



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 Regd. Post**

DIN No.: 20221064SW00000FECE

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/652/2022-APPEAL/4306-10
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-054/2022-23 and 28.10.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.10.2022
(ङ)	Arising out of Order-In-Original No. 22/ADJ/GNR/PMT/2021-22 dated 01.03.2022 passed by the Deputy Commissioner, CGST & CE, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Gayatri Tour & Travel (Proprietor Mr. Vikram D Patel) Address:- Block No. 782, Adarsh Nagar, Sector-24, Gandhinagar, Gujarat

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 रूपये 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.

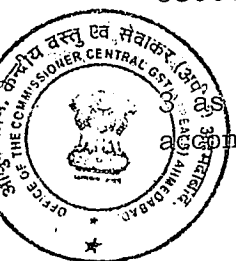
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों 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- 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 अपील 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।

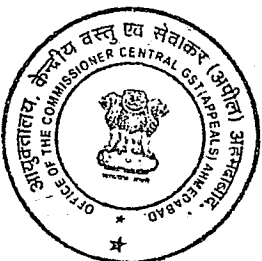
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश /ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Gayatri Tour and Travel (Proprietor Mr. Vikram D Patel), Block No. 782, Adarsh Nagar, Sector -24, Gandhinagar [hereinafter referred to as "the appellant"] against Order-in-Original No.22/ADJ/GNR/PMT/2021-22, dated 01.03.2022 [hereinafter referred to as "the impugned order"] passed by the Deputy Commissioner, CGST & Central Excise, Gandhinagar Division, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2, Facts of the case, in brief, are that the appellant, engaged in business activity of Tour Operator Service, was having Service Tax Registration No. AGHPP3579NST001. On the basis of data received from the Income Tax Department for the Financial Years 2015-16 and 2016-17, it was observed that there was discrepancies in the total income of the appellant. To ascertain whether the appellant had correctly discharged their service tax liability, they were issued letters dated 10.05.2020, 20.05.2020 and 02.07.2020 to provide the details of such services provided during these years. The appellant did not respond to these letters. It was observed that the appellant had filed NIL ST-3 returns for the period F.Y. 2015-16 & 2016-17. As the nature of activities carried out by the appellant appeared to be covered under the definition of service, hence the aforesaid services provided by the appellant appeared to be taxable under the Finance Act, 1994.

2.1. Based on the data mentioned in the ITR returns and Form 26AS filed by the appellant with the Income Tax Department, their service tax liability was calculated as detailed below:

Sr. No	Details	Year 2015-16 (In Rs.)@ 14.5%	Year 2016-17(In Rs.) @15%
1	Total Income as per ITR-5	36,20,200	48,06,119
2	Income on which Service Tax paid	00	00
3	Difference of Value	36,20,200	48,06,119
4	Service Tax along with Cess	5,24,900	7,20,918
5	Net Amount of demand	5,24,900	7,20,918
	Grand Total (Rs.)		12,45,847/

2.2. The appellant was issued a Show Cause Notice demanding Service Tax amount of Rs. 12,45,847/- under proviso to Sub-section (1) of Section 73 of Finance Act,



1994 along with interest under Section 75 of the Finance Act, 1994. The SCN also proposed imposition of penalty under Section 76, Section 77(2), Section 77 (3) (c) and Section 78 of the Finance Act, 1994.

3. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein the proposals made in the SCN were confirmed.

4. Being aggrieved with the impugned order, the appellant has preferred this appeal on grounds as under:

(i) They had acted as an agent only. Hence, if tax is levied on them, then it will amount to double taxation for a single service provided.

(ii) The appellant was in Australia with his son, during the period of notices and therefore had not replied to any notices.

5. Personal Hearing in the case was held on 09.09.2022. Mr. Ronak P. Shah, Chartered Accountant, appeared for hearing on behalf of the appellant. He stated that the appellant was out of India when the notices were served to him. He submitted a detailed written submission during hearing and re-iterated submissions made therein.

5.1. In the written submission dated 25.08.2022, it was submitted as under:

(i) The appellant, Mr. Vikram D. Patel is the Proprietor of M/s. Gayatri Tour and Travel, having ST No. AGHPP3579NST001. They were appointed as LTC agent of Gujarat State Road Transport Corporation Ltd (GSRTC). As and when, any employee or group of employees of the government wishes to claim LTC benefit, they approached the appellant, then appellant prepared estimate for tour and collect the amount from the government employees on behalf of the GSRTC and deposit the amount with GSRTC. Appellant is acting as LTC agent between Employees and GSRTC for arranging Leave Encashment tours. On the amount received from employees, Service tax is already paid by GSRTC and Certificate of service tax paid amount is produced to the LTC agent to avoid double taxation of service tax amount.

(ii) Data provided by income tax department regarding gross receipt does not confirm the amount is taxable under Service Tax Act. Even the Central Board of Indirect Tax and Customs (CBIC) has issued advisory not to issue SCN without verification. They also submit that the High Court of Bombay



recently in March, 2021, in the case of Amrish Rameshchandra Shah Vs UOI had quashed identical show cause notice in which the Service Tax was demanded without any verification and based only on the data provided by the Income Tax authorities.

AMRISH RAMESHCHANDRA SHAH VS UNION OF INDIA AND OTHERS-2021-TIOL-583-HC-MUM-ST

(iii) Without verifying the Service tax implication and abatement rules, Wrongly Calculated Demand notice issued.

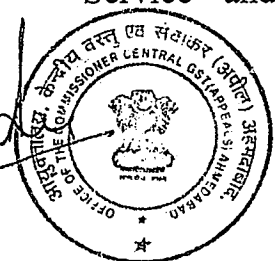
(iv) Service Tax is paid and Certificate from GSRTC is already produced, so there is double taxation in this case. Appellant is appointed as LTC agent of Gujarat State Road Transport Corporation Ltd (GSRTC). They are acting as LTC agent between Employees and GSRTC for arranging Leave Encashment tours. For acting as a LTC agent of GSRTC, they received clerkage charge of 5%, which is included in the invoice raised by the GSRTC. On the amount received from employees, Service tax is already paid by GSRTC and Certificate of service tax paid amount is produced to the LTC agent to avoid double taxation of service tax amount.

(v) In this case Service Tax is already paid by GSRTC on tours operating services, so if service tax liability is imposed on appellant then there is double taxation of service tax.

(vi) Non receipt/serving of Notices due to non-availability of appellant during assessment proceedings - penalty should not be levied.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and in additional written submission as well as submissions made by the appellant at the time of Personal Hearing. The issue to be decided in the case is whether the impugned order passed by the adjudicating authority, confirming the demand of Rs. 12,45,847/- alongwith interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

7. It is observed that the appellant is engaged in provision of Tour Operator Service and was registered with the Service Tax under Registration No.



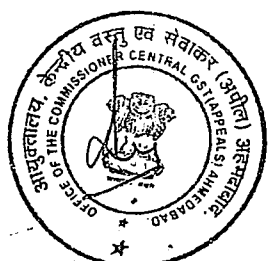
AGHPP3579NST001. Based on the data received from the Income Tax department which showed that the appellant had received income from their operations which appeared to be leviable to service tax. As the appellant did not respond to the communications from the department, the SCN in question was issued invoking extended period of limitation. It is further observed that the impugned order has been passed ex-parte, as the appellant did not file any reply to the SCN nor appeared for the hearing.

7.1. It is the contention of the appellant that they were acting as LTC agent between Employees and GSRTC for arranging Leave Encashment tours. Further, on the amount received from employees, Service Tax was already paid by GSRTC and a Certificate to this effect was also produced along with additional written submission. It was further contended that for acting as a LTC agent of GSRTC, they received clerkage charge of 5%, which was included in the invoice raised by the GSRTC. Hence, the present demand would amount to double taxation.

8. As regards the merits of the case, I find that the instant demand has been raised and confirmed merely by taking the data received from the Income Tax department without conducting any verification whatsoever in the case. It is further observed that the Central Board of Indirect Tax and Customs has issued Instructions dated 26.10.2021 which is reproduced below:

“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. 137/47/2020-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,



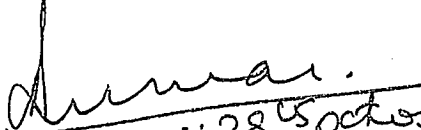
Chief Commissioner / Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.”

Hence, I find that the issuance of SCN and confirmation of demand merely on the basis of difference in the income reported in ITR-TDS data and service tax returns is not legally sustainable and is required to be set aside.

8.1. It is further observed that the appellant had stated that they could not respond to the departmental communications because they were away from India from March, 2020 to November, 2020. On perusal of the copy of passport submitted along with the additional written submission, I find that the version of appellant is correct. It is also pertinent to mention that during this period COVID pandemic was there and that there was lockdown in the entire world. The appellant have, in their additional written submission, submitted the necessary documents relevant for assessment. Hence, in the interest of natural justice, I find it fit to remand the case to the adjudicating authority to examine the documents submitted by the appellant so as to arrive at correct assessment.

9. Accordingly, I allow the appeal filed by the appellant by way of remand to the adjudicating authority who shall decide the case afresh based on the documents submitted by the appellant after following the principles of natural justice.

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.

  
28<sup>th</sup> October, 2022..  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Dated: 28th October, 2022

साक्षात्कृत / Attested:

(Somnath Chaudhary)

By Regd. Post A. D

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Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar
3. The Deputy /Asstt. Commissioner, Central GST, Deputy Commissioner of CGST & CE, Gandhinagar Division, Sector 10 A, Near CH\_3 Circle, Opposite St. Xavier's School, Gandhinagar - 382010
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
- ✓ 5. Guard file
6. PA File

