

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:20230364SW0000222CFB

स्पीड पोस्ट

- क. फाइल संख्या File No : GAPPL/COM/STP/1796/2022-APPEAL /१३- १२
- ख. अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-217/2022-23  
दिनांक Date : 30-03-2023 जारी करने की तारीख Date of Issue 31.03.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग. Arising out of Order-in-Original No. CGST-06/D-VI/O&A/228/Eagle/AM/2021-22 दिनांक:  
31.03.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-  
North
- घ. अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Eagle Global Logistics,  
204, 2<sup>nd</sup> floor, Shangrila Arcade,  
Near Shyamal Cross Road, Ahmedabad-380015

2 Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad  
North, 7<sup>th</sup> Floor, B D Patel House, Nr. Sardar Patel Statue, Naranpura,  
Ahmedabad - 380014

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 :

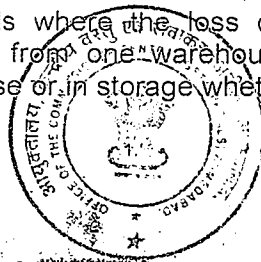
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(i) कन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा की 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।

(ii) 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 .

(iii) 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 प्रक्रिया 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 रिवेट के मामले 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 (सं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(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 महीने के भीतर मूल आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खराता इ का मुख्यशीर्ष के अंतर्गत धारा 35 इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर 6 चालान की प्रती 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/- की 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.

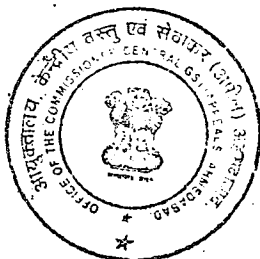
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की प्रशिवम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद - 380004

(a) 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 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 उपयुक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथारिथति 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथारिथति 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 आर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सौगा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में विहित 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) सौगा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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.

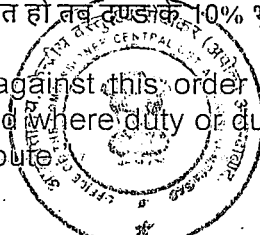
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT (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 of 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: Eagle Global Logistics. 204. 2<sup>nd</sup> Floor. Shangrila Arcade, Near Shyamal Cross Road, Ahmedabad – 380015 (hereinafter referred to as “the appellant”) against Order-in-Original No. GST-06/D-VI/O&A/228/Eagle/AM/2021-22 dated 31.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACMPP1714GST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 1,03,18,428/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST-06/04-708/O&A/Eagle/2020-21 dated 23.12.2020 demanding Service Tax amounting to Rs. 14,39,621/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994 and imposition of penalties under Section 76, 77 & 78 of the Finance Act, 1994.

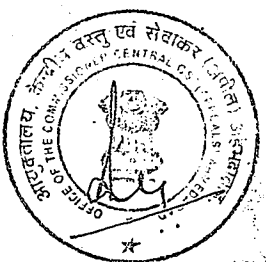
2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 14,39,621/- was confirmed under provision to Sub-Section (2) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further, Penalty of Rs. 14,39,621/- was also imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994.

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

- The appellant are holding service tax registration number ACMPP1714GST001 and engaged in providing freight forwarding services including warehousing, transportation, clearance, and transportation.



- The Service Tax department has issued letter for requirement of certain information pertaining to FY 2015-16 as on 19.10.2020. However, as the Proprietor of appellant was diagnosed with the COVID VIRUS during December 2020, all staff of the office were quarantined in December 2020 and the appellant were not able to submit the details required by the department. Further, due to non-availability of the staff and post impact of the COVID-19 second wave, the appellant could not appear in the personal hearing.
- The appellant was regularly filing the income tax returns and TDS was also deducted on his income for the aforesaid period and therefore by no stretch of imagination it can be said that the appellant had not declared his income to the government authorities.
- The investigation regarding the same matter for the same period i.e. FY 2015-16 was already conducted by Office of the Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South.
- The investigation is firstly conducted by the Ahmedabad South department and the appellant has submitted all the required documents and reply pertaining to the show cause notice issued by them. Further, if the investigation is being conducted by the Ahmedabad-South department then the same matter for the same period of the very same appellant cannot be open or conducted by the Ahmedabad-north department at the same time.
- With regards to the double investigation of the very same person, the appellant requested to the Ahmedabad-North departmental official to close the matter vide letter submitted on 13-05-2022.
- With regards to the on going investigation by the Ahmedabad-South department, on the basis of submitted documents and attended personal hearing Order-in-Original No. 23/WS08/AC/HKB/2022-23 dated 13-05-2022 was issued by the Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South. The appellant submitted copy of the same along with appeal memorandum.
- In the said OIO dated 13-05-2022, it is clearly mentioned in para 21 of the order that the difference for the FY 2015-16 stands reconciled and the appellant are not required to pay service tax in so far as the FY 2015-16 is concerned.
- As the inquiry for this matter is already processed and concluded by the Ahmedabad-South commissionerate vide Order-in-Original No. 23/WS08/AC/HKB/2022-23 dated 13-05-2022 issued by the Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South. the requested to pass a favorable order for the period of FY 2015-16 in the present case.



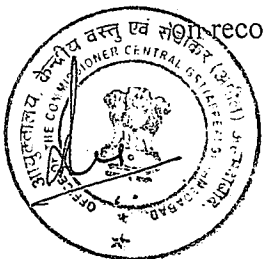
- The appellant submits that for the reasons set out hereinabove the entire demand itself is not justifiable as on the total income shown in Form 26AS flat 15% tax has been calculated but the same is not proper. Hence, the imposition of total penalty cannot be sustained.
- Without prejudice to the aforesaid, penalty under proviso to Section 78(1) of the Finance Act, 1994 read with Rule 15(3) cannot be imposed, as there was no suppression or willful misstatement on part of the appellant with regards to non-payment of service tax as mentioned hereinabove.
- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 29.03.2023. Ms. Deepika Lodha, CMA, appeared on behalf of the appellant for personal hearing. She reiterated submission made in appeal memorandum.

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 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 2015-16.

6. It is observed that the main contention of the appellant is that the investigation regarding the same matter for the same period i.e. FY 2015-16 was already conducted by Office of the Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South and Order-in-Original No. 23/WS08/ AC/HKB/2022-23 dated 13-05-2022 was passed by the Assistant Commissioner, CGST, TAR Section, Ahmedabad-South in the matter, wherein it is clearly mentioned in para 21 of the order that the difference for the FY 2015-16 stands reconciled and the appellant are not required to pay service tax in so far as the FY 2015-16 is concerned.

6.1 I also find that the appellant had vide their letter dated 22.01.2021, which was received by the office of the adjudicating authority on 03.02.2021, filed reply to the present show cause notice. The appellant also vide letter dated 13.04.2022 informed the office of the adjudicating authority the facts that the investigation regarding the same matter for the same period is already conducted by the Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South. However, the impugned order was passed by the adjudicating authority ex-parte, without taking the same records, in clear violation of principles of natural justice.



6.2 I find that the present Show Cause Notice No. CGST-06/04-708/O&A/Eagle/2020-21 dated 23.12.2020 demanding Service Tax amounting to Rs. 14,39,621/- for the period FY 2015-16 was issued to the appellant and two days earlier i.e. on 21.12.2020 another Show Cause Notice No. CGST/WS0803/O&A/TPD(15-16)/ACMPP1714G/2020-21 issued by another authority i.e. the Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South for demanding service tax amounting to Rs. 28,02,951/- along with interest and penalties for the FY 2015-16 and FY 2016-17. I also find that the said SCN dated 21.12.2020 has already been adjudicated by the Assistant Commissioner, CGST, HQ, Ahmedabad-South vide Order-in-Original No. 23/WS08/ AC/HKB/2022-23 dated 13-05-2022. wherein it is clearly mentioned in para 21 of the order that the difference for the FY 2015-16 stands reconciled and the appellant are not required to pay service tax in so far as the FY 2015-16 is concerned. The relevant portion of the same is reads as under:

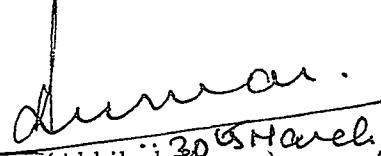
*"21. In view of the above, I find that the figures / difference for the year 2015-16 stands reconciled and the said Noticee are not required to pay service tax in so far as the FY 2015-16 is concerned."*

6.3 In view of the above. in my considered view the second Show Cause Notice i.e. present Show Cause Notice dated 23.12.2020 issued to the appellant is legally not sustainable and also when the matter of demanding service tax on the income received by the appellant during the FY 2015-16 has already got finality vide aforesaid OIO dated 13.05.2022, the impugned order is also required to be set aside.

7. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.


8. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

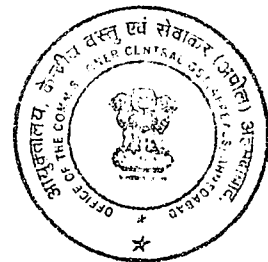
The appeal filed by the appellant stands disposed of in above terms:

  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date : 30.03.2023

Attested

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



**By RPAD / SPEED POST**

To.

M/s. Eagle Global Logistics,  
204, 2<sup>nd</sup> Floor, Shangrila Arcade,  
Near Shyamal Cross Road,  
Ahmedabad – 380015

Appellant

The Assistant Commissioner,  
CGST, Division-VI,  
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 VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System). CGST, Ahmedabad North

(for uploading the OIA)

~~5) Guard File~~

6) PA file

