



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20210664SW0000616061

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/627/2020 / **1465 TO 1469**
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-09/2021-22**
दिनांक Date : **21-05-2021** जारी करने की तारीख Date of Issue 02.06.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **KLL DIV/STAX/AC-AD/19/20-21** दिनांक: **27.07.2020** issued by Assistant Commissioner of CGST & Central Excise, Kalol Division, Gandhinagar Commissionerate
- ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Kalhaar Association
Club House-1, Kalhaar Bunglows,
Near Shilaj, Village-Nandoli,
Post Rancharda, Ahmedabad-382115.

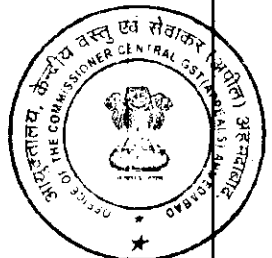
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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) 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 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 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) 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 मुख्यशीर्ष 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) 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 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 ओदश 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश 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 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.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर 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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

M/s. Kalhaar Association, Club Houe-1, Kalhaar Bungalows, Near Shilaj, Village- Nandoli, Post Rancharda, Ahmedabad-382115 (hereinafter referred to as the "appellant") has filed the present appeal against the Order-in-Original No. KLL DIV/STAX/AC-AD/19/20-21 dated 27.07.2020 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & Central Excise, Kalol Division, Gandhinagar Commissionerate, (hereinafter referred to as the "adjudicating authority").

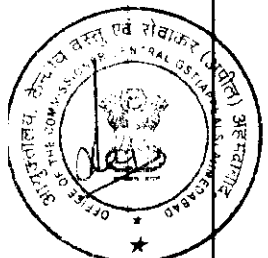
2. The facts of the case, in brief, are that the appellant was registered as "Associations of Persons" and engaged in providing taxable service viz. Event Management Service" as defined under sub-clause 108 of Section 65 of the Finance Act, 1994 and not registered with Service Tax. On the basis of intelligent gathered by the officer of the Directorate General of Goods & Service Tax intelligence, Zonal Unit, Ahmedabad, a search was conducted at the premises of appellant. On scrutiny of documents, it was found that the appellant was formed by nine co-operative societies as an Association of Persons (AOP) with a view to avoid any difference of opinion in respect of the management and use of the properties and amenities amongst themselves and for the purpose of management, use and maintenance of the properties and amenities. It was further observed that they shall raise funds by way of contribution from each society, which in their opinion is necessary for management, use and maintenance of the properties and amenities. During investigation, it was found from financial and other records/documents for the period from 01.10.2013 to 31.03.2017 and statement of Shri Jayesh Nagori, Chairman of M/s. Kalhaar Association, recorded during investigation that they had also provided event management service by way of organizing Navratri for their members and their family and issued transferable entry passes during the said period from 01.10.2013 to 31.03.2017 and charged consideration total amounting to Rs. 2,06,27,400/- from them and thereby had rendered taxable services under the provision of Section 68 of the Finance Act, 1994. Therefore a Show Cause Notice F.No. DGGI/AZU/GR.E/36-13/2019-20 dated 24.04.2019 (hereinafter referred to as the "SCN") was issued to them proposing demand of service tax amounting to Rs. 27,87,174/- (for the period



01.10.2013 to 31.03.2017) under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994 read with Section 174 of Central Goods and Service Tax Act, 2017 by invoking extended period alongwith interest under Section 75 of the Finance Act, 1994. Penalties under Section 76, 77 and 78 of the Finance Act, 1994 were also proposed. The said SCN was adjudicated vide the impugned order wherein the adjudicating authority has confirmed the demand alongwith interest and also imposed penalties under Section 77(2) and Section 78 of the Act.

3. Being aggrieved with the impugned order, the appellant filed the instant appeal on the grounds that:

- The receipts which is collected by providing passes to their members and their family only are not liable to Service Tax as the society is giving passes to only its members;
- They are neither selling the entry passes issued for navratri festival nor saleable;
- The appellant is association of person and makes available facilities exclusively for their members and not carrying on any trade or business activity and submitted copy of article of agreement to form an association;
- They relied on the judgement of Hon'ble Supreme Court-larger Bench in case of M/s State of West Bengal and Ors Vs Calcutta Club Ltd., and Chief Commissioner of Central Excise and Service Tax and Ors Vs M/s Ranchi Club Ltd (2019-TIOL-449-ST-LB) that the service tax is not the Principle of Mutuality;
- They also relied on the judgement of CESTAT, Ahmedabad in case of Commissioner of Service Tax, Ahmedabad Vs Rajpath Club Ltd (A/10785/2018 dated 26.04.2018) and Hon'ble High Court of Gujarat in case of Sports Club of Gujarat Ltd Vs Union Of India (2013-TIOL-528-HC-AHM-ST), Hon'ble High Court of Calcutta in case of Dalhousie Institute Vs Assistant Commissioner, Service Tax Cell (2005-TIOL-08-HC-KOL-ST) and Hon'ble Supreme Court in case of Royal Western India Turf Club Ltd (24 ITR 551).
- There is no service which it has provided in relation to the service of Navratri Garba, it is itself is organizing the event and there is no service in relation to such religious function is being provided;

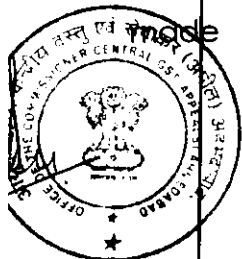


- As per Sr.No. 28 of Notification No. 25/2012 ST dated 20.06.2012, contribution received from the member is exempt upto Rs.5000/- per month, therefore, income of Rs.2,06,27,400/- received by the appellant cannot be considered as taxable service as defined under Section 65B(51) of the Finance Act, 1994 as effective from 01.07.2012;
- The Impugned order does not talk about the personal hearing as no personal hearing took place which is against the principle of audi alteram partem;
- The adjudicating authority has also not recorded the submissions made by the appellant in the latest additional submission though the receipt of the same has been recorded in impugned order and the adjudicating authority has acted with prejudicial mind;

4. Personal hearing in the matter was held on 23.03.2020 through virtual mode. Shri Gunjan Shah, C.A, appeared on behalf of the appellant for hearing. He stated that the impugned order was passed without giving them opportunity for personal hearing. He further re-iterated the submissions made in Appeal Memorandum. He also stated that he would submit additional written submission based on which case may be decided.

5. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum. The issue to be decided in the instant appeal is whether the fund collected/received from members of the association, i.e from the sector of Kalhaar Bungalows, by appellant is a consideration on which service tax is payable by the appellant under the "Event Management Service" as defined under erstwhile Section 65B(51) of the Finance Act, 1994 or otherwise. The period involved in dispute is from 01.10.2013 to 31.03.2017.

6. It is observed that one of the grounds on which the appeal has been preferred that no opportunity of personal hearing was granted to the appellant before passing the impugned order and hence principles of natural justice have been violated. The appellant has further argued that adjudicating authority has not considered additional written submissions made by them and that non-appearing in personal hearing by the



appellant was due to the fact that they had been not given any notice for personal hearing.

6.1. It is observed from the impugned order that there is no mention of conducting any personal hearing while adjudicating the case. Hence, it is apparent from records that the adjudicating authority, without giving personal hearing to the appellant, had proceeded to decide the matter ex-parte. I find that, the impugned order has been passed in violation of principles of natural justice.

..


7. I find that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Once, show cause notice is issued, the notice should be given sufficient opportunity to rebut their case being first and foremost requirement of natural justice. The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

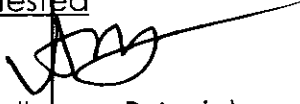


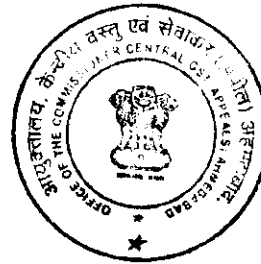
8. In view of above observations, without going into merit, I set aside the impugned order and remand the case back to the adjudicating authority to decide it afresh ensuring principle of natural justice. The appeal is accordingly allowed by way of remand.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
Date : .05.2021

Attested


(Atulkumar B Amin)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Kalhaar Association,
Club House-1, Kalhaar Bungalows,
Near Shilaj, Village- Nandoli,
Post Rancharda, Ahmedabad-382115.

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, CGST & Central Excise, Gandhinagar Commissionerate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Commissionerate.
4. The Assistant Commissioner, CGST & C.Ex, Kalol Division, Gandhinagar Commissionerate.
- ✓ 5. Guard File.
7. P.A. File.