



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 : 20211064SW0000717566

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1179/2020 / 3990 To 3994
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-44/2021-22**
दिनांक Date : **12-10-2021** जारी करने की तारीख Date of Issue 21.10.2021
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **02/REF/S.TAX/AC/2020-21** दिनांक: **09.09.2020** issued by Assistant Commissioner, CGST & Central Excise, Division Mehsana, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Jaydev B. Barot
Near Gurudwara Jail Road,
Mehsana, Gujarat

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 :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः 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 जोड़यूटीक्रेडिटमान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में विस्तृत 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 ईए-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 इकाई 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 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.

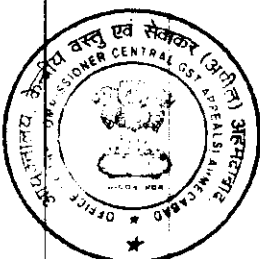
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-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, अपीलों 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 पढ़ी 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 Appellate 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 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेशों 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 आदेशों से 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 हैं।

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

- (22) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामलों में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपये है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर 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:

- (xlix) amount determined under Section 11 D;
- (l) amount of erroneous Cenvat Credit taken;
- (li) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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."



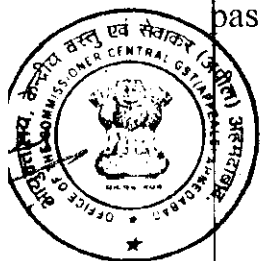
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Jaydev B. Barot, Proprietor, Near Gurudwara, Jail Road, Mehsana, Gujarat (hereinafter referred to as the appellant) against Order in Original No. 02/REF/S.Tax/AC/2020-21 dated 09-09-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Central GST, Division : Mehsana, 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. ABAPB7928HST001 and engaged in providing Rent-a-cab services on contract basis to different organizations. Intelligence gathered by the department indicated that the appellant was suppressing the correct taxable value and escaping assessment of tax liabilities and had evaded Service Tax amounting to Rs.94,35,879/- during the period from F.Y. 2002-2003 to F.Y. 2006-2007. The appellant was issued show cause notice for recovery of Service Tax amounting to Rs.94,35,879/- which was adjudicated vide OIO No. 20/Commr./2008 dated 29.02.2008 and the demand was confirmed along with interest and penalties were also imposed. The appellant challenged the OIO before the Hon'ble Tribunal, Ahmedabad who vide Order No. A/11061/2019 dated 04.07.2019 partly allowed the appeal and set aside the demand for the extended period of limitation and also partly set aside the penalty under Section 78 of the Finance Act, 1994.

3. Consequent to the order of the Hon'ble Tribunal, the appellant submitted a claim for refund of Rs.10,23,653/- vide letter dated nil which is said to have been received on 14.07.2020. From the claim of the appellant, it appeared that :-

- i. The appellant had submitted the claim for refund after expiry of one year from the relevant date;
- ii. The challans submitted by the appellant were having different service tax registration, some of the challans were for the period prior to the demand; and
- iii. The appellant had failed to establish that the incidence of tax has not been passed on.



3.1 Therefore, the appellant was issued a SCN dated 04.08.2020 for rejection of the claim for refund, filed by them, under Section 11B of the Central Excise Act, 1944. The SCN was adjudicated by the impugned order and the claim for refund was rejected.

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

- A. As per the impugned order, refund of Rs.4,10,716/- out of the total of Rs.10,23,653/- was eligible had the claim been filed within the prescribed time limit.
- B. The date for filing the refund was extended by the Tax Ordinance Act and the subsequent amendment notification dated 27.06.2020 due to the lockdown declared by the Central Government on account of the pandemic prevailing in the country. By virtue of the said Tax Ordinance Act and the notification dated 27.6.2020, the date was extended to 30.09.2020. They had filed the refund claim on 13.07.2020 which is well before 30.9.2020. Hence, refund of Rs.4,10,716/- is clearly admissible.
- C. The refund has also been rejected on the principle of unjust enrichment. In this regard they submit that the entire refund has arisen on account of the pre-deposit made by them and was paid on the basis of the OIO at the time of filing appeal before the CESTAT. Hence, it is not duty of Excise or Service Tax *per se*. Therefore, the provision of Section 11 B cannot be made applicable for refund of pre-deposit.
- D. Out of the refund amount of Rs.6,11,937/-, only Rs.2,66,131/- pertains to the period prior to the SCN. The remaining amount of Rs.3,45,806/- pertains to the period subsequent to the SCN and should be considered for refund.
- E. The challans which bear different service tax registration number are of their Ahmedabad branch. Hence they pertain to the same unit.

5. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri Pratik Trivedi, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum.



6. 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 adjudicating authority has in the impugned order observed that the appellant has paid an amount of Rs.43,91,540/- as against the demand of Rs.39,80,824/- and if they are eligible for refund, the amount is only Rs.4,10,716/-. However, the adjudicating authority has proceeded to reject the entire claim for refund of Rs.10,23,653/- on the grounds of limitation in terms of Section 11 B of the Central Excise Act, 1944.

7. The appellant have contested the issue of limitation on the grounds that the Tax Ordinance Act and the notification dated 27.6.2020 extended the period upto 30.09.2020 and the claim was filed by them well before this date. In this regard, I find that the Government of India by virtue of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020 extended the time limits falling during the period from 20.03.2020 to 29.06.2020 till 30.06.2020. The relevant part of Section 6 of Chapter V of the said Ordinance is as under :

“Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 or Chapter V of the Finance Act, 1994, as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July, 2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as-

(a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf.”

7.1 Subsequently, vide Notification dated 27.06.2020, the date was further extended till 30.09.2020, the relevant part of the Notification is reproduced as



"i) the 29th day of September, 2020 shall be the end date of the period during which the time-limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or Chapter V of the Finance Act, 1994 (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and

(ii) the 30th day of September, 2020 shall be the end date to which the time-limit for completion or compliance of such action shall stand extended."

7.2 The adjudicating authority has observed that the refund claim was required to be filed by 03.07.2020. Since this date falls within the period covered by the Taxation Ordinance dated 31.02.2020, the same stands extended till 30.09.2020. The refund claim of the appellant was received on 14.07.2020 which is much before 30.09.2020. Consequently, the refund claim of the appellant has to be held to have been filed within the period of limitation. Therefore, the adjudicating authority has erred in rejecting the refund claim of the appellant on the grounds of limitation.

8. Coming to the issue of the amount of refund to which the appellant is eligible, the adjudicating authority has held only an amount of Rs. 4,10,716/- to be admissible. The details of the duty payment challans submitted by the appellant were for the period prior to the issue of SCN as well as for the period subsequent to the SCN and the passing of the OIO confirming the duty demand. The adjudicating authority has recorded a finding that some of the challans for the remaining amount of Rs.6,12,937/- are bearing different service tax registration number and some are for the period prior to the demand and therefore, cannot be considered for the refund claim application of the appellant. I find merit in the finding of the adjudicating authority in this regard. It is for the appellant to establish their claim for refund by producing the proper documents evidencing payment of Service Tax which is claimed by way of refund. The appellant have in the present case failed to do.

9. I find that the appellant have not given any cogent reasons for the above discrepancies. They have merely stated that challans bearing a different service tax registration number belongs to their Ahmedabad Unit. However, they have not put forth any material to show that these challans are related to the disputed service tax

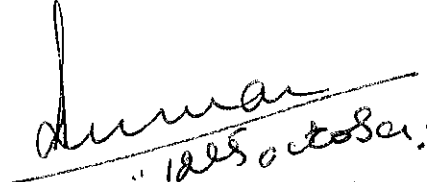


paid by them and which is sought to be claimed in refund. I, therefore, do not find any merit in the contentions of the appellant in this regard.

10. In view of the above discussions, I hold that the appellant are eligible to refund of Rs.4,10,716/-. Accordingly, the appeal is partly allowed to this extent.


11. 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)

Attested:

Date: .10.2021.


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



BY RPAD / SPEED POST

To
M/s. Jaydev B. Barot, Proprietor,
Near Gurudwara, Jail Road,
Mehsana, Gujarat

Appellant

The Assistant Commissioner
CGST & Central Excise,
Division- Mehsana
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.