



आयुक्त(अपील)काकार्यालय,
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- टेलिफैक्स 07926305136



DIN : 20211164SW000000A017

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2309/2021 / H306 TO H310
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-52/2021-22**
दिनांक Date : **10-11-2021** जारी करने की तारीख Date of Issue 17.11.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **28/AC/MEH/CGST/2020-21** दिनांक: **13.01.2021** 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 Surbhi Traders
A-5, Ramakrishna Market,
Malgodown Road, Mehsana-384002

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए संक्षम 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) केंद्रीय 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 अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।
- (ii) 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 हानिकार खाने 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 मामले 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 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।

(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 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 संलग्न रकम एक लाख रुपये या उससे कम होतो 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 सेवा कर 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) 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 2ndमाला, 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 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 और 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.

- (29) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(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)

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:

- (lxx) amount determined under Section 11 D;
- (lxxi) amount of erroneous Cenvat Credit taken;
- (lxxii) 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।

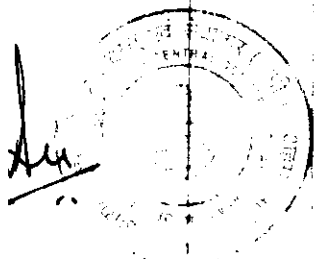
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Surbhi Traders, A-5, Ramakrishna Market, Malgodown Road, Mehsana – 384 002 [now at 3/B, Harinagar Soccity, Near Simandhar Jain Temple, Highway, Mehsana- 384 002 (hereinafter referred to as the appellant) against Order in Original No. 28/AC/MEH/CGST/20-21 dated 13-01-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AAWPD8580ESD001 under the category of Clearing and Forwarding service. During the course of audit of records of the appellant by the departmental officers, it was observed by audit officers that the appellant had issued bills amounting to Rs.10,00,366/- during Financial Year 2015-16, however, they had in their ST-3 returns for the said period declared a taxable value of only Rs.6,88,112/-. Thus, it appeared that the appellant had short declared taxable value of Rs.3,12,254/- and short paid service tax amounting to Rs. 45,277/-. Accordingly, the appellant was issued a Show Cause Notice No. VI/1(b)-235/Surbhi/IA/2016-17/AP-57 dated 01.01.2018 seeking to recover the service tax short paid amounting to Rs.45,277/- under Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and penalty under Section 76, 77 and 78 of the Finance Act, 1994.

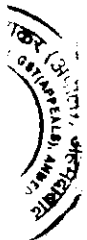
2.1 The said SCN was adjudicated vide OIO NO. 09/AC/ST/MEH/18-19 dated 06.03.2019 wherein the demand for Service Tax amounting to Rs.45,277/- was confirmed along with interest and penalty under Section 77 and 78 of the Finance Act, 1994 was imposed. Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-018-19-20 dated 10.07.2019 remanded the case back for denovo adjudication.



2.2 In the denovo proceedings, the matter has been decided by the adjudicating authority vide the impugned order wherein he has confirmed the demand of service tax amounting to Rs.45,277/- under Section 73 (2) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalty of Rs.10,000/- was imposed under Section 77 of the Finance Act, 1944 and Penalty of Rs.45,277/- was also imposed under Section 78 of the Finance Act, 1994.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds:

- i) That in the details shown in the Audit Report, SCN and the impugned order in the statement in column No.2 against 'Bill Date' the first figure indicates the month, middle figure indicates the date and last figure indicates the year. This has created confusion resulting in showing total amount of Rs.10,00,366/- as receipt of taxable amount during 2015-16.
- ii) That invoices issued during 08.01.2015 to 02.03.2015 pertains to year 2014-15 and they had already paid service tax in this regard amounting to Rs.19,635/- under Challan dated 18.04.2015 and this amount is indicated in the return filed by them for the period January, 2015 to March, 2015.
- iii) An amount of Rs.1,48,335/- pertaining to invoice dated 31.3.2016 has been accounted for in their books in the month of April, 2016. Accordingly, this amount has been considered for payment of service tax in the quarter of April, 2016 to June, 2016.
- iv) Invoice No.22 dated 10.04.2015 pertains to non-taxable value and is required to be deducted.
- v) Out of the total confirmed value of Rs.3,12,254/- value of Rs.3,10,848/- is required to be deducted and the difference is only Rs.1,406/- and they have already deposited the service tax on this value.
- vi) The adjudicating authority has not understood the case properly and, therefore, the confirmed demand is incorrect, illegal and without authority.



- vii) When demand itself is not sustainable the question of interest and penalty does not arise.

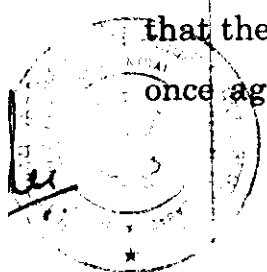
4. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri Mehal Doshi, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

5. 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 material available on records. I find that the matter was remanded back for fresh adjudication by the Commissioner (Appeals), Ahmedabad, vide OIA No. AHM-EXCUS-003-APP-018-19-20 dated 10.07.2019 observing that:

* 7. In view of above discussion, I feel that the matter needs to be verified again by the adjudicating authority and the appellant is hereby directed to furnish all details before the adjudicating authority. Therefore, I remand the case for fresh decision by the adjudicating authority after allowing adequate principles of natural justice".

5.1 I find from the impugned order that neither the appellant nor the adjudicating authority have taken pains to comply with the above directions. I find that the adjudicating authority has recorded in the impugned order at para 12 that the "*Noticee has informed that the matter is remanded back and requested to decide the case at the earliest. They further requested to communicate the date of hearing in the matter so that they can attend the same to explain to facts of the case*". Further, at para 13 it has been recorded that "*Shri Hasmukhbhai I. Mehta, authorized person on behalf of the said Noticee attended the same wherein he reiterated the facts put up before Commissioner (Appeals), Central Tax, Ahmedabad in support of their submission. He requested to consider the same and thereafter decide the matter. He further informed that he has nothing to add anymore in the matter.*"

5.2 I further find that the adjudicating authority has recorded at para 19 that the appellant has not furnished any document and hence, he was relying once again on the documentary evidence submitted earlier. I am pained to




find that both the appellant and the adjudicating authority have shown utter disregard to the directions of the Appellate authority and in the process undermined the entire adjudication process in de-novo proceedings.

5.3 The appellant despite being clearly directed to furnish all details has clearly failed to do so. At the same time, it was also incumbent upon the adjudicating authority to have atleast called for the documents and details from the appellant, which I find he has failed to do so. Be that as it may, in the interest of justice, I am constrained once again to remand the matter back to the adjudicating authority for denovo adjudication. The appellant is directed to submit the documents and details to the adjudicating authority within 30 days of the receipt of this order and the adjudicating authority shall grant a personal hearing after receipt of same from the appellant and thereafter adjudicate the matter.

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

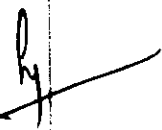
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals)

Attested:

Date: .11.2021.



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

BY RPAD / SPEED POST

To

M/s. Surbhi Traders,
3/B, Harinagar Soceity,
Nr. Simandhar Jain Temple
Highway, Mehsana- 384 002.

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.

