



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3802/2023-APPEAL / 381 - 85
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-177/2023-24 and 28.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. 88/ST/OA/ADJ/2022-23 dated 22.03.2023 passed by the Assistant Commissioner, CGST, Division : Himmatnagar, Commissionerate : Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bakarali Maisamali Bhatt (Prop of Al Vafa Tours), 8-Rehmani Complex, Huseni Chowk, Himmatnagar—383001

कोई व्यक्ति इस अपील-आदेश से असंतोष 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:-

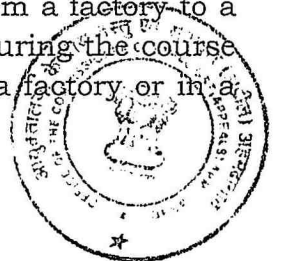
Revision application to Government of India:

(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 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 मामले 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 हों।

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 ईए-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.

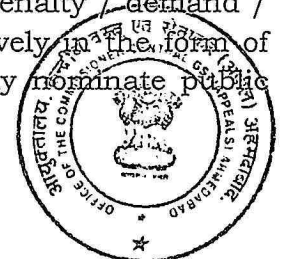
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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-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 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 हैं।

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 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) 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."



ORDER IN APPEAL

M/s. Bakarali Maisamali Bhatt, AL Vafa Tour, 8-Rehmani Complex, Huseni Chowk, Himmatnagar- 383001 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 88/ST/OA/ADJ/2022-23 dated 22.3.2023, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division- Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service and were holding PAN No.AUJPB8093P.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant in the ITR/Form-26 AS has earned taxable income on which no service tax was discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

Table-A

<i>F.Y.</i>	<i>Value shown in Form-26AS and value as per ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	1,14,75,000/-	14.5%	16,63,875/-

2.1 A Show Cause Notice (SCN) No. V/15-60/CGST/HMT/O&A/2021-22 dated 23.04.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs. 16,63,875/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994 was also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 16,63,875/- was confirmed alongwith interest. Penalty of Rs.10,000/- under Section 77(1) and penalty of Rs. 16,63,875/- was also imposed under Section 78 of the F.A., 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-

- The appellant is a proprietor of AL Vafa Tour engaged in providing Tour Operator services to various persons. The appellant earns commission/ service charge as a tour operator. The appellant collects lumpsum amount from the clients for the expenses incurred towards tickets and Umrah-Jiyarat. The appellant has acted as a pure agent and spent the collected amount towards the tour on behalf of the client. As per the Profit & Loss account for the F.Y. 2015-16, the Gross Income was Rs.6,42,136/- and net income chargeable to Income Tax is Rs.4,95,642/-



- Out of the total receipts, lump sum amount received from the clients amounting to Rs.1,14,75,000/- an amount of Rs.1,08,32,864/- is received on account from clients as deposit to be spent on actual basis towards ticket expenses and umrah-Jiyarat expenses and the same is received by the appellant as pure agent. Every year during the Hajj and umrah pilgrimage, Appellant collects a lump sum amount from the prospective clients who want to do the pilgrimage and the same is incurred on their behalf and over and above also collect the commission/charges. The proof/evidence regarding the expenses incurred by the appellant on behalf of the clients as pure agent along with documentary evidence shall be submitted during the hearing. Out of total receipts, after deducting the amount of expenses incurred by appellant on behalf of clients towards tickets expenses and umrahJiyarat expenses, the remaining amount of Rs. 6,42,136/- is towards taxable service of tour operator provided by the appellant to the clients, and chargeable to service tax.
- In the present case, the ticket expenses and umrah-Jiyarat expenses incurred on behalf of the clients are required to be excluded from the taxable service of tour operator. It is settled principle of law by the various decisions of appellate tribunals and courts that the service tax is not payable on expenses incurred by the service provider as a pure agent and reimbursed by the recipients of service. They placed reliance on (i) 2012-TIOL-966-HC-Del-ST - Intercontinental consultant & Technocrats P. Ltd (ii) 2011 (24) STR 290 (T-LB) - Sri Bhagavathy traders (iii) 2020 (35) GSTR 202 (T-Del) - Ernst and young Pvt. Ltd. (iv) 2021 (50) GSTL 530 (T-Chennai) - TVS logistics services Ltd.
- The confirmation of demand is ex-face illegal, incorrect, without authority and jurisdiction in as much as the proceedings were initiated only based on data received from the Income tax Department, without ascertaining as to the nature of service, classification of service, value of service. Under the Finance Act, 1994, the levy of the service tax is on the services rendered and not on the income and expenditure. The Adjudicating Authority failed to ascertain which activity carried out by the appellant is 'service' as defined under section 65B(44) and much less 'taxable service' in terms of section 65B(51). Reliance placed on following decision;
 - a) 2017 (47) STR 110 9T-AII)- Jubilant Industries Ltd
 - b) 2019 (24) GSTL 606 (T-AII)- Kush constructions.
 - c) 2019 (27) GSTL 397 (Tri-AII)- Go Bindas Entertainment Pvt. Ltd
 - d) 2007 (5) STR 312 (Tri. Bang.)
- For justification of invocation of longer period the provisions are mechanically quoted, and un-substantiated allegations are made in the Show Cause notice without any documentary evidence proving the charges of fraud, collusion, suppression of facts with intend to evade the payment of tax. In the present case it cannot be alleged that ST-3 return were not filed as they were not required to be filed by the Appellant. It cannot be alleged that appellant deliberately mis-declared the value of taxable services and deliberately withheld the essential and



critical information from the department in as much that appellant has properly maintained the books of records; they have entered all expenses and income details in their books of accounts such as ledgers, Profit & Loss account, and balance Sheet. Appellant has received all the income through proper banking challans and not dealt in any cash transactions. Appellant has also filed their Income tax return properly and on time by declaring all the income without concealing any income. The proceedings were initiated by Department based on the information received from the income tax department, that itself means that the details were submitted with the government department and there was no suppression, or mis-declaration or concealment of any income with the government. This is not the case wherein the department has dig out the details from an unknown source or from the hidden place or any cash transactions came to light. The proceedings were initiated only based on the details already available with

- The income earned during the F.Y. 2015-16 was less than the threshold limit provided in Notification No.33/2012-ST dated 20.6.2012, therefore they were not required to obtain registration and discharge any tax liability. In the instant case, the value of taxable service in the previous as well as in the current year i.e.2015-16 is less than 10 lakhs. Therefore, in the instant case the benefit under the said notification is available and accordingly appellant has availed the said threshold exemption. By taking into consideration all the above, appellant is not required to discharge service tax in the period in dispute.
- When there is no tax liability, interest is not recoverable and nor penalty under Section 77(1) imposable.
- As regards the imposition of an equal amount of penalty of Rs.16,63,875/- under section 78 of the Finance Act. It is submitted that for imposition of penalty under section 78, it is mandatory on part of Department to prove the charges of fraud, collusion, mis-declaration and suppression of fact with intent to evade payment of tax, with positive documentary evidence proving the mala-fide on part of the Appellant. In the present case, Department grossly failed to bring on record a piece of evidence to prove the charges of fraud, collusion etc. In the present case as discussed in the foregoing paragraph, the question involved is about interpretation of provisions of law and demand is raised based on information furnished in income tax return. Therefore, imposition of penalty is wholly illegal, incorrect, and without authority and Jurisdiction and required to be set aside.

4. Personal hearing in the matter was held on 14.12.2023. Shri Karim S. Lakhani, Chartered Accountant appeared for personal hearing on behalf of the appellant and reiterated the submissions made in the appeal. He requested five days time to submit additional documents.

4.1 The appellant vide letter dated 27.12.2023, submitted a C.A. certificate dated 22.12.2023, issued by M. A. Punasiya & Co. certifying that the appellant was running business of Air Ticket Booking & Allied services during the F.Y. 2015-16 and have earned



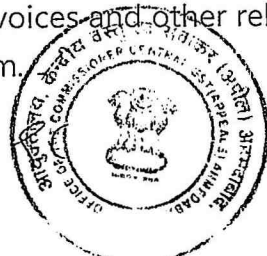
Rs.6,42,136/- as service charges for various service provided during the said F.Y. He provided services as a pure agent defined in Rule 5(2) of the Service Tax Valuation Rules, 2006 and have recovered the expenses incurred on behalf of the client. They certified that the above certificate was issued on the basis of the documents and other data provided by the appellant.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, additional submissions as well as those made during personal hearing. The issue to be decided in the present case is whether the demand of **Rs. 16,63,875/-** confirmed vide the impugned order alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. Period of dispute involved is F.Y.2015-16.

5.1 M. A. Punasiya & Co., Chartered Accountants have certified that the appellant was running business of Air Ticket Booking & Allied services during the F.Y. 2015-16 and have earned Rs.6,42,136/- as service charges for various service provided during the said F.Y. They certified that the appellant has provided services as a pure agent defined in Rule 5(2) of the Service Tax Valuation Rules, 2006. They also provided detailed bifurcation of services provided by the appellant to various clients which they claim have been certified based on the documents and other data provided by the appellant.

Particulars	Value of service
Gross Receipts	1,14,75,000
Less: Reimbursement of Ticket Charges	53,34,914
Less: Reimbursement of Foreign Exchange purchase on behalf of Customers	54,97,950
Service Charges on Ticket Booking	3,30,000
Service Charges on Visa Services	2,26,500
Other Service Charges	85,636
TOTAL	6,42,136/-

5.2 On going through the documents, I find that the appellant have not submitted sample invoices to substantiate their claim that they were acting as a pure agent and the expenses incurred by them were on behalf of the clients. Further, I find that the Balance Sheet, Profit & loss Account were also not submitted by the appellant so it is not possible to co-relate the figures mentioned in the C.A. certificate. Also, considering the fact the entire demand was decided ex-parte, I find that the in the fitness of the thing the matter needs to be remanded back to the adjudicating authority for fresh adjudication, who following the principles of natural justice shall examine the claims made by the appellant and verify the figures mentioned in the C.A. certificate with the financial records. The appellant is directed to submit sample invoices and other relevant documents to the adjudicating authority in support of their claim.



6. Accordingly, I set-aside the impugned order and allow the appeal by way of remand.

7. 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.



(ज्ञानचंद जैन)

आयुक्त(अपील्स)

Date: 28-12-2023

Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



By RPAD/SPEED POST

To,

M/s. Bakarali Maisamali Bhatt,
AL Vafa Tour,
8-Rehmani Complex, Huseni Chowk,
Himmatnagar- 383001

Appellant

The Assistant Commissioner
CGST, Division-Himmatnagar,
Gandhinagar

Respondent

Copy to:

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
4. Guard file.