



आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO.: 20231264SW00001631FE

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/54/2023 / 9299 - 9302
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-142/23-24 and 21.11.2023
(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	12.12.2023
(ङ)	Arising out of Order-In-Original No. 67/JC/LD/2022-23 dated 22.11.2022 passed by The The Additional Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Harikesh Agencies, 267/4/A, Harikesh House, Juna Wadaj, Ashram Road Ahmedabad - 380013

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 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 :-

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 खाने 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।

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.

(ग) 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.

(घ) 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।

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 प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 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 (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 above para.

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 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 कर्तव्यमांग (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 सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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

M/s. Harikesh Agencies, 267/4/A, Harikesh House, Juna Wadaj, Ashram Road, Ahmedabad – 380013 (hereinafter referred to as "the appellant") against Order-in-Original No. 67/JC/LD/2022-23 dated 22.11.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, CGST, Ahmedabad North (hereinafter referred to as "the adjudicating authority"). The appellant were holding GST Registration No. 24ABXPP2730LIZ5.

2. On the basis of the intelligence gathered by the officers of DGGI, Regional Unit, Vapi, it was found that the appellant were supplying Pan Masala to various retailers/wholesalers without cover of GST invoice /bills and were indulging in the evasion of GST by way of clandestine receipts and supply of Pan Masala. Search was carried out at two un-registered godowns of the appellant and physical verification of the stock available in respect of Pan Masala, Tobacco, Cigarette & Supari was conducted. The DGGI found Pan Masala having Brand Karamchand, Dilbag, Tobacco of Brand Karamchand, Dilbag, Supari of Brand Sanjana and Water Bottle of Cello & Water Jugs of Cello etc which lacked proper documents regarding purchase and storage at two un-registered godowns of M/s. Harikesh Agencies. These unaccounted goods were therefore seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at 94B, Sagar Estate, Sarkhej Bavala Road, Sarkhej, Ahmedabad and Panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, in Lane opposite Ganpatbhai Gotawala, Kadodara Surat Road, Saroli, Surat, under reasonable belief that the same were liable for confiscation as per provisions of the CGST Act, 2017 and the Gujarat GST Act, 2017 and rules made thereunder. Further, investigation also revealed that the said godown is of the appellant and was not shown as additional place of business in GST records. Shri Rajesh Kumar Bharvad, Caretaker of said godown could not produce documents/invoices/ stock register related to the goods mentioned in the said INS 02 (Order of Seizure) dated 02.03.2020 nor could produce any records related to these goods or any valid documents or valid explanation, hence the goods were seized. Similarly, the godown of the appellant situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, Kadodara Surat Road, Saroli, Surat, was also not shown as additional place of business in GST records. Shri Suresh Dhanjibhai Tejani, Caretaker of said godown also could not produce any records related to these goods, any valid documents or any valid explanation, hence the goods were seized.

2.1 During the course of investigation, a statement of Shri Suresh Dhanjibhai Tejani, Caretaker of godown situated at Shivam Estate, Saroli, Surat, was recorded on 03.03.2020 under Section 70 of the CGST Act, 2017 wherein he stated that he stated that they received Pan Masala and Tobacco having brand name Karamchand from Gwalior without any Bill/Invoices and as per instructions given by Shri Narendra Sharma, a resident of Ahmedabad; he supplies the said goods to various locations without issuing any Bills/Invoices. He further stated that some quantity of Pan Masala, Tobacco and Water Bottles & Jugs of Cello Brand found at the godown of M/s. Harikesh Agencies situated at Shivam Estate, Saroli, Surat were also received without covering of any bill/invoice.



2.2 Statement of Shri Harishbhai Keshavlal Patel, Proprietor of Appellant firm was recorded on 14.08.2020 wherein he has stated that he is aware of the facts that the premises of M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, JunaWadaj, Ahmedabad and two unregistered godowns mentioned above were used to stock some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand found lacked legitimate documents regarding purchase and storage. He further stated that stock of some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand found at two godowns were received without covering of any bill/invoice. He also stated that he did not have the purchase bills of the goods seized under the aforesaid panchnamas and that they sold these goods without the cover of the GST bill to various customers located at different places of all over Gujarat and that the payment for all such goods were collected in cash only. These seized goods were kept unaccounted with the intent to supply them clandestinely which were purchased without cover of taxable invoices. The value of total goods seized under the panchanama dated 02.03.2020 drawn at two godowns were of Rs. 13,73,78,960/-. The value of total goods seized under Pnachnama dated 02.03.2020 drawn at two godowns was as per MRP inclusive of all taxes.

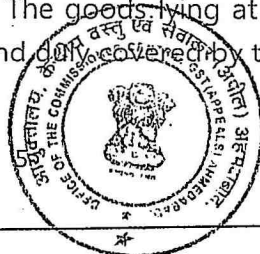
2.3 Later, the appellant paid GST of Rs. 51,62,838/- alongwith equal penalty of Rs.51,62,838/- vide DR 03 Debit Entry Nos. DI2403200004282 dated 02.03.2020, DC2404200019947 dated 27.04.2020 and DC2405200000671 dated 01.05.2020. The aforesaid seized goods were released provisionally on payment of complete tax involved in the seized goods and 100% penalty.

2.4 Therefore, Show Cause Notice No. V/15-07/DGGI/VAPI/2020-21 dated 31.08.2020 was issued to the appellant proposing GST demand of Rs.51,62,828/- under Section 74 of CGST Act, 2017; interest under Section 50; confiscation of seized goods under Section 130; penalty under section 130 read with Section 122 of the CGST Act, 2017. The payments made by the appellant were also proposed to be appropriated against the said tax liability. This notice was limited to the seizure portion only.

3. The said SCN was adjudicated vide the impugned order confirming the GST demand of Rs.51,62,828/- and ordered appropriation of same against the payment already made. Recovery of interest on said demand was ordered. Penalty of Rs.51,62,828/- u/s 122 was imposed and ordered appropriation of penalty amount against the payment made. He did not order confiscation of seized goods as the goods were already released and proceedings were concluded vide DRC-04 dated 01.10.2020.

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

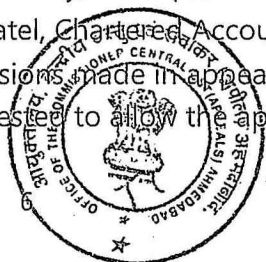
- The adjudicating authority erred while passing the impugned Order confirming demand of tax of Rs. 44,69,190/- with respect to goods found at the Ahmedabad Godown. He failed to explain the nature of transactions pertaining to the goods found at the Ahmedabad Godown. The goods lying at the Ahmedabad Godown were not unrecorded transactions and not covered by the Tax Invoices.



- No evidence has been produced to declare the goods found at the Ahmedabad Godown procured by the Appellant through illicit practice. Confirming the demand of tax merely on the basis of admission made by the Appellant during the course of investigation is not correct in law.
- The impugned order confirming demand of tax of Rs. 6,93,638/- with respect to goods found at the Surat Premises which did not belong to the Appellant nor the goods stored therein were belonging to the Appellant.
- Shri Chiragsingh Chavda furnished affidavit during the course of adjudication which the adjudicating authority failed to appreciate. Shri Dhanjibhai Tejani was not allowed to be cross-examined by the Appellant.
- Order demanding interest under section 50(1) of the Act, imposing penalty of Rs. 51,62,828/- was not correct and appropriating the amount of Rs. 51,62,828/- paid by the Appellant inasmuch as the imposition of penalty of Rs. 51,62,828/- fails to survive.
- The adjudicating authority grievously erred in law while passing the impugned Order without disposing the Form DRC-04.

5. Personal hearing in the case was held on 25.09.2023. Shri Rahul Patel, Chartered Accountant appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum. He submitted that the appellant is a distributor of masala products. Officers of DGGI had visited the premises of the appellant at Ahmedabad and Surat and found a difference in the stock which was seized under panchnama and statement of concerned persons were recorded by the DGGI officers. He submitted that the difference in stock at Ahmedabad was on account of certain fresh and invoices which were not fed into the tally system further the premises visited by the officers at Surat did not belong to the appellant and the appellant has no concern with those said stock. However, the statements were recorded under threat and duress to make the concern person admit unaccounted stock. Appellant was also compelled to make payment of tax during the course of search proceeding, which is evident from the date of Form DRC-03. The appellant had file and affidavit before the adjudicating authority denying the statements. He submitted that the appellant was made to pay the tax with interest and penalty as per show cause notice by force. He submitted all facts before the adjudicating authority, who held that the goods not to be liable for confiscation. However, the adjudicating authority has confirmed the demand with interest and also imposed penalty on the appellant, which is bad in law and the appellant is contesting vehemently. He submitted that apart from the statement relied upon in the show cause notice there is no evidence against appellant. In view of this, he requested to set aside the impugned order with consequential relief.

5.1 Due to change in the appellate authority, fresh personal hearing was granted to the appellant on 06.11.2023. Shri Rahul Patel, Chartered Accountant appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum and those made in earlier personal hearing. He requested to allow the appeal.



6. 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. 51,62,828/- against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise?

6.1 The department has alleged that the appellant has supplied Pan Masala to Vapi/Vyara/Waghai/Ahwa based retailers/wholesalers frequently without cover of GST paid invoices/bills and is indulged in evasion of GST by way of clandestine receipt and supply of the Pan Masala. Simultaneous searches were conducted at various premises including the registered premises and unregistered godowns of the appellant by the officers of Directorate General of Goods and Services Tax Intelligence Regional Unit, Vapi and incriminating documents were recovered under panchnama dated 02.03.2020 which revealed that the appellant have failed to account for the goods seized under the Panchnama dated 02.03.2020, thereby violating provisions of Section 35 of the CGST Act, 2017 read with Rule 56 of the CGST Rules, 2017 and Gujarat GST Rules, 2017. The appellant received the aforesaid seized goods from the suppliers without cover of tax invoices with sole intention to supply without payment of the applicable tax, therefore, they have contravened the provisions of Section 35 of CGST Act, 2017 read with Rule 56 of CGST Rules, 2017 and Section 35 of Gujarat GST Act, 2017, hence, the said goods are liable for confiscation under section 130 of CGST Act, 2017 and attract penal action under Section 122 of CGST Act, 2017 and thereby, they are liable to pay the tax involved in the said seized goods along with applicable interest and penalty equal to 100% tax.

6.2 The appellant however contends that the goods lying at Ahmedabad Godowns duly covered tax invoices. They also claimed that the Surat premises was not belonging to them and nor the goods stored therein were belonging to them. They contended that the adjudicating authority never produced any evidence to attribute that the Surat premises and the goods lying therein were of the appellant. They also contended that the admissions made in the statement during investigation was made under force and duress and were subsequently denied by the appellant by way of filing an affidavit.

6.3 I have gone through the SCN and impugned order. I find that during the course of search at two un-registered godowns of the appellant, stock of Pan Masala having Brand Karamchand, Dilbag, Tobacco of Brand Karamchand, Dilbag, Supari of Brand Sanjana and Water Bottle of Cello & Water Jugs of Cello etc were found which lacked legitimate documents regarding purchase and storage. Goods were therefore seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at Ahmedabad and Panchnama dated 02.03.2020 was drawn at godown of M/s. Harikesh Agencies situated at Surat. Further, it was also revealed that the said godowns belonged to the appellant and were not shown as additional place of business in GST records. Shri Rajesh Kumar Bharvad, Caretaker of Ahmedabad godown could not produce documents/invoices/ stock register related to the goods mentioned in the said INS 02 (Order of Seizure) dated 02.03.2020 nor could they produce any records related to these goods or any valid documents or



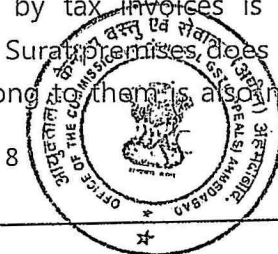
valid explanation. Similarly, Shri Suresh Dhanjibhai Tejani, Caretaker of Surat godown also could not produce any records related to these goods, any valid documents or any valid explanation of the goods which were seized.

6.4 Both Shri Suresh Dhanjibhai Tejani, in his statement dated 03.03.2020 deposed that he received Pan Masala and Tobacco having brand name Karamchand from Gwalior without any Bill/Invoices and as per instructions given by Shri Narendra Sharma, a resident of Ahmedabad; that he supplies the said goods to various locations without issuing any Bills/Invoices. He also stated that some quantity of Pan Masala, Tobacco and Water Bottles & Jugs of Cello Brand found at the godown of M/s. Harikesh Agencies situated at Shivam Estate, Saroli, Surat were also received without covering of any bill/invoice.

6.5 Shri Harishbhai Keshavlal Patel, Proprietor of Appellant firm in his statement recorded on 14.08.2020 also stated that the appellant firm had two unregistered godowns which were used to stock some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand without legitimate documents regarding purchase and storage; that the goods seized under the aforesaid panchnamas at two godowns were received without covering of any bill/invoice for which he did not have the purchase bills; that he sold these goods without cover of the GST bill to various customers located at different places of all over Gujarat and payment for all such goods are collected the payment in cash only. These seized goods were kept unaccounted with the intent to supply them clandestinely which were purchased without cover of taxable invoices. As the appellant did not maintained sale & purchase details the value of goods were arrived based on the details contained in separate spring files maintained by the son of Shri Harkeshbhai Keshavlal Patel and seized by the DGGI in respect of the goods supplied by the appellant clandestinely. The total GST involved on the clandestine supply of Pan Masala, Cigarettes and Supari comes to Rs.5,72,81,900/-. Further, the value of total goods seized under the panchanama dated 02.03.2020 drawn at two godowns were valued at Rs. 1,37,78,960/-.

6.6 The contention of the appellant that the payment was made under duress is not acceptable as the appellant had voluntarily paid the GST amount of Rs.6,24,44,728/- alongwith applicable interest of Rs.34,03,645/-. They also paid penalty of Rs. 1,37,55,129/- vide DRC-03 debit entries. Besides this they also discharged the tax liability of Rs.51,62,838/- and the seized goods were provisionally released. The appellant after making the above payments voluntarily informed the department that they have accepted their tax liability and paid the same and that do not want any SCN in the matter and requested to conclude the proceedings in terms of CGST Act, 2017. Accordingly, the in terms of provisions of Section 76(6) of the CGST Act, 2017, accepted the appellant's request. All these facts clearly show that the allegation of threat and duress is an after thought and legally not sustainable.

6.7 From the above facts of the case, it is ample clear that the appellant was indeed indulging in clandestine removal of goods. Their contention that the goods lying at Ahmedabad Godown were duly covered by tax invoices is not supported by any documentary evidence. Their claim that the Surat premises does not belong to them and that the goods stored therein did not belong to them is also not true especially when



Shri Harishbhai Keshavlal Patel, Proprietor of Appellant firm in his statement dated 14.08.2020 has categorically admitted that they had two unregistered godowns at Ahemdabad & Surat which were used to stock unaccounted Pan Masala, Tobacco, Supari and Cigarettes which they received without bill/invoice so that they could sell these goods without cover of the GST bill to various customers located at different places of all over Gujarat. He also admitted that the payments for all such goods were collected in cash only therefore these seized goods were kept unaccounted with the intent to supply them clandestinely which were purchased without cover of taxable invoices. All these acts clearly bring their malafide intention to evade taxes by dealing in fraudulent practices.


7. I find that all these above admissions are enough to prove their illegal activities. They also contended that the admissions made in the statement during investigation was made under force and duress and were subsequently denied by the appellant by way of filing an affidavit. However, the appellant never produced such affidavit before the appellate authority and therefore their above claim is not entertainable. Further, as regards their contention that the impugned Order was passed without disposing the Form DRC-04 is also not sustainable. The impugned order is in respect of the SCN issued for seizure portion. The appellant had paid the tax and penalty however interest was not paid hence the same is liable to be recovered. In light of above discussion and findings, I find that the GST demand of Rs.51,32,828/- is legally sustainable.

8. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax in terms of Section 129(4) of the CGST Act, 2017.

9. As regards the penalty, I find that Section 130 deals with confiscation of goods and penalty thereof. The appellant supplied and received goods in contravention of provisions of the CGST Act and rules made thereunder with an intent to evade payment of tax. They also did not account for any taxable goods and supplied goods which were liable to tax. As the goods were liable for confiscation, I find that the appellant shall be liable to penalty equal to 100% tax.


10. Accordingly, I uphold the demand of Rs.51,62,828/- alongwith interest and penalty imposed on the appellant.

11. 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.


(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 21.11.2023

Attested


(रेखा नायर)
आधीक्षक (अपील्स)



केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

M/s. Harikesh Agencies,
267/4/A, Harikesh House,
Juna Wadaj, Ashram Road,
Ahmedabad – 380013

Appellant

The Joint Commissioner
CGST, Ahmedabad North

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. The Assistant Commissioner, CGST Division-VII, Ahmedabad North.
5. Guard File.

