



सत्यमेव जयते

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

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DIN:- 20230264SW000000F04A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1140/2022-APPEAL / 8410-12
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-118/2022-23 and 16.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	16.02.2023
(ङ)	Arising out of Order-In-Original No. 77/AC/DEM/MEH/ST/Balmukund/2021-22 dated 22.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Balmukund Transport, Station Road, Kukarvada, Vijapur, Mehsana, Gujarat-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, 4<sup>th</sup> 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 या किसी भण्डागार में हो माल की प्रक्रिया 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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- 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 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, or penalty, where penalty alone is in dispute."



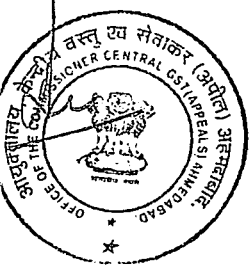
अपीलीय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Balmukund Transport, Station Road, Kukarvada, Vijapur, Mehsana, Gujarat-384002 (hereinafter referred to as the "appellant") against Order in Original No. 77/AC/DEM/MEH/ST/Balmukund/2021-22 dated 22.03.2022 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, CGST & CE, Division-Mehsana Gandhinagar Commissionerate (hereinafter referred to as "adjudicating authority").

2.1 Briefly stated, the facts of the case are that the appellant were engaged in providing taxable services viz. Clearing and Forwarding Services, Manpower Recruitment/Supply Agency Services, Transport of goods by road/Goods Transport Agency Services etc., and holding Service Tax Registration No. ABIPP6387QST001 for the same. As per details provided by Income Tax Department through DG Systems Report No. 02 & 03 for the F.Y. 2015-16 and F.Y. 2016-17, discrepancies were observed in total income declared in the Income Tax Return, when compared with Service Tax Returns of the appellant for the period F.Y.2015-16 and F.Y.2016-17. In order to verify the said discrepancies and the manner of payment of Service Tax, letters /e-mails were issued to the appellant. However, they did not respond. It appeared to the jurisdictional officers that the nature of activities carried out by the appellant were covered under the definition of service and, were not exempted vide Notification No. 25/2012-S.T. dated 20.06.2020, hence, taxable.

2.2 Accordingly, the differential Service Tax payable by the appellant was determined on the basis of difference between the value "Sales/Gross Receipts (derived from Value reflected in ITR)" as provided by the Income Tax Department and the taxable value declared in their ST-3 returns for the F.Y. 2015-16 and F.Y. 2016-17, as below:- :

Sr. No.	Period	Differential Taxable Value as per Income Tax Data (In Rs.)	Rate of Service Tax including Cess (%)	Service Tax Liability (In Rs.)
1	2015-16	1,38,56,524	14.5	20,09,196
2	2016-17	1,09,52,484	15	16,42,873
Total	-	2,48,09,008	-	36,52,069



3. The appellant was issued a Show Cause Notice under F.No. V.ST/11A-198/Balmukund/2020-21 dated 18.08.2020 (in short SCN) for demand and recovery of Service Tax amounting to Rs.36,52,069/- by invoking extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Sections 77 and 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order ex-parte wherein the proposals made in SCN were confirmed.

5. Being aggrieved with the impugned order, the appellant have preferred the present appeal on following grounds that:

- (i) The appellant is involved in activity of transport of goods by road. As per Reverse Charge Mechanism (RCM) under Service Tax, tax on such service is required to be paid by the recipient of services, as per Notification No. 30/2012-S.T. dated 20.06.2012.
- (ii) The appellant is also providing services related to C&F Agency, Loading & Unloading Charges, Godown Rent on which proper Service Tax is charged and paid by them.
- (iii) The appellant is also providing services related to Rent-a-cab Services, which also attracts RCM under Service Tax in terms of Notification No. 30/2012-S.T. dated 20.06.2012. Proper billing was made for these services as per applicable provisions at that time.
- (iv) At the time of passing of impugned order, department had considered the type of services provided by them. Due to Covid-19, they had made online submission, which were not considered by the adjudicating authority.

6. Personal hearing in the case was held on 09.01.2023. Shri Nilesh Nihalani, Chartered Accountant, appeared for hearing. He reiterated the submissions made in the appeal memorandum. During hearing, he submitted documents viz. ITR, Form-26AS, P & L Account Statement. He stated that wherever applicable, they had paid service tax and filed ST-3 Returns. Rest of the amounts pertained to services under reverse charge. The appellant vide letters dated 23.01.2023 & 08.02.2023, submitted reconciliation statement along with sample invoices as additional submission.



7. I have carefully gone through the case records, the appeal memorandum and oral submissions made by the appellant as well as additional submission made by them. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs.36,52,069/- by invoking extended period of limitation along with interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

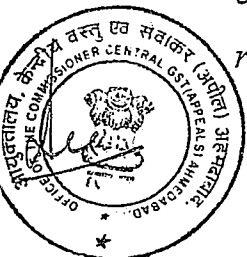
8. It is observed from the case records that the SCN in the case has been issued only on the basis of data received from the Income Tax department. The appellant is registered with the department. No further verification was caused to ascertain the exact nature of services provided by the appellant during the period F.Y. 2015-16 and F.Y.2016-17. Further, in terms of Notification No. 30/2012-ST dated 20.06.2012, services of Goods and Transport Agency and Renting of Motor Vehicles attract service tax under 'Reverse Charge Mechanism' at the service receiver's end. Therefore, appropriate inquiry was required to ascertain the taxability of the services provided by the appellant and the nature of exemptions available to them (if any). Further, on the basis of documents submitted the appellant, it is also observed that the appellant had filed ST-3 returns for the F.Y. 2015-16 and F.Y.2016-17 and, they had paid Service Tax under Clearing and Forwarding Agent Services and Manpower Recruitment/Supply Agency Services, which is undisputed. Hence, the SCN and the impugned order issued in this case without causing necessary verification are vague.

8.1 It is also observed that the impugned order was adjudicated ex-parte on the basis of demand of Service Tax proposed vide the SCN, which itself was issued entirely on the basis of data received from the Income Tax Department, without causing any investigation. Therefore, the violation of the principles of natural justice is apparent.

9. I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

...

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*

...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN and the impugned order has been issued indiscriminately and mechanically without application of mind, and are vague, being issued in clear violation of the instructions of the CBIC discussed above.

10. I, further, find that the appellant have in their appeal memorandum and additional submission, submitted various documents viz. ITR, ST-3 Returns, Profit & Loss Account Statement, Reconciliation Statement, Sample Invoices etc., for the relevant period in their defense. They have also claimed exemption under Section 66D of the Finance Act, 1994 as well as under Notification No. 30/2012-ST read with Rule 2(1)(d) of the Service Tax Rules, 1994. I find that these contentions are contrary to the declarations made in the ST-3 Returns. However, for arriving at correct assessment, these contentions are to be examined in light of the supporting documents. As the submissions of the appellant were not perused by the adjudicating authority as also neither did they attend the personal hearing granted, nor any oral submissions were made by them in their defense, these submissions were not examined by the adjudicating authority. Therefore, I am of the considered view that it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submissions of the appellant, made in the course of the present appeal, and, thereafter, adjudicate the matter.

11. In view of the above, I am of the considered view that since the appellants have contested the SCN for the first time before this authority and the matter requires verification from the documents of the appellant, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contentions of the appellant. Therefore, the matter is required to be remanded back for denovo adjudication after following the principles of natural



justice. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant should also attend the personal hearing as and when fixed by the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellants stand disposed of in above terms.

*Akhilesh Kumar*  
16<sup>th</sup> February, 2023  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Dated : 16<sup>th</sup> February, 2023

Attested

*(Somnath Chaudhary)*  
Superintendent (Appeals),  
CGST (Appeals), Ahmedabad



By R.P.A.D./Speed Post

To,  
M/s Balmukund Transport,  
Station Road, Kukarvada,  
Vijapur, Mehsana, Gujarat-384002

Copy to:

1. The Principal Chief Commissioner of CGST, Ahmedabad Zone.
2. The Commissioner, CGST & CE, Gandhinagar Commissionerate.
3. The Assistant Commissioner, CGST & CE, Division-Mehsana, Gandhinagar Commissionerate.
4. The Assistant Commissioner (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- ✓ 5. Guard File.
6. P.A. File.