



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: 20220864SW000071717C

स्पीड पोस्ट

क. फाइल संख्या : File No : GAPPL/COM/STP/2241/2021-APPEAL/304 - 3199

ख. अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-26/2022-23
दिनांक Date : 25.08.2022 जारी करने की तारीख Date of Issue 26.08.2022

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

ग. Arising out of Order-in-Original No. **CGST/A'bad North/Div-VII/ST/DC/24/2021-22** दिनांक: **23-07-2021**, issued by Deputy Commissioner, CGST, Division-VII, Ahmedabad-North

घ. अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Rudra Consultants
4th Floor, Shajanand Arcade,
Nr. Helmet Circle, Memnagar,
Ahmedabad - 52

2. Respondent

The Deputy Commissioner
CGST, Division-VII, Ahmedabad North
4th Floor, Sahjanand Arcade, Nr. 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) 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 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 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.

- (19) 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.

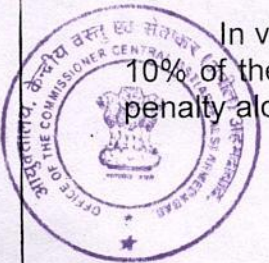
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xi) amount determined under Section 11 D;
- (xli) amount of erroneous Cenvat Credit taken;
- (xlii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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. Rudra Consultants, 4th Floor, Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/24/2021-22 dated 23.07.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST and Central Excise, Division-VII, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant is engaged in providing taxable services as defined under Section 65B (44) of the Finance Act, 1994 and are holding Service Tax Registration Number AAJFR4396RST001.

2. The facts of the case, in brief, are that on perusal of the data received from CBDT, it was noticed that the appellant had earned service income by way of providing taxable service on which service tax was not paid thereon. Letters were issued to the appellant on 09.02.2018, 25.06.2019 & 17.07.2020 to submit the data of Income Tax Returns filed with jurisdictional Income Tax authorities, Form 26AS, VAT/Sales Tax Returns, Annual Bank Accounts Statements, Contract/Agreements entered into with the persons for provision of services, Balance Sheet, P&L Account alongwith Schedules, Reconciliation Statement of service income reflected in returns with the Income Tax & VAT authorities etc but the above information was not provided by them. Therefore, the service tax liability amounting to Rs.16,16,103/- of the appellant was ascertained on the basis of "sales of services under Sales/Gross Receipts from services (Value from ITR) or "Value of TDS" as provided by the Income Tax Department for the F.Y. 2014-15.

2.1 A SCN No. CGST/Div-VII/A'bad-North/TPD/93/2020-21 dated 27.09.2020 was therefore issued proposing service tax recovery amounting to Rs.16,16,103/- not paid during F.Y. 2014-15 u/s 73(1); recovery of interest u/s 75 and imposition of penalties u/s 77 & 78 of the Finance Act, 1994 and penalty for late filing of returns under Rule 7C of the Service Tax Rules, 1994 was also proposed.

2.2 The said SCN was adjudicated vide the impugned order wherein the service tax liability of Rs.10,11,251/- alongwith interest during F.Y. 2014-15 was confirmed and the demand of Rs.6,04,852/- was dropped on limitation. Penalty of Rs.10,11,251/- u/s 78 and penalties of Rs.10,000/- each was also imposed u/s 77 (1) & 77(2).

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal wherein they have contested the demand on following grounds:-

- For the services provided as recovery agent, 100% service tax is payable by recipient of service under RCM as mentioned in Table in Para-II of Notification No.30/2012 dated 20.06.2012.
- The extended period of limitation can only be invoked for the period October, 2014 to March, 2015. Thus, demand for April, 2014 to September, 2014 is absolutely time barred.

4. Personal hearing in the matter was granted on 17.08.2022 in virtual mode. Mr. Tushar Parmar, Authorised Person, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He further submitted copies of relevant



notifications and Ordinances, copy of Form 26AS and relevant pages of the contract entered with Airtel and Renewal Agreement entered with SBI Cards and Payment Services Pvt. Ltd. as part of additional written submission.

5. I have carefully gone through the case records, the impugned order, and the submissions made by the appellant, both oral as well as written. The issue to be decided in the present case is as to whether the demand of Rs.10,11,251/- 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 confirmed pertains to the period F.Y. 2014-15 (October, 2014 to March, 2015).

6. I find that the appellant is engaged in providing services as a recovery agent to SBI Cards and Payment Services Pvt. Ltd. as well as to Bharti Airtel Ltd. They acted as collecting agents for SBI Cards and Payment Services Pvt. Ltd in recovering the outstanding Credit Card Bills. The adjudicating authority has held that the consulting income related to such banks cards are not covered in exemption notification or negative list of services, hence, they are taxable. He further held that recovery of outstanding landline bills, mobile bills and telephone bills for Bharti Airtel Ltd cannot be termed as a banking company or financial institution or a non-banking financial institution by virtue of Notification No.30/2012, hence appellant is liable to pay service tax. He, however considering the plea of the appellant, dropped the demand of Rs.6,04,852/- pertaining to period April, 2014 to September, 2014, on the grounds of limitation.

7. The adjudicating authority has held that SBI Cards and Payment Services Pvt. Ltd. and Bharti Airtel Ltd does not fall under banking company, financial institution or non-banking company, therefore, the liability to pay service tax shall be on the appellant. I have gone through Notification No.30/2012-ST dated 20.6.2012 and the amending Notification No.10/2014-ST dated 11.07.2014. As per the said notifications, the liability to pay tax is placed on the service recipient where the services by recovery agent are provided to a banking company or a financial institution or a non-banking company.

7.1 The adjudicating authority has confirmed the service tax demand of services rendered to SBI Cards and Payment Services Pvt. Ltd merely on the argument that Section 194J of IT covers consulting income, which is not covered in the exemption notification or under negative list, hence they are taxable. I find that as far as the nature of services rendered by the appellant that of the recovery agent is not disputed, the above argument of the adjudicating authority shall not hold any ground especially when there is a specific entry of such services in Notification No.10/2014-ST dated 11.07.2014. Further, as per the website www.icra.in SBI Cards and Payment Services Pvt. Ltd is a non-banking financial company registered with RBI, therefore, the services provided by the appellant to such company shall be covered under the aforesaid notification. Accordingly, the 100% liability to pay tax shall lie on the recipient of service. So, I find that there is merit in appellant's contention that being service provider, they are not liable to pay service tax for services rendered to SBI Cards and Payment Services Pvt. Ltd. The demand to that extent is liable to be set-aside alongwith interest and penalty imposed under u/s 78 of the Finance Act, 1994.

7.2 Further, in respect of the services provided to Bharti Airtel Ltd, I find, as per the official website of Bharti Airtel Ltd. they are engaged in the business of providing



telecommunication systems and services, passive infrastructure services, and direct to home services, which in no way is related to bank like financial services. Thus this company is neither banking company, financial institution nor a non-banking financial company. Non-banking financial companies (NBFCs) are entities that provide certain bank-like financial services but do not hold a banking license. I, therefore, find that the recovery agent services rendered by the appellant to Bharti Airtel Ltd shall not be covered under the said notification. Accordingly, the tax liability on such services shall be on the service provider i.e on the appellant. To that extent, I find that the demand sustains on merits.

7.3 In terms of Notification No.10/2014-ST dated 11.07.2014, 100% liability to pay taxes in the case of banking companies, financial institution or a non-banking financial company shall lie on the recipient of service. The demand of Rs.10,11,251/- confirmed by the adjudicating authority includes the value of taxable services rendered to both SBI Cards and Payment Services Pvt. Ltd as well as to Bharti Airtel Ltd. Therefore, considering the fact that service rendered to SBI Cards and Payment Services Pvt. Ltd, was to a non-banking financial company registered with RBI, the demand to that extent gets reduced and only the demand pertaining to the value of service rendered to Bharti Airtel Ltd. shall sustain on merits alongwith interest and penalty.

7.4 In view of my above discussions, the impugned order passed by the adjudicating authority is set-aside, to the extent it relates to demand of service tax on the services rendered to SBI Cards and Payment Services Pvt. Ltd and I uphold the service tax demand to the extent it relates to services rendered to Bharti Airtel Ltd. The matter is, therefore, remanded to the adjudicating authority for fresh quantification of demand as directed in Para 7.1 to 7.3 of this Order. Accordingly, the appeal filed by the appellant is partly allowed and partly rejected to the extent as detailed above.

- 8.** 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.

Akhilesh Kumar
(Akhilesh Kumar) 25 AUG 2022

Commissioner (Appeals)

Date: 08.2022

Attested

Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Rudra Consultants,
4th Floor, Shajanand Arcade,
Nr. Helmet Circle, Memnagar,



Appellant

Ahmedabad-380052

The Deputy Commissioner
CGST, Division-VII,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

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

