



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20230264SW0000003E7B

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1760/2022-APPEAL / १३०६ - 12
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-115/2022-23 and 15.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	15.02.2023
(ङ)	Arising out of Order-In-Original No. 140/AC/DEM/MEH/ST/Agarwal Transporter/2021-22 dt. 29.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Agarwal Transport Corporation, 10, Samudra Complex, Nr. Bandhan Guest Home, Highway, Mehsana - 384002

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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 किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 पढी 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6)(i) 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, penalty, where penalty alone is in dispute."



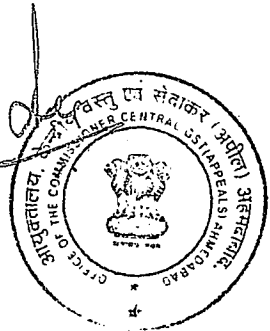
अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Agarwal Transport Corporation, 10, Samudra Complex, Near Bandhan Guest Home, Highway, Mehsana-384002 (hereinafter referred to as "the appellant") against the Order-In Original No. 140/AC/DEM/MEH/ST/Agarwal Transporter/2021-22, dated 01.04.2022 (hereinafter referred as the 'impugned order') passed by the Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate- Gandhinagar. [Hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were providing taxable services and holding Service Tax Registration No. AIYPA0364PSD001. As per the information received from the Income Tax Department, the appellant had earned income from the services during the Financial Years 2015-16 & 2016-17. It was observed from the Income Tax data vis-a-vis Service Tax data of the appellant that there was a differential taxable value of Rs.26,53,095/- [2015-16 - "Rs. -NIL" & 2016-17 -" Rs.26,53,095/-"]. Thus, it appeared that the appellant had evaded / short paid the Service Tax amounting to Rs.3,97,964/- on the differential taxable value of Rs.26,53,095/- reflected in the Income Tax Returns, which was suppressed from the Service Tax department .

2.1 Accordingly, a Show Cause Notice was issued to the appellant vide F.No.V.ST/11A-64/Agarwal/2020-21, dated 30.06.2020, wherein it was proposed to demand and recover:

- (i) Service Tax amount of Rs.3,97,964/- under proviso to Section 73(1) of the Finance Act, 1994 readwith Section 68 of the Finance Act, 1994.
- (ii) Interest under Section 75 of the Finance Act, 1994 on the above amount of Service Tax.
- (iii) Penalties under Section 77(2), 77(1) C & 78 of the Finance Act, 1994.

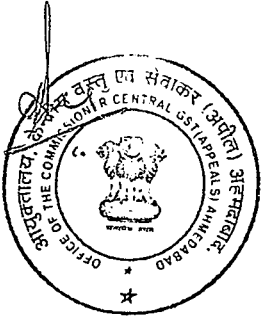


3. The Show Cause Notice was adjudicated vide *the impugned order* wherein the *adjudicating authority* has:

- (i) Confirmed the demand of Service Tax amount of Rs.3,97,964/- ;
- (ii) Ordered to pay interest under Section 75 of the Finance Act, 1994, on the above demand of Service Tax.
- (iii) Imposed a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994.
- (iv) Imposed a penalty @ Rs.200/- per day till the date of compliance or Rs.10,000/-, whichever is higher under Section 77(1)(C) of the Finance Act, 1994.
- (v) Imposed a penalty of Rs.3,97,964/- under Section 78(1) of the Finance Act,1994.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds:-

- On the basis of ITR, the department has issued SCN which was not received by them.
- Due to non receipt of notice for personal hearing or received late and non-availability of details of SCN, they could not submit documents and the adjudicating authority has passed the present order.
- SCN was issued based on presumptions and third party information without any verification and hence not sustainable.
- Extended period of limitation not applicable in terms of proviso to Section 73(1) of the Finance Act, 1994. In support they relied upon the decision in case of M/s Cosmic Dye Chemical Vs Collector of C.Ex., Bombay [1995(75) ELT 721 (SC)].
- They were carrying out the work of Goods Transport Agency. As per Notification No.30/2012, dated 20.06.2012 such services covered under RCM. As per the said Notification 100% of ST is payable by the person receiving the services.
- Since there are no tax liabilities, no penalty is imposable.

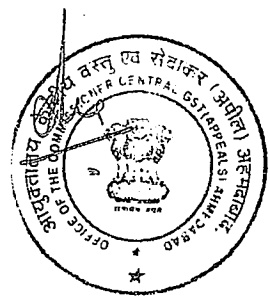


5. Personal hearing in the matter was held on 10.02.2023. Shri Arpan Yagnik, Chartered Accountant, appeared as authorized representative of the appellant. He reiterated submissions made in the appeal memorandum. He submitted a copy of certificate dated 08.06.2022 by M/s Gujarat Ambuja Exports Limited during hearing.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the materials available on the record. The issue before me for decision is as to whether the impugned order confirming the demand of service tax amounting to Rs.3,97,964/- , along with interest and penalty, in the facts and circumstances of the case, is legal and proper *or* otherwise. The demand pertains to the period to F.Y. 2016-17.

7. It is observed that the appellant was issued SCN on the basis of the data received from the Income Tax Department and the appellant was called upon to submit documents/required details in respect of the difference found in their income reported in the ST-3 returns as compared to the Income Tax Returns. However, the appellant failed to submit the required details. Therefore, the appellant was issued SCN demanding Service Tax on the differential income by considering the same as income earned from providing taxable services. The adjudicating authority had confirmed the demand of Service Tax, along with interest and penalty, vide the impugned order.

8. It is observed that the appellant is a Proprietorship firm and registered with the department. They are engaged in business in relation to goods transport agency. As per the Form 26AS submitted by the appellant for F.Y. 2016-17, they had received an amount of Rs.26,53,095/- from M/s Gujarat Ambuja Exports Ltd., on which TDS had been deducted under Section 194C of the Income Tax Act, 1961. They have claimed that the services provided by them are covered under reverse charge mechanism in terms of Notification No. 30/2012-ST, dated 20.06.2012.



8.1. I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

"2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 1-4-2021 and 23-4-2021 issued vide F.No. 137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

8.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken by the adjudicating authority, and the impugned order has been issued only on the basis of the data received from the Income Tax department. Therefore, I find that the impugned order has been passed without following the directions issued by the CIBC.

9. It is further observed that the appellant, in the appeal memorandum, have stated that on the basis of ITR, department has issued SCN, which was not received by them. Further, due to non receipt of notice for personal hearing or received late and non-availability of details of SCN, they could not submit documents and the adjudicating authority has passed the present order.

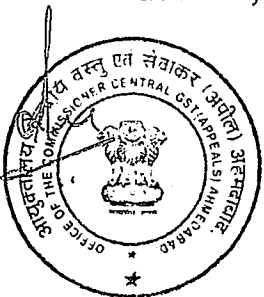


9.1 I find that at Para 15 of the impugned order, it has been recorded that the opportunity of personal hearing was granted on 17.02.2022, 23.02.2022 and 22.03.2022 but the appellant neither appeared for hearing nor sought any extension. It has also been recorded at Para 14 that no reply has been filed by the appellant. The adjudicating authority had decided the case ex-parte.

9.2 In terms of Section 33A (1) of the Central Excise Act, 1944, the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that in the instant case, three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. I find it relevant to refer to the judgment of the Hon'ble High Court of Gujarat in the case of Regent Overseas Pvt. Ltd. Vs. UOI - 2017(6) GSTL 15 (Guj) wherein it was held that:

12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing."

Therefore, the impugned order has been passed in violation of principles of natural justice and is not legally sustainable.

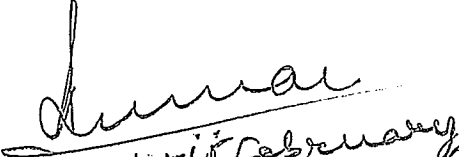


9.3 It is further observed that the appellant have made submissions in their appeal memorandum, which were not made before the adjudicating authority. In view of the above, I am of the considered view that in the interest of the principles of natural justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of personal hearing.

10. In view of the above, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh, after following principles of natural justice. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant is also directed to appear before the adjudicating authority as and when personal hearing is fixed by the adjudicating authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.

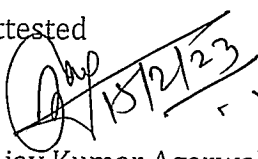
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar) 15.02.2023..
Commissioner (Appeals)

Date: 15.02.2023

Attested


(Ajay Kumar Agarwal)
Assistant Commissioner [In-situ] (Appeals)
Central Tax, Ahmedabad.



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3. The Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.

