



केंद्रीय कर आयुक्त (अपील)



158 सत्यमेव जयते

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेक्निक के पास, Near P.o. ytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi; Ahmedabad-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(ST)158/A-II/2016-17

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-48-17-18

दिनांक (Date): 28/08/2017, जारी करने की तारीख (Date of issue): 28/9/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद, आयुक्तालय द्वारा जारी

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. SD-01/05/AC/EFWFL/16-17 Dated: 03.08.2016
issued by: Assistant Commr STC(Div-I), Ahmedabad.

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s East West Freight Carrier Ltd.

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

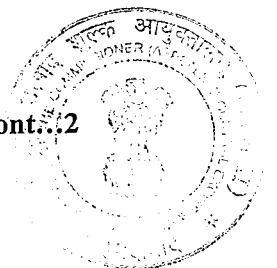
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

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

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

Cont.:2



- (c) 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 हों।

- (d) 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. 100 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 डोनी 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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं
- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.
- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.
- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



(ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/- फीस भेजनी होगी। फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है। स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी।

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 ₹ 1,000/-, ₹ 5000/- and ₹ 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of ₹ 500/-.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायधिकरण को एक अपील या केंद्रीय 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 ₹ 1 lacs fee of ₹ 100/- for each.

(4) न्यायालय शुल्क अधिनियम १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of ₹ 6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायधिकरण (कार्यावधि) नियम, १९८२ में निहित है।

(6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



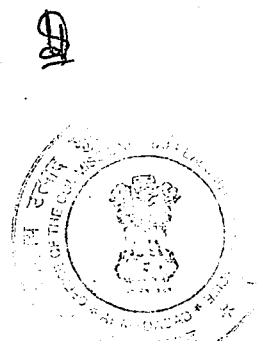
ORDER IN APPEAL

M/s. East West Freight Carrier Ltd., 9/A, Vikram Nagar Society, Opp. Ambika Society, Nr. Usmanpura garden, Usmanpura, Ahmedabad (*hereinafter referred to as the 'appellants'*) have filed the present appeal against the Order-in-Original number SD-01/05/AC/EWFCL/2016-17 dated 03.08.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that during the course of audit, it was detected that the appellants had failed to discharge their Service Tax liability correctly for the years 2010-11, 2012-13 and 2013-14. On being pointed out by the audit officers, the appellants agreed to the objection and paid ₹ 2,14,057/- (amount short paid and detected by the audit officers) along with applicable interest of ₹ 1,37,713/- on 02.10.2015 and 25.02.2016 respectively. They further stated that the short payment was only due to clerical/accounting error and hence requested for the waiver of penalty in terms of Section 80 of the Finance Act, 1994 which existed at the relevant time.

3. A show cause notice, dated 21.04.2016, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the Service Tax demand of ₹ 2,14,057/- under Section 73(1) of the Finance Act, 1994 and ordered to appropriate the said amount already paid by the appellants. The adjudicating authority further confirmed the demand of interest of ₹ 1,37,713/- under Section 75 of the Finance Act, 1994 for delayed payment of the amount ₹ 2,14,057/- and ordered to appropriate the said amount already paid by the appellants. He further imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

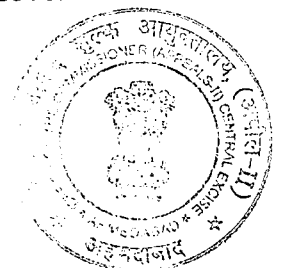
4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants have submitted that the impugned order was passed without complete understanding of the appellant's case. They argued that in the impugned order, the adjudicating authority has stated that the appellants had not submitted any reply and not received by the adjudicating authority. However, they had submitted a reply to the adjudicating authority and a copy of which has been submitted before me along with the appeal. The appellants further argued that the short payment, as alleged by the adjudicating authority, is incorrect and without any legal basis. They paid the Service Tax correctly and also filed the ST-3 returns on time. All their Service Tax payments had been shown in the ST-3 returns correctly and thus, the allegation of non-payment of Service Tax is incorrect and the impugned order should be set aside. They had produced copies of



payment challans, before the adjudicating authority, which had been ignored in the impugned order. They further contended that the impugned order has wrongly confirmed the demand of Service Tax short paid. Whatever short payment that occurred was only due to clerical and accounting error which should be condoned. They further argued that the adjudicating authority has completely ignored the fact that the appellants had discovered the alleged short payment and paid the amount before issuance of the show cause notice.

5. Personal hearing in the matter was granted and held on 20.07.2017 wherein Shri Adithya Srinivasan, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. He submitted copies of some judgments and requested to set aside the impugned order.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and submissions made by the appellants at the time of personal hearing. I find that the appellants had short paid Service Tax for the periods 2010-11, 2012-13 and 2013-14 and on being pointed out by the audit officers of the department, they paid the short paid amount along with applicable interest arising out of the late payment. The adjudicating authority, vide the impugned order, confirmed the short paid Service Tax and interest (and ordered for appropriation of the same) under Section 73 and 75 of the Finance Act, 1994 and imposed penalty under Sections 77 and 78 of the Finance Act, 1994. The appellants, in their argument claimed that the adjudicating authority has wrongly stated that they did not submit any reply but actually they submitted a reply to the show cause notice and have received an acknowledgement of the same. In paragraph 9(i) of the impugned order, the adjudicating authority claims that the appellants, during the time of personal hearing, submitted copy of the reply dated 11.07.2016 which was not received by the adjudicating authority. How this statement has inversely affected the appellants, is not understood by me as the adjudicating authority has countered the contents of the said letter in paragraph 9(i) of the impugned order. The argument sounds more like a complaint by the appellants before me. In paragraph 3 of the grounds of appeal, filed by the appellants, they claimed that the allegation of short payment of Service Tax is incorrect as they have paid Service Tax correctly and filed the ST-3 returns on time. In paragraph 4, the appellants claimed that they had submitted the challans which clearly show the payment of Service Tax on monthly basis. In paragraph 5 of the grounds of appeal, the appellants claimed that whatever short payment of Service Tax occurred was due to clerical and accounting error. This straightway contradicts their contents in paragraph 3 where they mentioned that there was no short payment. Further, in paragraph 6 they mentioned that they had discovered

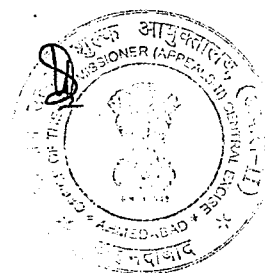


the short payment and paid the same before issuance of show cause notice. This is again far from truth as I come to understand that the short payment was detected by the audit officers and on being pointed out, the appellants paid the said amount along with interest. Thus, I find that the appellants are trying to create confusion by way of contradicting statements and trying to hide facts.

7. Further, coming to the issue that the appellants are not supposed to be penalized, I quote the contents of Rule 8(3), Central Excise Rules, 2002, where it is stated that if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest in terms of rate fixed under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount. Thus, it is quite clear that the appellants are liable to pay interest on the Service Tax amount short paid by them intentionally. Service Tax provisions provide for the imposition of interest and penalty when an assessee avoids or delays the payment of service tax he is liable to pay. However, charging of interest and penalty are two separate provisions under the law. The Hon'ble Supreme Court in the case of Pratibha Processors v. Union of India observed as follows: "*In fiscal statutes, the import of the words tax, interest, penalty, etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute*". Further, for more ease, I quote the concerned lines of section 76(1) of the Finance Act, 1994 as below;

"Section 76. (1) *Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty...*"

Here, in the instant case, I find that the appellants have continuously short paid Service Tax for the years 2010-11, 2012-13 and 2013-14 and the reason cited by them is clerical/accounting error. This is not palatable at all as the so called clerical/accounting errors were of chronic nature and surprisingly their accountants were naïve enough not to notice the error. The




act of continuous short payment of duty was committed with the full knowledge of the authority and cannot be considered as procedural lapses as argued by the appellants. The appellants have tried to hide their gaffe by trying to convert the wrong into right by giving contradictory statements and vague arguments as they have no solid base to stand. Thus, in view of the above discussion, I conclude that the adjudicating authority has very rightly confirmed, demanded and appropriated the amount of Service Tax short paid along with interest (under Section 73 and 75 respectively of the Finance Act, 1994) and imposed penalty under Section 77 and 78 respectively of the Finance Act, 1994.

8. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED



(S. DUTTA) 13/9/17

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,
East West Freight Carrier Ltd.,
9/A, Vikram Nagar Society, Opp. Ambika Society,
Nr. Usmanpura garden, Usmanpura,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asstt. Commissioner, Central Tax, Division-VII, S. G. Highway East, Ahmedabad (North).
- 4) The Asstt. Commissioner (System), Central Tax Hq, Ahmedabad (North).
- 5) Guard File.
- 6) P. A. File.

