



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:20230364SW000000EBD5

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1832/2022-APPEAL

19468-72

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-193/2022-23
दिनांक Date : 14-03-2023 जारी करने की तारीख Date of Issue 15.03.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/52/dem/AC/21-22/HNM दिनांक: 28.03.2022,
issued by Deputy/Assistant Commissioner, Division-II, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s GTPL Hathway Limited,
C-202, 2nd Floor, Sahjanand Shopping center,
Swaminarayan Mandir, Sahibaug,
Ahmedabad-380004

2. Respondent

The Assistant Commissioner, CGST, Division-II, Ahmedabad North, 3rd
Floor, Sahjanand Arcade, Opp. Helmet Circle, Memnagar, Ahmedabad - 52.

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 वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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.

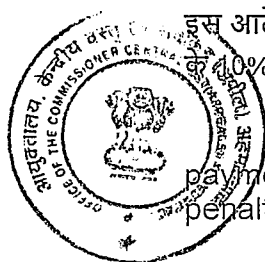
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

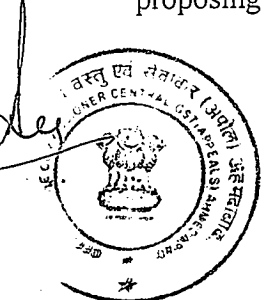
The present appeal has been filed by M/s. GTPL Hathway Limited, C-202, 2nd Floor, Sahjanand Shopping Center, Swaminarayan Mandir, Sahibaug, Ahmedabad - 380004 (hereinafter referred to as "the appellant") against Order-in-Original No. MP/52/Dem/AC/21-22/HNM dated 28.03.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division II, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated the facts of the case are that the appellant are engaged in providing services viz. Advertising Agency Services, Broadcasting Services, Cable Operator Services, Business Auxiliary Services, & Internet Cafe Services and were holding Service Tax Registration No. AACCG6676MST001. During the course of investigation, by the officers of the DGGI, Regional Unit, Vapi, it was noticed that the appellant had imported Set Top Boxes on CIF basis and not properly discharged the Service Tax liability on "Ocean Freight Services" under RCM.

2.1 It appeared that vide Notification Nos. 15/2017-ST and 16/2017-ST both dated 13 April, 2017 read with Board Circular No.206/4/2017-Service Tax dated 13.04.2017, as amended, the importer of goods as defined in the Customs Act, 1962 has been made liable for paying service tax in cases of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. This change has come into effect from 23rd April, 2017. In the wake of these changes, the appellant was required to pay the service tax on the above service under RCM as recipient of such service. But, they had not paid Service Tax, which amounting to Rs. 11,23,353/- (S.T. Rs. 10,48,463/-, KKC Rs. 37,445/-, SBC Rs. 37,445/-) on CIF value of transportation of imported goods; by vessel from a place outside India to the customs station in India during the period from 23.04.17 to 30.06.2017.

2.2 The appellant had made import of two consignments during the period from April-2017 to June-2017 and the Service Tax liability of the appellant under RCM on the expenses incurred as "Ocean Freight" was ascertained at Rs. 11,23,353/-, which was paid by the appellant under protest vide DRC-03 dated 29.05.2020. However, the appellant had not paid interest and penalty on the same.

2.3 Therefore, a Show Cause Notice bearing No. V/15-02/DGGI/Vapi/18-19 dated 24.03.2021 was issued to the appellant by the Deputy Director, DGGI, Regional Unit, Vapi, proposing demand of Service Tax amount of Rs. 11,23,353/- in terms of proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994; proposing appropriation of the amount of Rs. 11,23,353/- already paid vide DRC-03 dated



29.05.2020 against the said Service Tax demand and proposing penalty under Section 78(1) of the Finance Act, 1994.

2.4 The said SCN was adjudicated by the adjudicating authority ex-parte vide impugned order wherein the demand of Service Tax amounting to Rs. 11,23,353/- 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 and penalty of Rs. 11,23,353/- was also imposed on the appellant under Section 78(1) of the Finance Act, 1994. In the impugned order the adjudicating authority also order for appropriated the amount of Rs. 11,23,353/- already paid vide DRC-03 dated 29.05.2020 against the said Service Tax demand.

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

- The adjudicating authority failed to appreciate that the appellant had not received any service which shall be subjected to Service Tax under the Act. The adjudicating authority failed to appreciate that the provisions of reverse charge mechanism were not applicable to the appellant being the importer.
- The adjudicating authority erred in passing the impugned order confirming the demand of Service Tax despite of the decision of Hon'ble Gujarat High Court in case of SAL Steel Limited v. Union of India 2020 (37) GSTL 3, which was having binding effect over the case and the adjudicating authority had committed a serious mistake of violating judicial discipline while passing the impugned order.
- The adjudicating authority was not justified in confirming the demand of Service Tax of Rs. 11,23,353/- on the basis of the notice which was issued beyond the period of limitation provided in Section 73(1) of the Finance Act, 1994 and in invoking larger period of limitation.
- The adjudicating authority was not correct in demanding interest under Section 75 of the Finance Act, 1994 and not justified in imposing penalty under Section 78 of the Finance Act, 1994.

4. Personal hearing in the case was held on 06.03.2023. Shri Rahul Patel, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He submitted a copy of judgement of Hon'ble High Court of Gujarat passed in the case of M/s. Sal Steel Ltd.



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 April-2017 to June-2017.

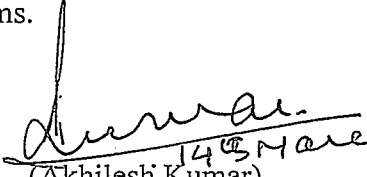
6. I find that main contention of the appellant is that the adjudicating authority has erred in passing the impugned order confirming the demand of Service Tax despite the decision of Hon'ble Gujarat High Court in case of SAL Steel Limited v. Union of India 2020 (37) GSTL 3, which was having binding effect over the case and the adjudicating authority had committed a serious mistake of violating judicial discipline while passing the impugned order.

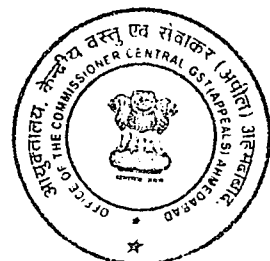
6.1 However, I find that the appellant at the stage of adjudication did not file any reply and also not attended the personal hearing. The appellant, at the appeal stage, has been the first time submitted their reply relying on the decision of Hon'ble Gujarat High Court in case of SAL Steel Limited v. Union of India, which was not produced by them before the adjudicating authority during the adjudication process. I am of the considered view that the appellant cannot claim any benefit at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to decide the case of the appellant. Considering the facts of the case as discussed hereinabove and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to consider the aforesaid claim of the appellant. The appellant is directed to submit their reply along with supporting documents in support of their claim before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the same decide the case afresh by following the principles of natural justice.

7. Accordingly, I allow the appeal filed by the appellant by way of remanding the case back to the adjudicating authority to decide the same afresh.

8. 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.


14 March, 2023..
(Akhilesh Kumar)
Commissioner (Appeals)



Attested

Date : 14.03.2023



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

By RPAD / SPEED POST

To,

M/s. GTPL Hathway Limited,
C-202, 2nd Floor, Sahjanand Shopping Center,
Swaminarayan Mandir, Sahibaug,
Ahmedabad – 380004

Appellant

The Assistant Commissioner,
CGST, Division-II,
Ahmedabad North

Respondent

Copy to :

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

(for uploading the OIA)

✓ 5) Guard File

6) PA file



