



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- टेलीफैक्स 07926305136



DIN:20230164SW000038883C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1278/2022-APPEAL/6708-13
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-96/2022-23**
दिनांक Date : **23-12-2022** जारी करने की तारीख Date of Issue 02.01.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **103/ADC/MR/2021-22** दिनांक: **25.03.2021**, issued by
Joint/Additional Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Radhe Logistics,
45/2- Krishna Gokul Society, Near Priya cinema, Krishna Nagar,
Ahmedabad-382345

2. Respondent

The Joint/Additional 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 :

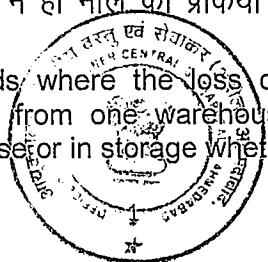
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) 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.

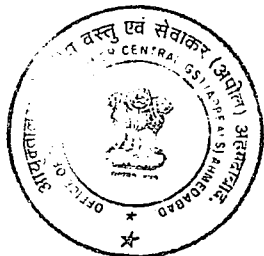
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 filed 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 और 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."



➤ The notice has been issued based on the value mentioned in ITR & Form 26AS and without carrying out proper investigation merely based on assumptions. The placed reliance on following decisions:-

- Amrish Rameshchandra Shah-TS-77-HC-2021 Bom ST
- Sharma Fabricators & Erectors Pvt. Ltd. – 2017(5) GSTL 96 (Tri.All.)
- Alpa Management Consultants P. Ltd- 2007(6) STR 181 (Tri-Bang)

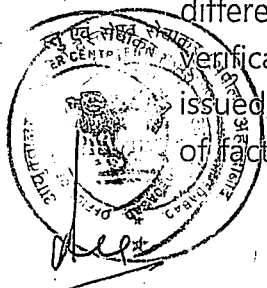
➤ Suppression cannot be invoked considering the facts that there is no liability to pay service tax. Hence demand, interest and penalties imposed is required to be set-aside.

4. Personal hearing in the matter was held on 20.12.2022. Shri Prakash Nandola, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.58,53,139/- confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise? The demand pertains to the period F.Y. 2015-16.

6. The appellant, before the adjudicating authority, had contended that services provided by them are covered under Section 66D of the F.A, 1994 and exempted vide Notification No.30/2012-ST. However, the claimed exemption benefit was not granted by the adjudicating authority as the documents like ledger, lorry receipt, any financial records or PAN card details of the service recipients etc were not produced by the appellant, to prove that the service provided to the service recipients were covered under negative list or covered under the category (a) to (f) of clause A (ii) of the said notification.

6.1 It is observed that the appellant is not registered with the department and the demand has been raised in the SCN based on ITR data provided by Income Tax department. While addressing the issues where demand has been raised based on third party information, the Board, vide Instruction dated 26.10.2021, has directed the field formations that while analyzing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns. The show cause notice based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. It was further directed that where such notices have already been issued, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. I find that the SCN issued in the present case,



without any investigation or verification of data received from Income Tax department, is vague.

6.2 It is further observed that the appellant vide letter dated 08.02.2022 had furnished their written submission before the adjudicating authority and also enclosed a copy of letter dated 07.07.2021 and e-mail dated 24.04.2021, submitting TAN Numbers of their service recipients (BPCL, Nyara Energy Ltd) and copy of Form 26AS sent to the Assistant Commissioner of Division-I. Despite recording the above facts at Para-11 of the impugned order, the adjudicating authority has passed the impugned order without examining the submissions of the appellant and without proper appreciation of above facts and confirmed the demand stating non-submission of documents, which I find is legally not tenable. Further, the SCN does not specify the category of services under which the income was received by the appellant. Mere receipt of service income cannot be a ground for raising the service tax demand. I find, no further investigation was conducted to ascertain the nature of activities undertaken by the appellant and to counter their claim. I, therefore, find that the SCN in the case is vague. Further, the adjudicating authority, without considering the submissions made by the appellant for non-payment of tax on the income declared in their ITR, has decided the case, without considering the directions given by CBIC vide Instructions dated 26.10.2021. Hence, the impugned order passed by the adjudicating authority is not legally sustainable.

7. Further, the appellant, in the present appeal, have vehemently contended that under Reverse Charge Mechanism (RCM), the liability to pay service tax in their case shall be on the recipient of service. They claimed that the services worth Rs.4,00,73,218/- was provided to Bharat Petroleum Corporation Ltd (BPCL), hence, the service tax liability, in terms of Rule 2(1)(d) of the Service Tax Rules, 1994, on such services shall be on the said Company. Further, they also submitted copy of HDFC Bank Statement, Ledger Account of BPCL, Balance Sheet for F.Y. 2015-2016, Form 3CD submitted before Income Tax Department and copy of letter No. AD.NR.TPT.UDAIPUR dated 05.12.2013 issued by BPCL (which awarded a contract to the appellant for transportation of MS/HSD/Banded Fuels), in support of their above claim. They also claimed that income of Rs.2,93,254/- received was towards taxi services rendered to others. I find that while analyzing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax. The service tax liability on above income can be determined, only after reconciliation of such income vis-a-vis the nature of service rendered, which I find was not done. Now when the appellant have provided the documents, it would be proper to get the documents verified to examine the eligibility of exemption as claimed by the appellant.

8. Another contention of the appellant is that they are eligible for the threshold exemption available in terms of Notification No.33/2012-ST dated 20.06.2012. It is observed that the exemption of ten lakh rupees from the whole of the service tax leviable in any financial year is available to the service provider, on the basis of the aggregate value of the taxable services rendered in the previous financial year, if that does not exceeds ten lakh rupees. However, the appellant shall have to produce copy of Balance Sheet for the F.Y. 2014-15 to establish that the aggregate value of their taxable services rendered in the previous financial year, has not exceeded ten lakh rupees.



9. Hon'ble Supreme Court has consistently held that giving reasons in support of the conclusions arrived at is an ingredient of the principles of natural justice. Ignoring the submissions of the appellant, as raised in the written statement, which are taken on record as evident from the order and proceed to decide the issue as if no submissions and/or case law in support of the appellant's case was made before it, makes the impugned order a non-speaking order inasmuch as it does not consider the contentions of the appellant as supported by case law. It is of cardinal importance that the adjudicating authority having quasi-judicial powers passes orders with reasons. As observed by the Apex Court in *Siemen Engineering & Mfg. Co. Ltd. v. Union of India*, AIR 1976 SC 1785, that "the rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law." As a speaking order enables the parties to know the reason why their submissions have been accepted or not accepted. Further, giving of reasons also enable the appellate forum or Courts to appreciate and understand the basis for the adjudicating authority coming to a particular conclusion so as to appropriately deal with a challenge to it.

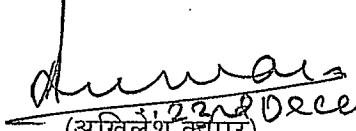
10. Thus, in view of above discussion, I find that the impugned order passed, being non-speaking order, would not be sustainable in the eyes of law. Therefore, I remand back the case to the adjudicating authority to decide the case afresh and for passing the speaking order in view of submission made by the appellant and keeping in mind the CBIC Instruction dated 26.10.2021. The appellant is also directed to submit all the relevant documents and details to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

11. In view of above discussion, I remand back the matter back to the adjudicating authority, who shall pass the order after examination of the documents and verification of the claim of the appellant.

12. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

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.


(अखिलेश कुमार)
आयुक्त (अपील्स)

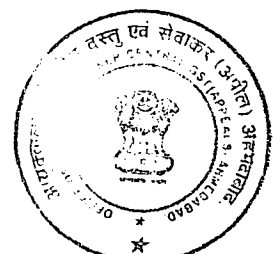
Date: 12.2022

Attested

(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Radhe Logistics,
45/2 -Krishna Gokul Society, .
Near Priya Cinema, Krishna Nagar,
Ahmedabad-382345

Appellant

The Additional Commissioner,
Central Tax, CGST & Central Excise,
Ahmedabad North
Ahmedabad

Respondent**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
- ✓ 5. Guard File.

