



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 : 20211264SW0000777AE2

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1510/2021 / **4153 70 H652**
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-67/2021-22**
दिनांक Date : **02-12-2021** जारी करने की तारीख Date of Issue 07.12.2021
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **33/AC/ME/CGST/2020-21** दिनांक: **04.02.2021** 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 Hotel Caravan
S.No. 1306, Near Bhagwati Estate,
National Highway, At & Post: Unava,
Mehsana-384170

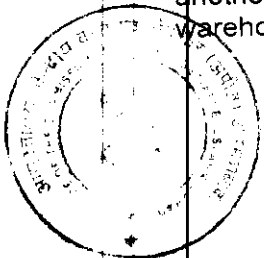
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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।
- (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 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 हों।

(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 भीतरमूल-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) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

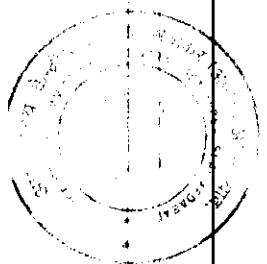
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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 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.

- (45) 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.

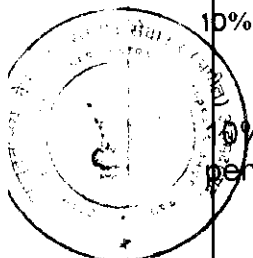
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxviii) amount determined under Section 11 D;
- (cxix) amount of erroneous Cenvat Credit taken;
- (cxx) 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."

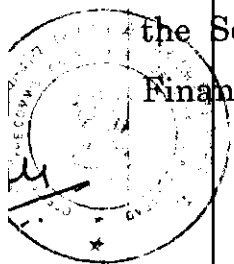


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Hotel Caravan, Survey No. 1306, Near Bhagwati Estate, National Highway Road, At & Post : Unava, District : Mehsana, Gujarat - 382 170 (hereinafter referred to as the appellant) against Order in Original No. 33/AC/MEH/CGST/ 20-21 dated 04-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is holding Service Tax Registration No. AAHFH9679RSD001 and engaged in providing Restaurant Service, Immovable Property Service, Mandap Keeper & Outdoor Catering Service, Permitting Commercial use or exploitation of events service, Accommodation in hotels, Inn, Guest House, Club or Camp site etc. service. During the course of audit of records of the appellant by departmental audit officers for the period from F.Y. 2015-16 (March, 2016) to 2017-18 (June, 2017), it was observed that the appellant had not discharged service tax on various services viz. 1) Non Payment of service tax amounting to Rs.15,550/- on rent income of immovable property during F.Y. 2015-16 to F.Y. 2017-2018 (June, 2017); 2) Short payment/non-payment of service tax amounting to Rs.1,16,315/- on income from AC restaurant/Guest House/Conference during F.Y. 2015-16 to F.Y. 2017-2018 (June, 2017); 3) Non payment of service tax amounting to Rs.1,94,616/- on income from non-AC restaurant during the F.Y. 2015-16 to F.Y. 2017-2018 (June, 2017); and 4) Non payment of penalty for non filing/late filing of ST-3 returns.

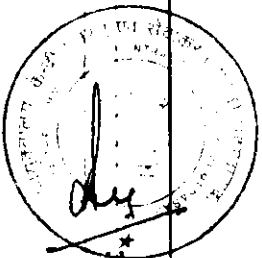
2.1 The appellant was issued a SCN bearing No. 194/2019-20/CGST/Audit dated 13.11.2019 from F.No. VI/1(b)-251/HOTEL CARAVAN/IA/AP62/18-19 wherein it was proposed to recover the service tax amount of Rs.3,26,481/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994, recover the late fee/penalty under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 and impose penalty under Section 78 of the Finance Act, 1994.



3. The said SCN was adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. The late fee/penalty was also ordered to be recovered. Penalty was also imposed under Section 78 of the Finance Act, 1994.

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

- i. The impugned order has been passed without appreciating their request that the SCN is incomplete without the calculation sheet showing as to how the amount demanded in the SCN has been arrived at so that proper reply can be filed by them.
- ii. Even on being requested, the Assistant Commissioner failed to produce any calculation sheet and it appears that even the adjudicating authority is not aware as to from where and how the demand has been worked out, hence he was not able to provide it to them. In the absence of any such calculation sheet, they were unable to file the reply to the SCN.
- iii. The audit report, the SCN and the impugned order does not explain as to what amount is short paid and how it is short paid.
- iv. They have collected and paid service tax on the bills raised from the AC restaurant which is separately named as "AC HALL", and not paid service tax on the bills raised from the NON-AC Restaurant as the same is located in open lobby, and is not a closed room either.
- v. Non-AC restaurant is exempted from service tax under Sr.No.19 of Notification No. 25/2012-ST. It has also been clarified vide CBIC Circular No.173/8/2013-ST dated 07.10.2013 that non AC restaurant is not taxable under service tax, even where the food to AC and non AC restaurant is supplied from a common kitchen. The menu card and the rates of the AC and non AC restaurant are different.
- vi. The impugned order is not sustainable on merits and also as the SCN served was incomplete without giving calculation of service tax and also due to violation of the principles of natural justice.



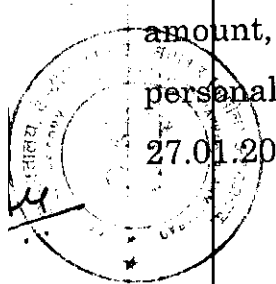
5. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri R. Subramanya, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

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. The issue to be decided in this case is whether the impugned order confirming the demand against the appellant alongwith interest and penalty is legally sustainable. The demand pertains to period F.Y. 2015-16 to F.Y. 2017-18 (upto June, 2017).

6.1 I find that the appellant have while contesting the issue on merits, have also contested the impugned order on the grounds that the SCN issued to them was incomplete as no calculation sheet showing how the demand was worked out was provided to them even after requesting for the same. They have also pleaded that there was a violation of the principles of natural justice.

7. I find that in the impugned order the adjudicating authority has recorded that the appellant has not submitted any defense submission and that the appellant did not appear for the personal hearing granted on 21.01.2021, 27.01.2021 and 01.02.2021. The SCN was, therefore, decided ex-parte. I find that the advocate for the appellant had vide email dated 23.01.2021 requested for details as to how the demand was arrived and sought an adjournment till such details are made available to that they could file their defense reply and appear for personal hearing. However, I find that the said request has apparently not been taken on record as there is no mention of the same in the impugned order. It is also not even forthcoming whether the request of the appellant was accepted or rejected.

7.1 I find that it is not a case where the appellant did not wish to submit any defense or did not wish to be heard in person. On the contrary, their advocate has clearly stated that upon receipt of the calculation of the demand amount, they would be filing their defense reply as well as appear for personal hearing and sought an adjournment of the hearing fixed on 27.01.2021. In spite of this specific request of the appellant, the adjudicating



authority fixed the next date of hearing on 01.02.2021 and thereafter proceeded to adjudicate the case.

8. I am of the considered view that there has been a violation of the principles of natural justice. The adjudicating authority was bound to either accept or reject the request of the appellant, for providing calculation sheet showing how the demand was worked out, and fix the date for personal hearing only after communicating the same to the appellant. Further, it is on record that the impugned order has been passed ex-parte without any defence reply or personal hearing. Therefore, I remand back the matter to the adjudicating authority for decide the matter afresh after providing the appellant the calculation sheet showing how the demand was worked out. The appellant shall, within 30 days of receipt of the calculation sheet, file their defense reply and appear for personal hearing when fixed by the adjudicating authority.

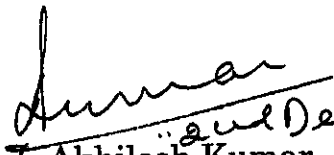
9. Accordingly, the impugned order is set aside with the above directions and the appeal of the appellant is allowed by way remand.

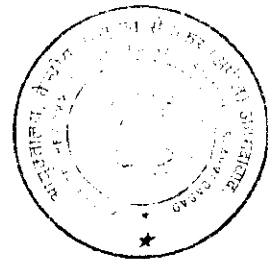
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Attested:

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: .12.2021.



BY RPAD / SPEED POST

To

M/s. Hotel Caravan,
Survey No. 1306,
Near Bhagwati Estate,
National Highway Road,
At & Post : Unava,
District : Mehsana, Gujarat – 384 170

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.

