



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलिफैक्स 07926305136



DIN:20230364SW0000818921

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/707/2022-APPEAL / 9342 - 46
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-184/2022-23**
दिनांक Date : **06-03-2023** जारी करने की तारीख Date of Issue 10.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST/A'bad North/Div-VII/ST/DC/110/2021-22**
दिनांक: **28.01.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Rajendra Kanaiyalal Mehta,
Office No. A/1-203, Palladium ,
Nr. Orchid Woods, Opp. Divya Bhaskar,
Corporate Road, Makarba, Ahmedabad

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(iii) 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.



(क) 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।

(A) 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.

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

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

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।

(c) 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.

(1) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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.

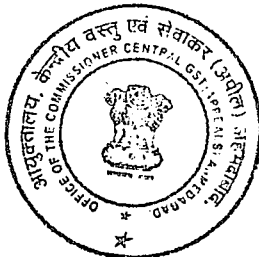
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



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 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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क 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

The present appeal has been filed by M/s. Rajendra Kanaiyalal Mehta, Office No. A/1-203, Palladium, Nr. Orchid Woods, Opp. Divya Bhaskar, Corporate Road, Makarba, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/110/2021-22 dated 28.01.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2.1 Briefly stated the facts of the case are that the appellant are providing services viz. "Business Auxiliary Services" and "GTA Service" and were holding Service Tax Registration No. ANXPM0605RSD001. During the course of audit of the financial records of the appellant, for the period from September-2015 to June-2017, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the following observations were made in Final Audit Report No. 95/2020-21 dated 09.09.2020:

Revenue Para 1: Short payment of service tax on account of reconciliation of ST-3 with Financial Accounts: During the course of audit, it was observed that the appellant has not paid the service tax amounting to Rs. 12,70,107/- on taxable income of Rs. 84,67,379/- received during the period from April-2017 to June-2017. The appellant was requested to pay the service tax along with interest and penalty. However, the appellant did not agree with the audit objection and not paid liability.

Revenue Para 2: Non-payment of Penalty on late filing of ST-3: The appellant had not filed the Service Tax Return ST-3 for the period of April-2017 to June-2017 till date. Therefore, Penalty for non filing of Service Tax Return amounting to Rs. 20,000/- is required to be paid by the appellant. On being pointed out, the appellant did not agree with the audit objection.

Revenue Para 3: Non-payment of Penalty for furnishing of improper documents / Invoices: It was observed that the appellant had issued the invoices for Business Auxiliary Services and GTA Services. But, in the invoices for GTA services, appellant did not mention the consignment note number on the invoices. Therefore, Penalty of Rs. 10,000/- is liable to be recovered from the appellant under Section 77(1)(e) of the Finance Act, 1994. On being pointed out, the appellant did not agree with the audit objection.

2.2 Subsequently, a Show Cause Notice dated 10.09.2020 was issued to the appellant proposing demand of Service Tax amounting to Rs. 12,70,107/- in terms of proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposing penalty under Section 78 of the Finance Act, 1994. The SCN also propose imposition of penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994 read with the provisions of Rule 4A of the Service Tax Rules, 1994 and imposition / recovery of late fees / penalty of Rs.

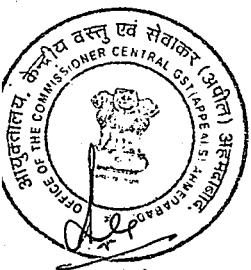


20,000/- under the provisions of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

2.3 The said SCN was adjudicated ex-parte vide impugned order wherein the demand of service tax amounting to Rs. 12,70,107/- as proposed in SCN was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Further, the penalty of Rs. 12,70,107/- under Section 78(1) of the Finance Act, 1994; Penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994 read with the provisions of Rule 4A of the Service Tax Rules, 1994 and late fees/ penalty of Rs. 20,000/- under Section 70 of the Finance Act, 1994 read with the provisions of Rule 7C of the Service Tax Rules, 1994 was also imposed on the appellant.

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

- The appellant are engaged in providing services such as Business Auxiliary Service, Goods Transport Agency Service, and were holding Service Tax Registration No. ANXPM0605RSD001.
- The appellant has neither received show cause notice nor received any personal hearing letter, because address of the appellant has been changed.
- The appellant has received Fright amount in the relevant Period F.Y. 2017-18 (up to June 2017). GTA service provided by them came under the purview of Notification No. 30/2012-ST dated 20.06.2012 and services provided by appellant to specified six category of persons falls under RCM and the appellant not liable to pay service tax on the said income. The appellant were providing Freight services, which were also covered under Notification No. 26/2012-ST where abatement of 70% given. The Audit officer and the adjudicating authority, in the impugned order, has not worked out properly liability of service tax on Freight income, after allowing the benefit of Notification No. 26/2012-ST and 30/2012-ST which resulted in excess services tax liability payable by the appellant and which is not in line with actual payable liability.
- The appellant has been providing Business Auxiliary Services, which are in actually supporting services of Goods Transport Agency Services, which is incidental service to main Service of Transportation. It is bundled Service. 'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. As per Section 66F 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service, which

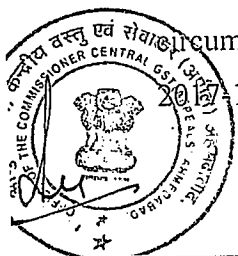


gives such bundle its essential character'. Taxability of bundled service will be determined on the basis of service which gives the bundle its essential character.

- Hence, Business Auxiliary Services is incidental services provided in ordinary course of business, subject to service tax as main service is taxable. Hence, applicant Main Service is eligible for exemption of various notification the bundle services also eligible for the same. However due to lack of knowledge, they have not claimed such relaxation and considered such services as taxable services on which appellant has pay tax after adjusting Cenvat credit. The Audit officer and the adjudicating authority in the impugned order has not been given the benefit of Cenvat credit.
- The appellant has already paid Net Service Tax Payable (after availing exemptions, abatements and CENV AT credit) along with interest before the issuance of the show cause notice and impugned order vide Challan dated 25.06.2018. They have submitted copy of the Challan dated 25.06.2018 along with appeal memorandum.
- There is no suppression of facts in this case, since the department was well aware of the facts. Hence, the invocation of extended period of limitation is wholly incorrect in law.
- The appellant submitted that for imposing penalty under Section 78 of the Act, there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts necessary. In the present case, the appellant have provided all the details as and when desired by the department and the appellants at no point of time had the intention to evade service tax or suppressed any fact willfully from the knowledge of the department. Hence appellant is not liable for penalty under Section 78 of the Finance Act, 1994.
- The appellant has already paid Net Service Tax Payable with Interest, therefore appellant is not liable for Interest under Section 75 of the Finance Act, 1994.

4. Personal hearing in the case was held on 17.01.2023. Shri Dilip U. Jodhani, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted copies of reconciliation statement along with Challan dated 25.06.2018 of Service Tax paid during the course of personal hearing.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. 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 against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2018 (upto June-2017) and is based on Final Audit Report No. 95/2020-21 dated 09.09.2020



in respect of the audit of the financial records of the appellant conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad.

6. I find that the main contentions of the appellant are as under:

- (i) The impugned order was issued ex-parte in as much as they have not received the SCN or any letter for personal hearing as the address of the appellant has been change.
- (ii) Bifurcation of services between Business Auxiliary Services and GTA Services are not matched with the books of account.
- (iii) The audit officer as well as the adjudicating authority have not extended the benefit of Notification No. 26/2012-ST and No. 30/2012-ST available to them.
- (iv) They have also submitted a Challan dated 25.06.2018 stating that they have already paid required Net Service Tax liability after adjusting Cenvat credit before issuance of the show cause notice and impugned order.

7. In this regard, to verify the contention of the appellant that they have not received any letter for personal hearing, this office made correspondence with the jurisdictional Deputy Commissioner. The Deputy Commissioner, CGST, Division-VII, Ahmedabad has vide letter F.No. CGST/Div-VII/North/Dem-03/Rajendra/22-23 dated 02.03.2023 informed that the personal hearing letters issued to the appellant were returned unattended with remarks "left" from the postal authorities.

8. I find that the adjudicating authority had fixed personal hearing on three different times i.e. on 18.11.2021, 01.12.2021 and 09.12.2021. I also find that after given three opportunities for personal hearing, the adjudicating authority passed the impugned order, ex-parte. However, the adjudicating authority has not considered the facts that the personal hearing letters were not delivered to the appellant. Thus, it is held that the impugned order passed by the adjudicating authority, ex-parte, without ensuring deliveries of the letters of personal hearing to the appellant, is clearly in breach of the principles of natural justice.

9. The SCN in the case was issued on the basis of audit of the records of the appellant. They have contested the observations of audit. They have further contested that they had not received the SCN. They are also contending that the audit officers have not considered the various abatement available to the GTA, including the liability of payment of service tax by service recipient under reverse charge mechanism. They have also claimed to discharge the applicable service tax liability along with interest before issuance of SCN and submitted a copy of reconciliation statement during personal hearing. Hence, the matter requires reconciliation of financial records of the appellant to arrive at correct service tax liability.

10. In view of the above discussion, I hold that the impugned order passed by the adjudicating authority, without following principles of natural justice, is not legal and correct. I am of the considered view that the same is required to be decided a fresh in remand proceedings.

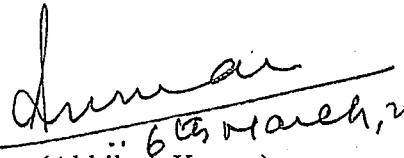


11. The appellant is directed to submit all the records and documents in support of their case before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the records and documents submitted by the appellant and decide the case afresh by following the principles of natural justice.

12. The appeal filed by the appellant is allowed by way of remand.


13. अपील कर्ता 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)
 Commissioner (Appeals)

Date : 06.03.2023

Attested


 (R. C. Maniyar)
 Superintendent(Appeals),
 CGST, Ahmedabad



By RPAD / SPEED POST

To,

M/s. Rajendra Kanaiyalal Mehta,
 Office No. A/1-203, Palladium,
 Nr. Orchid Woods, Opp. Divya Bhaskar,
 Corporate Road, Makarba,
 Ahmedabad

Appellant

The Deputy Commissioner,
 CGST, Division-VII,
 Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

- ✓ 5) Guard File
- 6) PA file

