



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

By Regd. Post

DIN No.: 20221264SW000072297D

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/235/2022-APPEAL / 5705-09
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-070/2022-23 and 30.11.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.12.2022
(ङ)	Arising out of Order No. A/10412/2016 dated 16.05.2016 passed by the Hon'ble CESTAT, WZB, Ahmedabad passed in respect of the Order-In-Original No. 03/Jt.Commr.(AMS)/2008 dated 19.03.2008 passed by the Additional Commissioner, Central Excise, HQ, Ahmedabad-III (Now Gandhinagar Commissionerate)	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Harsolia Motors, Palace Road, Nr. Hathimati Bridge, Himmatnagar Idar Highway, Himmatnagar, Sabarkantha, Gujarat-383001

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 मंचिव, 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 या 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.

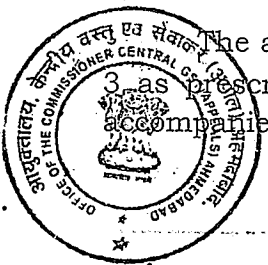
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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-8 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 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।

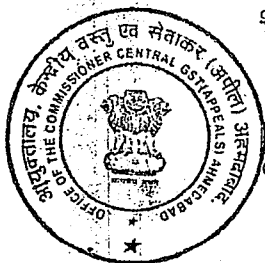
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

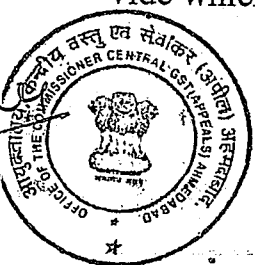


अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has arisen out of Order No. A/10412/2016 dated 16.05.2016 passed by the Hon'ble CESTAT, WZB, Ahmedabad (hereinafter referred to as "*CESTAT order*") in the case of M/s.Harsolia Motors, Near Hathmathi Bridge, Himmatnagar, Dist. Sabarkantha, Gujarat (hereinafter referred to as the appellant). The CESTAT order has been passed in respect of the Order in Original No. 03/Jt.Commr.(AMS)/2008 dated 19.03.2008 (hereinafter referred to as "*impugned order*") passed by the Additional Commissioner, Central Excise, Commissionerate: Ahmedabad-III (hereinafter referred to as "*adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant was engaged in the business of selling TATA Motor Vehicles and were the authorized dealer of the company. As a service provider, they were also providing taxable services covered under the category of "Business Auxiliary Services" as defined under erstwhile Section 65 of the Finance Act, 1994 (FA,1994) to various financial institutions like ICICI Bank, HDFC Bank, TATA Motors etc. who were financing Motor Vehicles purchased by the customers from the appellant. As a service provider, the appellants were also receiving incentives/commission/remuneration from these financial institutions towards promotion / marketing of their business. The appellants were also providing services as an "Authorised Service Station".

2.1 The Services provided by the appellant were covered under "Business Auxiliary Services" in terms of the definition laid down vide sub section 19 of Section 65 of the FA,1994 and were made taxable with effect from 01.07.2003. As per Rule-6 of the Service Tax Rules,1994 (STR,1994) read with Section 68(1) of the FA,1994, the appellant was supposed to pay Service Tax at the rate specified in Section 66 of FA,1994 and as per Section 69 of FA,1994, they were supposed to obtain Service Tax Registration. Investigation was initiated by the Preventive Wing of Ahmedabad-III Central Excise Commissionerate regarding non-payment of service tax and upon completion of the investigation, a Show Cause Notice was issued to the appellant vide F.No.V.ST/15-74/OFF/OA/2006-07 dated 01.02.2007 vide which it was proposed to :



- Demand and recover Service Tax amounting to Rs.7,16,036/- by invocation of extended period under Section 73 of the FA,1994. As the entire amount was paid by the appellant, the same was proposed to be appropriated.
- Demand and recover Interest at appropriate rates under Section 75 of the FA,1994 on the amount of Rs.7,16,036/-, and since the same was already paid the same was proposed to be appropriated.
- Penalty was proposed under Section 76, 77 and 78 of the FA,1994.

3. The SCN was adjudicated vide the impugned order wherein :

(i) The demand of service tax amounting to Rs.7,16,036/- on the value of taxable services of Rs.75,01,584/- was confirmed along with interest by invoking extended period. As both the above confirmed demands were already paid, they were appropriated.

(ii) Penalty amounting to Rs.7,50,000/- was imposed under Section 78 of the FA,1994 alongwith option for reduced penalty.

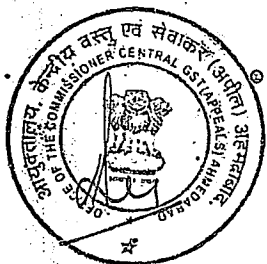
(iii) Penalty amounting to Rs.100/- per day was imposed upto 20.11.2006 under Section 76 of the Finance Act, 1994

(iv) Penalty amounting to Rs.1,000 /- was imposed under Section 77 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant filed an appeal before the then Commissioner (Appeals), Central Excise, Ahmedabad on following grounds:

- The impugned order was passed against the principles of natural justice as the authority at Para 20 of the impugned order stated that the appellant had booked net amount of commission after deduction of TDS and service tax liability.
- Rejecting the claim of netting of commission by the adjudicating authority on the grounds that the service tax element was shown separately on payment vouchers.

Section 67 of the FA,1994 was amended with effect from 14.04.2006.



- The adjudicating authority has ignored the provision of Section 80 of the FA,1994.

5. The Commissioner (Appeals), Central Excise, Ahmedabad decided the appeal vide Order-in-Appeal No.71/2008 (Ahd-III)CE/KCG/Commr(A) dated 02.09.2008 wherein the appeal was dismissed under the provisions of Section 35F of the Central Excise Act,1944 made applicable under Section 83 of the Finance Act,1994.

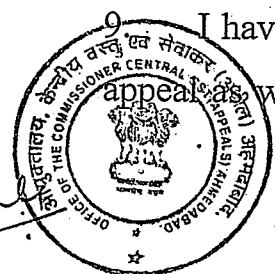
6. Being aggrieved, the appellant preferred appeal before the Hon'ble CESTAT, WZB, Ahmedabad. The Hon'ble CESTAT decided the case vide CESTAT order wherein the Tribunal has ordered that :

" we find that the Commissioner (Appeals) has not decided the case on merits, but dismissed for non-compliance with the provisions of Section 35 F of the Central Excise Act,1944, as applicable to the Service Tax matters by virtue of Section 83 of the Finance Act,1994. The learned authorized representative for the Revenue submits that the appellants have now deposited 25% of the penalty before approaching this Tribunal. In the circumstances, it is appropriate to remand the matter to the Commissioner (Appeals) to decide the issue afresh on merits, after giving an opportunity for personal hearing to the appellants without insisting any further pre-deposit. All issues are kept open. The appeal is allowed by way of remand."

7. In compliance of the above order of the Hon'ble CESTAT, the appeal was admitted and the appellants were informed about the same.

8. Opportunities for personal hearing in the case was granted on 19.04.2022, 16.05.2022 and 20.07.2022 through virtual mode. However, none appeared on behalf of the appellant for the hearing. Subsequently, fourth opportunity for personal hearing was granted to the appellant (in person) on 31.10.2022. Shri Shakir V Chauhan, Chartered Accountant, as an authorized representative of the appellant vide letter dated 31.10.2022 sought adjournment for 8-10 days. Thereafter, opportunity for personal hearing was granted (fifth opportunity) to the appellant on 23.11.2022. However, none attended the hearing.

I have gone through the facts of the case, the impugned order and order-in-appeal as well as submissions of the appellant. I find that the present appeal has



arisen in terms of the remand order of the Hon'ble CESTAT, WZB, Ahmedabad. The appellants were duly informed of the same and were requested to submit their written submission. Further, the appellants were granted 04 opportunities for personal hearings. The appellants has vide letter dated 31.10.2022 requested for adjournment, which was considered. However, they neither submitted any written submission nor attended the hearing on 23.11.2022.

9.1 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."

In the instant case, the appellant was granted 05 (five) opportunities for submitting their written/oral submissions, which they have preferred not to avail. Under the circumstances, I am deciding the appeal on facts and materials available on record.

10. It is observed from the case records that the appellant has accepted the taxability of the services provided by them and has discharged the liability confirmed in the demand along with the interest, which has been appropriated in the impugned order. They have subsequently paid 25% of the penalty imposed under Section 78 of the Finance Act, 1994.

10.1. I further find that the then Commissioner (Appeals), Central Excise, Ahmedabad had given his findings on the contentions of the appellant in their appeal memorandum in Para 6 and 7 of the Order-in-Appeal No. 71 / 2008 (Ahd-III) CE/KCG/ Commr (A) dated 02.09.2008. As regards the contention for cum-duty benefit, the then Commissioner (Appeals), Central Excise, Ahmedabad had held that:



6. ... The lower authority has rejected this claim of the appellant at para No.20 of the impugned order wherein it was discussed the pattern of invoicing as under :

1. Incentive amount
2. Service Tax Reimbursement.
3. Less Deduction
4. Net Payable

I observed that the lower authority has correctly denied the benefit of cum-duty value by observing the above invoicing pattern which shows the service tax separately and therefore I reject the claim of cum-duty value of the appellant.

10.2 Further, regarding the contention for applicability of erstwhile Section 80 of the Finance Act,1994, the then Commissioner (Appeals), Central Excise, Ahmedabad at Para-7 of the Order-in-Appeal No. 71 / 2008 (Ahd-III) CE/ KCG/ Commr (A) dated 02.09.2008 held that :

“... I find that the appellant has not paid the penalty imposed under Section 76 and 77 of the Finance Act,1994. The appellant has failed to produce any documentary evidence for payment of these penalties though it was stated by the appellant at the time of personal hearing. I find that in the case of Assistant Commissioner of Customs Vs Krishna Poduval-2006(1) STR 185 (Ker.), the Hon'ble High Court of Kerala dismissed the petition of the department and held that “Penalty (Service Tax)- section 76 and 78 of Finance Act,1994- incidents of imposition of penalty are distinct and separate under two provisions and even of offences are committed in course of same transaction or arise out of same Act, penalty imposable for ingredients of both offences-person who is guilty of suppression deserve no sympathy under section 80 ibid – order of single judge withdrawing penalty under section 76 ibid, set aside”. Therefore, I hold that both penalties under Sec.76 and 78 of the Finance Act,1994 are leviable.”

10.3 As regards their contentions for amended Section 67 of the Finance Act, 1994 w.e.f. 14.4.2006, I find that the same are not applicable to the instant case which covers the demand from F.Y. 2003-04 to F.Y. 2005-06 and the amendment was brought after the period of demand.

10.4. In view of the above, I find that the issues raised by the appellant are addressed in the order-in-appeal dated 02.09.2008 passed by the Commissioner (Appeals) supra and the appellants have not produced any fresh



evidences/contentions or any reasonable cause for consideration in the remand proceedings. Therefore, I do not find any reason to deviate from the findings given by the Commissioner (Appeals) supra and the appeal filed by the appellants are hereby rejected.

11. 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.

Akhilesh Kumar
30 November 2022
(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 30th November, 2022

Attested:

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



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