



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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टीएस
आरादीक
अमृत महोत्सव

By SPEED POST

DIN:- 20231164SW000000F3AF

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2453/2023 / 6306 - 8318
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-137/23-24 and 31.10.2023
(ग)	पारित किया गया / Passed By	श्री ग्यानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	20.11.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/787/2022-23 dated 30.01.2022 passed by The Deputy Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s K.L. Enterprise, GF-3 Rainbow Complex, Nr. High court Underbridge, 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 अठारह नीचे बताए गए मामलों के बारे में प्रत्येक द्वारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अर्जी 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 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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार वाले से किसी भण्डारगार या अन्य कारखाने में या किसी भण्डारगार से दूसरे भण्डारगार में माल ले जाते हुए मार्ग में, या किसी भण्डारगार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डारगार से 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।

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.

(घ) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(ध) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश को इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित को समय पर या साथ में बिना अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रथम संख्या एफ-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दोनों प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ जाता है का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित की 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उसके कम होतो रुपये 200/- कीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की कीस 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेड) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माता, बहुमाली भवन, अहमदाबाद, सिद्धरनगर, 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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA- 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 आवेदनों का समावेश होता है तो प्रत्येक मूल आवेदन के लिए फीस का भुगतान उपर्युक्त ढंग से लिया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पदी कार्य से बचने के लिए क्या स्थिति 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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आवेदन क्या स्थिति निर्धारण प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमात्र (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनबैट क्रेडिट की राशि;
- (3) सेनबैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

वह 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.



(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

M/s. K.L. Enterprise, GF-3 Rainbow Complex, Nr. High Court Underbridge, Navrangpura, Ahmedabad - 380009 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/787/2022-23 dated 30.1.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST Division-VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority"). The appellant were holding Service Tax Registration No. AAEP05034EST001.

2. Facts of the case in brief are that on scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, difference in value of service was noticed between the gross value of service declared in ITR/Form 26AS and the gross value of service shown in Service Tax return filed by the appellant, on which no tax was paid. Letters were, therefore, issued to the appellant to provide details of the services provided during said period and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the differential income was considered as a taxable value.

Table-A

F.Y.	Value as per ITR	Value as per Form -26AS	Gross Value of services as per STR	Higher Value Difference	Service tax rate	Service Tax liability
2015-16	11,10,500/-	12,01,607	8,52,757/-	3,48,850/-	14.5%	50,583/-

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/DIV-VII/A'bad North/TPD-UR/76/20-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 50,583/- 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 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of unquantified amount of Service Tax for the period FY 2015-16 to FY 2017-18 (up to Jun-17).

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. 50,583/- was confirmed along with interest under Section 75; Penalty of Rs. 50,583/- was imposed on the appellant under Section 78 of the Finance Act, 1994; Penalty of Rs. 500/- each was imposed under Section 77(1)(c) & Section 77(2) of the Finance Act, 1994.

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

- They have not received any notice regarding the submission of the requisitioned documents with reference to the F.Y. 2015-16.



- The demand has been raised without examining the nature of income and services rendered instead entire income received by the appellant and reflected in Form 26AS was considered for taxable services.
- They have already shown the courier income in the ITR filed for the F.Y. 2015-16. Accordingly, the difference shall come to Rs. 1,36,642/- as per the table below, which they are ready to pay alongwith interest on said differential income.

F.Y.	Value as per Balance Sheet	Service tax payable	Turnover as per ITR inclusive of S.Tax	Income as per ST-3	Net Difference of Turnover
2015-16	9,89,399/-	1,21,101/-	11,10,500/-	8,52,757/-	1,36,642/-

- Interest charged under Section 75 had been wrongly charged and Penalty of Rs.19,689/- under Section 78 & under Section 77(1)(c) & Section 77(2) of the Finance Act, 1994 were wrongly imposed.

4. Personal hearing in the case was held on 16.10.2023. Shri Hitesh Patel, Chartered Accountant appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum. He stated that the income as per Form- 26AS involves service tax component and the gross value without service tax would be Rs. 9,89,399/-. Since in the ST-3 they have already shown income of Rs.8,52,757/- and discharged tax liability. However on the remaining income of Rs.1,36,642/-. He therefore requested to modify the impugned order accordingly.

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 service tax demand of Rs. 50,583/- 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 F.Y 2015-16.

6. It is observed that the appellant is registered as Courier Agency Service. I find that in their Balance Sheet they shown the Courier receipts as Rs.11,10,500/- out of which Rs. 1,21,101/- is reflected as service tax amount. If the service tax amount involved is deducted the taxable income shall come to Rs. 9,89,399/-. I, therefore, agree with the contention of the appellant that the value reflected in the ITR/Form 26 is inclusive of service tax component. However the appellant has already discharged service tax on the value of Rs. 8,52,757/- in their ST-3 Return. Thus, their liability shall be on the remaining taxable income of Rs. 1,36,642/- only. Accordingly, I find that they shall be liable to pay service tax of Rs.19,813/-

7. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.

8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable turnover. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors Association* in (2008 (231) E.L.T. 3



(S.C.)), considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but suppressed the value of taxable service and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

9. As regards the imposition of penalty under Section 77(1) & 77(2) is concerned, I find that the same is also imposable as the appellant were rendering the taxable service but failed to correctly assess their tax liability thereby filed incorrect ST-3 Return. However, considering the reduction in tax, I reduce the penalty from Rs.500/- to Rs.100/- each under Section 77(1) & 77(2) of the Finance Act, 1994.

10. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand to the extent of **Rs.19,813/-** alongwith interest and penalties.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त शर्तों के से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

[Signature]
31-10-23
(ज्ञानचंद जैन)
आयुक्त (अपील)

Date: 10.2023

Attested

[Signature]

(रेखा नायर)

अधीक्षक(अपील)

सी. जी. एस. टी. अहमदाबाद



By RPAD/SPEED POST

To,

M/s. K.L. Enterprise,
GF-3 Rainbow Complex,
Nr. High Court Underbridge,
Navrangpura,
Ahmedabad - 380009

Appellant

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

Respondent

Copy to:

1. The Principal 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. Guard File.

