



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



DIN : 20211164SW0000277082

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1403/2021 / 4296 70 H300
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-53/2021-22
 दिनांक Date : 11-11-2021 जारी करने की तारीख Date of Issue 18.11.2021
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 37/D/GNR/KP/2020-21 दिनांक: 10.02.2021 issued by
 Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar
 Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
 M/s Arvind Singh
 31 Shabad Co-operative Housing Society,
 Bhat. Gandhinagar - 382438

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 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।
- (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 :
- (iii) 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 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.



(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 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) केंद्रीय 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 इका 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) रिवीजन 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.

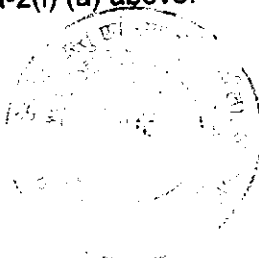
सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केंद्रीय 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, केंद्रीय 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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 कान्यायालय 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.

- (30) 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 (11) 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.

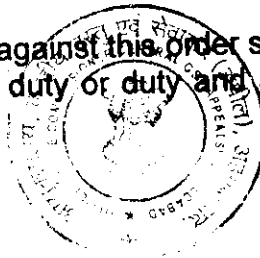
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxiii) amount determined under Section 11 D;
- (lxxiv) amount of erroneous Cenvat Credit taken;
- (lxxv) 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."

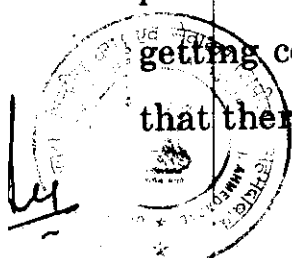


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Arvind Singh, 31, Shabad Co-operative Housing Society, Bhat, Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. 37/D/GNR/KP/20-21 dated 10-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Gandhinagar, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is engaged in providing taxable service as defined under Section 65B (44) of the Finance Act, 1994 in the category of Business Auxiliary Service without obtaining Service Tax registration. Information was received from DGGI, Ghaziabad that the Direct Selling Agent (DSA) of M/s. Safe & Secure Online Marketing Pvt Ltd (hereinafter also referred to as SSOMPL) were evading payment of service tax. The said SSOMPL were engaged in the business of selling/marketing the products either manufactured by themselves under their trademark and also of other brands under multilevel marketing network. A DSA promotes sale, markets products of SSOMPL for which they are entitled to commission/incentive from the company depending upon the recommended sale. The amount received by the DSA as commission is a consideration for service provided by them to SSOMPL and is chargeable to Service Tax. The said activity of promoting and marketing of the products of SSOMPL is neither covered by the Negative List of Services nor is it exempted under any notification.

2.1 The appellant is one such DSA of SSOMPL and in the course of the investigation, he informed that he has to convince people to purchase the products from the website of SSOMPL and for this he is getting commission for the sale generate through his ID. It was found that there was evasion at the end of the DSA, i.e. the appellant, as they



had failed to charge/pay service tax on the commission received from SSOMPL. It appeared that the appellant had failed to pay service tax amounting to Rs.3,68,239/- during the period from April, 2016 to June, 2017.

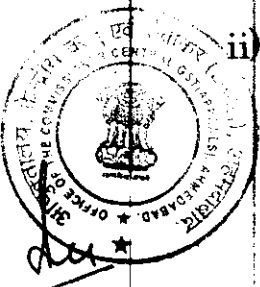
2.2 Therefore, the appellant was issued a Show Cause Notice bearing F.No. V/04-323/SCN/Arvind/20-21 dated 14.08.2020 proposing to demand and recover the service tax amounting to Rs.3,68,239/- under the proviso to Section 73 (1) of the Finance Act, 1994. The notice also proposed recovery of interest under Section 75 of the Finance Act, 1994 as well as imposition of penalty under Section 77 and 78 of the Finance Act, 1994. The SCN also proposed to appropriate an amount of Rs.2,90,000/- paid by them towards service tax liability.

3. The said SCN was adjudicated vide the impugned order wherein the demand for Service Tax amounting to Rs.3,68,239/- was confirmed along with interest and penalty under Section 77 and 78 of the Finance Act, 1994 was imposed.

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

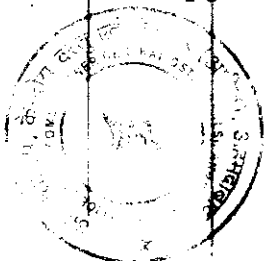
i) The extended period has been invoked for levying tax as well as interest and penalty. From the provisions of Section 73 of the Finance Act, 1994, it is clear that a demand can be raised under the extended period for reason of fraud, collusion, willful mis-statement, suppression of facts or contravention of any of the provisions. One of these activities has to be undertaken in order to evade the payment of service tax. In the absence of these reasons, extended period cannot be invoked.

ii) They agree that they were earning commission and now understand that the same was liable to service tax. However, there was never an intention of not paying service tax.



- iii) Suppression of facts has been cited by the adjudicating authority. However, there was never any suppression of fact from their side. They were not aware that their income was taxable under service tax and hence question of intentional hiding of facts would never arise.
- iv) The statement recorded of the appellant confirms that the appellant was ignorant of the taxability which itself indicates that suppression of facts cannot be considered.
- v) In the case of Tamilnadu Housing Board Vs. CCE reported at 1994 (74) ELT 9 (SC) it was observed by the Hon'ble Supreme Court that intention to evade payment is not mere failure to pay duty. It must be something more, the assessee must be aware that duty was leviable and he must deliberately avoid payment of duty. Similarly, in the case of Collector Vs. Chemphar Drugs the Hon'ble Supreme Court held that mere inaction or failure will not amount to suppression of facts.
- vi) They have never hidden the facts overall. Tax was deducted at source on his income and the income has been reflected in the Form 26AS generated by Income Tax department. The income tax return submitted by them also shows the income as well as the fact that the same was commission.
- vii) In the light of the above, extended period may not be invoked and they not be asked to discharge the tax on income during April, 2016 to June, 2017. The amount already paid be refunded to them.

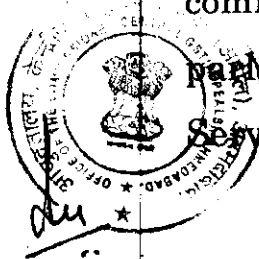
5. The appellant vide letter dated 09.09.2021 requested for early hearing. Accordingly, Personal Hearing in the case was held on 12.10.2021 through virtual mode. Shri Abhishek Shah, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.



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 material available on records. I find that the issue of the activity undertaken by the appellant viz. promoting & marketing being a taxable service is not disputed by them. Further, the appellant is also not disputing the taxability of the income earned by them through commissions from SSOMPL. Therefore, these issues are not being deliberated.

6.1 The only issue raised by the appellant is with regard to the invoking of extended period of limitation in terms of the proviso to Section 73 (1) of the Finance Act, 1994. In this regard, I find that the SCN at para 12 states that as per clause 5 and 26 of the agreement signed by the appellant with SSOMPL, the amount paid by SSOMPL to the DSA is inclusive of all taxes and the DSA is responsible for complying with the existing Taxation Acts or Rules. It, therefore, is evident that the appellant was aware of their activity having liability under Taxation Acts and Rules. Despite this, the appellant have failed to get themselves registered with the Service Tax Department, file periodical returns and pay the applicable service tax.

6.2 I find that the fact of the appellant being engaged in taxable service activity as well earning income which was taxable to service tax was unearthed only in the course of the search proceedings at the premises of SSOMPL. Further, the claim of the appellant that he was unaware of the taxability of the service is contradicted by the fact that he was aware that the service provided by him was business auxiliary service. This fact has been recorded in paragraph 3 of the panchnama dated 19.12.2019 and the same has not been refuted by the appellant. The appellant is a Direct Selling Agent of SSOMPL and is earning commission for promoting the products of SSOMPL. In common parlance, the activity of a DSA is not termed as Business Auxiliary Service. The fact that the appellant himself stated that he is engaged in



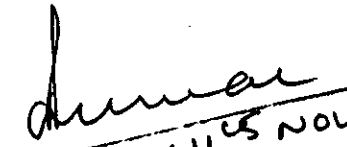
supplying business auxiliary service is indicative of the fact that he was aware of the provisions of Service Tax. Therefore, I do not find any merit in the contention of the appellant that he was not aware of the taxability of the service provided by him.

6.3 In the era of self assessment, the responsibility of the tax payer to comply with the requirement of disclosure of information is all the more greater. However, by not getting registered with the department and by not filing periodical returns, the appellant has suppressed facts from the department. Therefore, the extended period of limitation has been rightly invoked for demand and recovery of the Service Tax not paid by the appellant. Consequently, the appellant is also liable to interest and penalty.

7. In view of the above discussions, I reject the appeal filed by the appellant and uphold the impugned order.

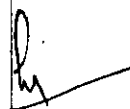
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals)

Date: .11.2021.

Attested:


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



BY RPAD / SPEED POST

To

M/s. Arvind Singh,
31, Shabad Co-operative Housing Society,
Bhat, Gandhinagar

Appellant

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

