



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: 20221064SW000091439E

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2281/2021-APPEAL/4250-54

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-47/2022-23
दिनांक Date : 21-10-2022 जारी करने की तारीख Date of Issue 31.10.2022

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

ग Arising out of Order-in-Original No. 17/JC/MT/2021-22 दिनांक: 30.07.2021, issued by
Joint Commissioner, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Shri Snehal Patel,
Director of M/s. Aroma Enterprises (India) Ltd.,
First Floor, Pipe House,
Near HCG Hospital, Beside Sola Overbridge,
SG Highway, Ahmedabad

2. Respondent

The Joint Commissioner, CGST, Ahmedabad North, Custom House, 1st
Floor, Navrangpura, Ahmedabad - 380009

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 :

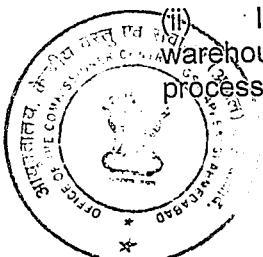
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केंद्रीय 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.

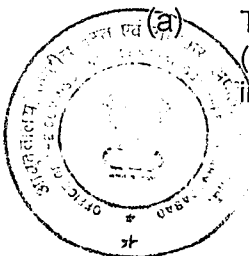
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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

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.

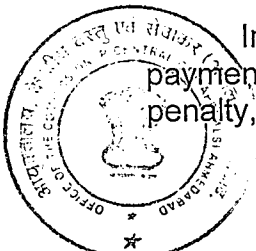
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



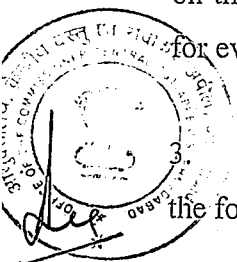
ORDER-IN-APPEAL

The present appeal has been filed by Shri Snehal Patel, Director of M/s. Aroma Enterprises (India) Ltd., First Floor, Pipe House, Near HCG Hospital, Beside Sola Overbridge, SG Highway, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original Number 17/JC/MT/2021-22 dated 30.07.2021(hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case is that during the investigation by the officers of Directorate General of GST Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as "DGGI"), it was found that M/s. Aroma Enterprises (India) Ltd. had received a compensation amount of Rs.8,33,75,000/- from M/s. Ardor Global Pvt. Ltd. for tolerating an act on non-compliance of contract agreement committed by M/s. Ardor Global Pvt. Ltd.. It was also found that M/s. Aroma Enterprises (India) Ltd. had received Rs. 1,69,84,440/- from M/s. Rajpath Club Ltd. as compensation for relinquishing their right to buy the land in favour of M/s. Rajpath Club Ltd. Thus, M/s. Aroma had provided services viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or situation" which incidentally is "declared service" under the provisions of Section 66E of the Finance Act, 1994. However, M/s. Aroma Enterprises (India) Ltd. had not discharged the service tax liability on the aforesaid consideration received by them. During the investigation, it was also found the M/s. Aroma Enterprises (India) Ltd. had not paid service tax under reverse charge mechanism on payment of Rs.57,30,000/- made to the directors as sitting fees. Thus, total service tax liability of M/s. Aroma Enterprises (India) Ltd. was worked out to be Rs.1,36,81,158/-.

2.1 Subsequently, the M/s. Aroma Enterprises (India) Ltd. and the appellant being Managing Director of M/s. Aroma Enterprises (India) Ltd. were issued a Show Cause Notice dated 31.07.2020 issued demanding total Service Tax amounting to Rs. 1,36,81,158/- under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest and imposition of penalties on M/s. Aroma Enterprises (India) Ltd. and also proposed imposition of penalty on the appellant under Section 78A of the Finance Act, 1994. The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority and the demand of Service Tax amounting to Rs. 1,36,81,158/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 and Penalty of Rs. 1,36,81,158/-, Rs. 10,000/-, Rs. 10,000/-and Rs. 10,000/- were also imposed on M/s. Aroma Enterprises (India) Ltd. under Section 78, 77(1)(a), 77(1)(c) & 77 of the Finance Act, 1994, respectively. Further, Penalty of Rs. 1,00,000/- was also imposed on the appellant under Section 78A of the Finance Act, 1994 for willfully suppressing the facts for evading service tax liability.

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

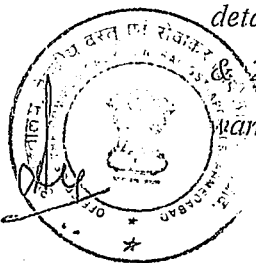


- The impugned order is bad in law and contrary to the facts of the case.
- Penalty proceedings are quasi-criminal in nature and penalty should not be imposed merely because it is lawful to do so. However, mensrea cannot be attributed to the company or the appellant in the facts and circumstances of the present case. This is a case of a genuine dispute regarding interpretation of statutory provisions. Hence, penalty is not imposable on the appellant in the facts and circumstances of the present case.
- The adjudicating authority failed to appreciate that all the allegations made against the appellant and the company are false and baseless, hence, penalty is not imposable either on the appellant or the company.
- The impugned order suffers from the grave defect and not given finding on all the contentions raised by the company and the appellant in defence reply.
- Penalty is not imposable on the appellant in the facts and circumstances of the present case that the demand of service tax against the company is not sustainable hence penalty is not imposable on the appellant or the company.
- Without prejudice to the appellant's contention that penalty is not imposable on the appellant, they submitted that penalty is highly excessive.

4. The appellant was granted opportunities for personal hearing on 21.07.2022, 17.08.2022, 01.09.2022, 26.09.2022 & 20.10.2022. However, no one appeared to attend the hearing. I therefore, proceed to decide the case ex-parte after considering the 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 dispute involved in the present appeal relates to personal penalty imposed on the appellant under Section 78A of the Finance Act, 1994 for willfully suppressing the facts for evading service tax liability. The adjudicating authority, while imposing penalty upon the appellant in the impugned order, held that:

"28. I find that Shri Snehal Patel, Managing Director of M/s. Aroma is the person responsible for taking all the decisions including taxation issues of the company on the basis of facts and evidences on record. The aforesaid acts of non-payment of service tax on the compensation amount received from M/s. Ardor Global Pvt. Ltd. and M/s. Rajpath Club Ltd. in addition to non-payment of service tax under reverse charge for the amounts paid by the company as Director's remuneration were committed by M/s. Aroma under his guidance and supervision and as such, he had a decisive role to play in the present evasion. It is evident that M/s. Aroma had received compensation from M/s. Ardor Global Ltd. and M/s. Rajpath Club Ltd., which fall under the category of Declared service as defined in Section 66E(e) of the erstwhile Finance Act, 1994. The very fact that the details of the said compensation amount received by M/s. Aroma during the FY 2015-16 & 2016-17 were not shown in ST-3 returns give strong indication that M/s. Aroma wanted to evade the payment of service tax. In addition to the same, non-payment of



service tax under RCM on Director's remuneration during the period from October, 2014 to June, 2017 also indicate their intent to evade service tax on this account as well. As Shri Snehal Patel, Managing Director of M/s. Aroma is the person, who has to play the decisive role in the affairs of the company, due to the present evasion of service tax on part of M/s. Aroma, he has rendered himself liable to penalty under Section 78A of the Finance Act, 1994, for the infractios committed by his company."

6. Nothing contrary has been mentioned in the appeal memorandum. Hence, I fully agree with the finding given by the adjudicating authority. To better understand the issue, I hereby reproduce the text of Section 78A of the Finance Act, 1994, which reads as under:

"SECTION 78A. Penalty for offences by director, etc., of company — Where a company has committed any of the following contraventions, namely :—

(a) evasion of service tax; or

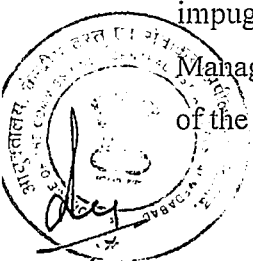
(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

"Explanation—For the removal of doubts, it is hereby clarified that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, and the proceedings with respect to a notice issued under sub-section (1) of section 73 or the proviso to sub-section (1) of section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to section 76 or clause (i) of the second proviso to section 78, as the case may be, the proceedings pending against any person under this section shall also be deemed to have been concluded."

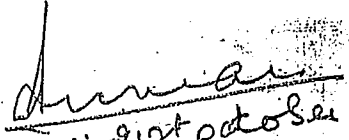
6.1 It is seen from the provisions under Section 78A reproduced above, that the liability to penalty is fastened upon a director in case a company has committed evasion of service tax. In the present case, the evasion of Service Tax of Rs.1,36,81,158/- was confirmed vide the impugned order by the adjudicating authority. Therefore, the penalty on the appellant, being Managing Director and responsible person for taking all the decisions including taxation issues of the company, is legitimate and proper.



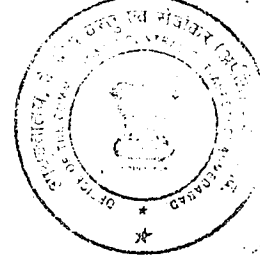
7. I also find that the appeal filed by M/s. Aroma Enterprises (India) Ltd. against the impugned order was also dismissed by this office vide Order-in-Appeal No. AHM-EXCUS-002-APP-46/2021-22 dated 13.12.2021 for non-payment of pre-deposit amount of 7.5% of duty demanded or penalty imposed in terms of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide sub-section (5) of the Section 85 of the Finance Act, 1994. Hence the demand confirmed against the Company has been upheld in appeal proceedings.

8. In light of the above discussion, I find that penalty of Rs. 1,00,000/- imposed on the appellant is justifiable and sustainable. Therefore, I reject the appeal filed by appellant.


10. अपीलकर्ता 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: 10.2022



Attested


(R. G. Manoj)
Superintendent (Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
Shri Snehal Patel, Director of
M/s. Aroma Enterprises (India) Ltd.,
First Floor, Pipe House, Near HCG Hospital,
Beside Sola Overbridge, SG Highway,
Ahmedabad

Appellant

The Joint Commissioner,
CGST & Central Excise,
Ahmedabad North

Respondent

Copy to:

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Joint Commissioner, CGST, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

5) Guard File

