of the above discussions, the order passed by the adjudicating authority needs to be remanded back to undertake the verification ordered in OIA No. AHD-EXCUS-003-APP 57 & 58-18-19 dated 29.08.2018 before adjudicating the case.

12. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way remand.

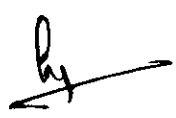
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


Akhilesh Kumar
Commissioner (Appeals)

Date: .09.2021.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To
M/s Effective Teleservices P Ltd,
101 to 103, 1st Floor, IT Tower-IV,
Infocity, Gandhinagar, Gujarat-382 007

Appellant

The Deputy Commissioner,
Hqrs., Commissionerate, Gandhinagar

Respondent

Copy to:

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)
- 4) Guard File.
- 5) P.A. File.