आयुक्त(अपील)का कार्यालय
Office of the Commissioner (Appeals)

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 टेलेफैक्स07926305136

DIN : **20230564SW000083205E**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1282/2022 /1103 - 1107

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-002-APP-017/2023-24**
दिनाँक Date : **28-04-2023** जारी करने की तारीख Date of Issue 04.05.2023

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

ग Arising out of OIO No. **CGST/A'bad North/Div-VII/ST/DC/139/2021-22** दिनाँक: **25.02.2022** passed by Deputy Commissioner, CGST, Division-VII, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s All Four Season Travels**
   54, Sardar Patel Nagar, Opp. Nabard Vihar,
   Behind Navrangpura Telephone Exchange,
   Ahmedabad - 380006

Resondent

1. **The Deputy Commissioner**
   CGST, Division VII, Ahmedabad North
   4th Floor, Shajanand 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 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 मे 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 कच्चें माल पर उत्पादन शुल्क के रिबेट के मामलें 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 डयूटी केडिट 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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिएं।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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 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.

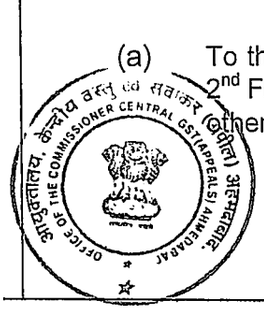
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–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 कान्यायालय 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.

6ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:
(clvii) amount determined under Section 11 D;
(clviii) amount of erroneous Cenvat Credit taken;
(clix) 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."

ORDER – IN – APPEAL

The present appeal has been filed by M/s. All Four Season Travels, 54, Sardar Patel Nagar, Opp. Nabard Vihar, Behind Navrangpura Telephone Exchange, Ahmedabad- 380006 (hereinafter referred to as "the appellant") against Order–in–Original No. CGST/A'bad North/Div-VII/ST/DC/139/2021-22 dated 25.02.2022 (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 are engaged in providing taxable services namely Air Travel Agent, Tour Operators, Business Auxiliary Service, Rail Travel Agent and are holding Service Tax Registration No. AAFFA7186GST001.

2. During the course of audit of appellant's records, carried out by the officers of CGST, Audit, Ahmedabad, for the period from April, 2015 to June, 2017; certain discrepancies were noticed, based on which following revenue paras were raised.

Revenue Para-1: In the Cash Discount Ledgers, certain entries were posted with codes /short titles like (Incentives, T.A., MLB, TTF Fees, transaction fees... etc). These entries were related to incentive/commission received from various airlines like Interglobe Aviation Ltd (INDIGO), Spicejet Ltd., Go Airlines Ltd etc, on which TDS was deducted and were reflected in the 26AS as well. The appellant have claimed that these were cash discounts paid to them on behalf of their clients as they have paid the charges then on behalf of the clients or have deposits with them. But they could not submit bank statement / Ledgers of such deposits made or copy of agreement showing such commission/incentive/cash discount agreed to be received in support of their claim. They could not clarify that if it was cash discounts, then why TDS was deducted. However, they claimed that they have opted for Rule 6(7) of the Service Tax Rules and were not liable to pay service tax on other components. However, on verification it was observed that the appellant have not made the payment on the commission and nor have opted for Rule 6(7) of the Service Tax Rules and have filed the ST-3 Returns wrongly. It, therefore, appeared that the commission /Incentive/ Cash discount earned by them are related to sales/business promotion and such amount in the form of extra incentives, consideration, bonus and commissions received by the appellant are taxable service under the provisions of Section 65B(44) of the Finance Act, 1994. Thus, total service tax liability of Rs. 21,71,166/- alongwith interest and penalty was worked out for the period F.Y.2015-16 to F.Y. 2017-18 (up to June 2017).

Revenue Para-2: On verification of cenvat related documents pertaining to input credit, it was observed that the appellant have availed cenvat credit of service tax paid on various services like designing of interior work, installation & labour charges of lift, food, applying heritage surface textures, granules, air conditioning etc., which cannot be considered as input services in terms of Rule 2(l) of the CENVAT Credit Rules, 2004 for providing their output services. Thus, the Cenvat credit amount of Rs. 92,219/- wrongly availed was proposed to be recovered alongwith interest and penalty.

Revenue Para-3: On reconciliation of financial records like Ledgers, Balance Sheet with the ST-3 Returns for the F.Y. 2015-16, it was revealed that the appellant

had short paid service tax amount of Rs. 2,35,074/- for which they could not provide any satisfactory reply. Thus, it appeared that the services provided by the appellant were taxable and liable for payment of service tax.

Revenue Para-4: The appellant have filed the ST-3 Returns for the F.Y. 2016-17 (April-Sept, 2016) and F.Y. 2017-18 (April to June, 2017) belatedly without paying late fees prescribed under Section 70 of the F.A., 1994.. Accordingly, they were liable to pay total late fees of Rs. 2,000/-.

Revenue Para-5: On going through the ST-3 returns for the period April-Sept, 2016-17, it is observed that the appellant have availed and utilized Cenvat credit of Rs. 2,602/- related to Education Cess and SHEC against Service Tax, which is not allowed, hence, they were required to be reversed/pay the Cenvat alongwith appropriate interest & penalty.

2.1 As the appellant contested the above revenue paras, a Show Cause Notice (SCN) No. 49/2020-21 dated 24.11.2020 was issued proposing service tax demands of Rs. 21,71,166/- and Rs. 2,35,074/- alongwith interest and penalty under Section 73(1), Section 75 & Section 78 respectively of the Finance Act, 1994; Cenvat credit amount of Rs. 32,219/- & Rs. 2,602/- under Section 73(1) read with Rule 14(1)(ii) of the CCR, alongwith interest and penalty Section 75 & Section 78 of the Finance Act, 1994; Late fees of Rs. 2,000/- under provisions of Section 70 of the Finance Act, 1994 read with Rule 7(c) of the Service tax Rules, 1994 was also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax and cenvat credit demands proposed in the SCN were confirmed alongwith interest and imposition of equivalent penalties. The late fees of Rs. 2,000/- was also imposed by the adjudicating authority.

3. Being aggrieved with impugned order passed by the adjudicating authority, the appellant have preferred the present appeal alongwith the application for condonation of delay in filing appeal, on the grounds which are elaborated below:-

- The appellant has been in receipt of the cash discount from various party for the reason being that the appellant has paid then, on behalf of the client or having deposit with them, which the appellant has accounted in the cash discount ledger, which has been accounted as per transaction basis & monthly consolidated basis, so while accounting payer details has been reflected in this. They placed reliance on Hon'ble CESTAT, Mumbai decision passed in the case of Gray World Wide India Pvt. Ltd. vide Final Order No. A/1337-1338/14/CSTB/CI dated July 30, 2014; Hon'ble Mumbai CESTAT, decision passed in the case of Group M Media India Pvt. Ltd -2014 (11) TM/ 545-CESTAT MUMBAI.

- The appellant had opted for the Rule 6(7) of Service Tax Rule, 1994 during the impugned period. So, once service provider has paid service as per option given in rule, demand of service tax on other components is not sustainable & tenable.

- Regarding the cenvat of the repair & renovation has been allowable to the service provider or not. Only works contract service has been denied under this definition, the appellant has availed cenvat credit other service other then WCT service, so the appellant has availed rightly, so demand required to be set-aside.

- The service tax demand on the basis of the reconciliation was done without taking factual details into account. The appellant has paid some of the service tax in advance on commission income on accrual basis, but the appellant has been in receipt of the same from the party in the impugned period so difference has been reflected. But as per reconciliation statement submitted by us & verified by audit there was no difference in the tax payable. Summary of reconciliation:

Year	ST
2015-16	235074
2016-17	-189624
2017-18	-182748

The appellant have deposited & paid excess tax amount to the tune of Rs. 1,37,298/- so, demand of the service tax is required to be set aside.

- When ST-3 return has been filed no penalty has to be imposed, even though for the peace of mind, appellant herewith agreed for the same.

- The E.Cess & HSE balance as per Board's Circular has transferred to service tax cenvat account, thus, demand of that amount is not sustainable. In Union Budget, 2015 it was proposed to do away with the Education Cess (EC) and Secondary and Higher Education Cess (SHEC) [collectively referred to as 'Cess']. While withdrawal of Cess on Excise duty has been made effective from March 1, 2015, Cess on Service tax has also been withdrawn effective from June 1, 2015. The act of withdrawal of Cess presented the Industry at large with a bouquet of concerns in view of the provisions of erstwhile Rule 3(7)(b) of the Cenvat Credit Rules, 2004, which permitted utilisation of Cenvat credit of Excise duty/Service tax for payment of Cess but not vice versa. The Notification No.12/2015-Central Excise (N.T.) dated April 30, 2015 had amended the Credit Rules to allow use of Credit of Cess charged on Inputs, Input Services and Capital goods received on or after March 1, 2015 in the factory for payment of Excise Duty on or after March 1, 2015. However, the situation was not made clear as regards EC and SHEC charged on Inputs, Input Services and Capital goods, for payment of Service tax. Notification No. 22/2015-Central Excise (N.T.) dated October 29, 2015 has amended the Credit Rules once again to allow use of Credit of Cess charged on Inputs, Input Services and Capital Goods received on or after June 1, 2015 for payment of output liability of Service tax on or after June 1, 2015 on similar line as was done for the manufacturers. The proposed amendment was also made in the by inserting the fifth proviso to Rule 3(7)(b) thereof.

- Entire demand is time barred as the notice covering period of 01.04.2015 to 30.06.2017 has been issued on 24.11.2020. The appellant is filing income tax returns and service tax returns regularly from time to time, hence extended period

of limitation cannot be invoked in the present case since there is no suppression, willful misstatement on the part of the appellant. The show cause notice is therefore liable to be dropped on this ground also.

- Penalty cannot be imposed under Section 78 of the Finance Act, 1994 in the present case as there is no suppression of any information from the department and there was no willful mis-statement on the part of the appellant. The Show Cause Notice has not brought any evidence/ fact which can establish that the Appellant has suppressed anything from the department. Hence no case has been made out on the ground of suppression of facts or willful misstatement of facts with the intention to evade the payment of service tax. Reliance placed on Hon'ble Gujarat High Court decision in case of Steel Cast Ltd. 2011 (21) STR 500 (Guj). Further, the issue involved in the present case is of interpretation of statutory provisions. For that reason also, penalties cannot be imposed. They placed reliance on the following case laws in this regard:

  a) Bharat Wagon & Engg. Co. Ltd.- (146) ELT 118 (Tri. - Kolkata),
  b) Goenka Woollen Mills Ltd. - 2001 (135) ELT 873 (Tri. - Kolkata).
  c) Bhilwara Spinners Ltd. -2001(129) ELT 458 (Tri. - Del.),

3.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 25.02.2022 and the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 09.05.2022 i.e. after a delay of 09 days from the last date of filing appeal. The appellant have, on 23.06.2022, filed a Miscellaneous Application seeking condonation of delay stating that as per Apex Court's decision, the limitation period for filing appeal shall start after 28.02.2022, accordingly, the appeal has to be filed on or before 30.04.2022. However, the appeal was filed 09.05.2022, as the authorized signatory of the appellant was out of station. Hence, there was delay in making the pre-deposit. They, therefore, requested to condone the delay of 09 days, which is within the condonable period.

4. Personal hearing in the matter was held on 29.03.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum as well as in additional submissions made during hearing. He also stated that the audit of the firm was conducted and would submit further additional submissions.

4.1 The appellant submitted additional submissions on 29.03.2023, wherein they reiterated the grounds of appeal and submitted the copies of ST-3 Returns, General Ledgers & Balance Sheet for the F.Y. 2015-16, F.Y. 2016-17 & F.Y. 2017-18 and ITR filed for the F.Y. 2016-17.

5. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered

to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 09 days and take up the appeal for decision on merits.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum and in the additional submissions as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether;

a) Demand of Rs. 21,71,166/- on non-payment of service tax on the incentive/cash discount income is sustainable on merits or otherwise?
b) Demand of Rs. 92,219/-on the cenvat credit of service tax paid on designing of interior work, installation & labour charges of lift, food, applying heritage surface textures, granules, air conditioning etc. is legally sustainable?
c) Whether the demand of short payment of service tax of Rs. 2,35,074/- noticed on reconciliation of income is sustainable on merits or otherwise?
d) Late fee of Rs. 2000/- imposed for late filing of ST-3 Returns is sustainable on merits or otherwise?
e) Availment and utilization of Cenvat Credit of E.Cess /SHEC cess of Rs. 2,602/-for payment of Service tax is admissible or not?

The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17

7. On the first issue, it is alleged that the appellant has received commission from various Airlines on which service tax liability was not discharged by the appellant. The service tax demand of **Rs. 21,71,166/-** was, therefore, confirmed on the findings that the commission/incentives/cash discount earned by the appellant are actually pure commission and not the cash discount against the deposit or payments made by the appellant on behalf of their clients. It was also held that since these payments are related to sales/business promotion on which TDS was deducted as per Form 26AS, they are to be included in the taxable value for charging service tax.

7.1 The appellant, on the other hand, claim that these are cash discount received from various clients for making payment on behalf of the client or having deposit with them, which has been accounted for in the cash discount ledger as per transaction and on monthly consolidation basis, hence payer details has been reflected. The appellant, however, failed to submit the relevant documents (*like bank statement/ ledgers of such deposit made and copy of agreement etc*) either before audit or before the adjudicating authority to establish that the commission, incentives, cash discounts agreed upon was actually cash discount received from their clients. Now, the appellant has submitted the General Ledger pertaining to the F.Y. 2015-16, F.Y. 2016-17 and F.Y 2017-18 as part of additional submission. On going through these documents, I find that the *'commission income, 'cash discount', 'incentives'* etc are shown separately and the amount reflected as 'cash discounts' in the respective legers tallies with the amount mentioned at Para-6 of the SCN and impugned order. In the SCN, the service tax demand has been proposed on the amount reflected as 'cash discounts' alleging that these are actually incentives,

commission, cash discounts, bonus received for sales/business promotion. I find that the adjudicating authority has completely ignored the fact that 'commission', 'cash discounts', 'incentives' received by the appellant are classified separately in the respective ledgers hence all these income cannot be clubbed under single head of 'cash discount' to confirm the demand. The adjudicating authority also failed to give any conclusive findings as to why such receipts should be considered as 'pure commission' and not 'cash discounts'. In terms of Rule 6 of Service Tax (Determination of Value) Rules, 2006, the commission received by an Air Travel Agent from Airlines is to be included in the taxable value. But, if these amounts were received as reimbursable expenses, then it shall be governed by Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, as the appellant themselves have claimed that these payments were received for making the payment on behalf of their client. Thus, to examine this aspect, I find that in the interest of justice, it would be proper to remand the matter to the adjudicating authority to decide the issue afresh after examination of the documents and verification of the claim of the appellant. The appellant is, therefore, directed to submit all the relevant documents and details to the adjudicating authority, 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.

8. On the second issue, the cenvat credit amount of **Rs. 92,219/-** was denied to the appellant on the findings that the service received from Aditi Air Conditioning, Alap Kamdar (Interior Design), Havmor Restaurant, Infinity Lift, TTPL projects (applying surface textures, granules) cannot be considered as input service for providing their output service. The appellant, however, have claimed that the cenvat credit availed are in respect of services other than Works Contract Service, hence is eligible. To examine their claim, the definition of the term "input service" contained in Rule 2(l) of the Cenvat Credit Rules, 2004, amended vide Notification No. 03/2011-CE(NT) dated 01.03.2011, is reproduced as under:

*(l) "**input service**" means any service, -*

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(i) construction or execution of works contract of a building or a civil structure or a part thereof;

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

*[**Explanation**. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]*

8.1 As per Clause (i) of Rule 2(l) of Cenvat Credit Rules, 2004, "input service" means any service used by a provider of taxable service for providing output service. The words "any service" and "used for providing an output service" in the "input service" definition, make it clear that the use of input service is depending on the scope of "an output service". On true and fair construction of Rule 2(l), it is clear that any service used by the provider of a taxable service for providing an output service including services used in relation to the setting up, modernisation, renovation or repairs of the premises of the provider of output service or for an office relating to such premises, procurement of inputs, activity relating to business such as inward transportation of inputs or capital goods and output transportation to the place of removal, would constitute input service.

8.2 Hon'ble Karnataka High Court in the case of *CCE, Banagalore-II* v. *Millipore India Pvt. Ltd.* - 2012 (26) S.T.R. 514 (Kar.) while rejecting Revenue's appeal held that the definition of input services is broadly worded and enacts an inclusive definition enumerating certain components, illustratively; that activity relating to business and services rendered in connection with it would form part of input services. On this interpretation, the High Court concluded that medical benefit extended to the appellant's employees and insurance policy taken out to cover risk and accident to the vehicle as well as person of the employees and landscaping of factory garden could legitimately be claimed to be input services, entitled for the claim of Cenvat credit.

8.3 The appellant have claimed that the credit availed was in respect of input service as the same was not in relation to Works Contract. I find that the adjudicating authority, while denying the credit, has not given any categorical finding as to why the Air Conditioning, Interior Designing, Catering services, installation of lift charges, etc are covered under the exclusion clause of Rule 2(l) of CENVAT Credit Rules (CCR), 2004. I, therefore, remand the matter to the adjudicating authority to re-examine the eligibility of the credit of said services and pass a speaking order after examining the relevant provisions under the CENVAT Credit Rules, 2004.

9. On the third issue, the notice alleges short payment of **Rs. 2,35,074/-** which was observed on re-conciliation of ST-3 Returns for the F.Y. 2015-16 with the income reflected in their financial records. On going through the reconciliation statement and

the ST-3 Returns submitted by the appellant, it is noticed that the income reflected in the reconciliation statement is not tallying with the income reported in the ST-3 Returns. Details of the entries are furnished below;

F.Y.	Air Travel Agent	Tour Operator	BAS	Rail travel Agent	Total Income
2015-16 *(April to September) As per ST-3 Return*	22,99,357/-	Nil	1,52,83,210	45,099	
2015-16 *(October to March) As per ST-3 Return*	3,94,370	Nil	1,32,01,842	73,551	
Total Taxable Income as ST-3	**26,93,727**	**Nil**	**2,84,85,052**	**1,18,650**	**31,297,429/-**
Income (*as per Reconciliation statement*)	**10,188,719/-**	**Nil**	**10,371,345**	**1,37,426**	**20,697,490/-**

Further, on examining the Balance Sheet, I find that for the F.Y. 2015-16, Rs. 22,984,381/- is shown as the '*Income of from Business Operations*' and Rs. 15,779,792/- is shown under '*Other Revenue*'. Thus, there is considerable variation in income reflected in ST-3 Return, income reflected in Balance Sheet and the income figures provided by the appellant in the reconciliation statement, which needs to justified by the appellant.

9.1 Further, the appellant claimed that they have paid some of the service tax in advance on commission income on accrual basis but received the receipt in the impugned period, hence, such difference. They also claim to have paid excess tax of Rs. 1,37,298/-. I do not agree with their contention. The service tax liability arises even on advances received. If part of the payment in respect of a taxable service is received in advance and the remaining part is received only after the invoice is issued, then the point of taxation for the first part (received in advance) will be the date on which such payment is received. The appellant has failed to produce any invoice / documentary evidence to support their claim that the part of the payment was received in the subsequent period as the financial records show otherwise. This is a matter pertaining to reconciliation. The SCN, while computing the demand has also taken into consideration the discounts, on which Revenue Para was raised. Hence, in the interest of justice, the appellant should be given one more opportunity to defend their case, based on above submission, as this ground was not raised before the adjudicating authority. I, therefore, find that the impugned demand needs to be re-examined by the adjudicating authority considering the above contention made by the appellant. The appellant are also directed to submit all relevant records justifying the differential income noticed in the Balance Sheets vis-à-vis the ST-3 Returns, before the adjudicating authority.

10. As regards the imposition of late fee of Rs. 2,000/- for delayed filing of ST-3 Returns, the appellant have contended that once ST-3 return has been filed, subsequently no penalty can be imposed. However, for the peace of mind, they have agreed to pay the same. It is observed that the appellant have filed the ST-3 Returns for F.Y. 2016-17 (April-Sept) on 11.11.2016, after a delay of 17 days and return for F.Y. 2017-18 (April to Sept) was filed on 05.09.2017 after a delay of 21 days. I find there has been delay in filing the ST-3 returns, which the appellant was duty bound to file ST-3 returns

for said period on due date which was not done. Therefore, the appellant is liable for late fee for delayed filing of ST-3 returns in terms of Section 70 read with Rule 7C of Service Tax Rules, 1994. The appellant is also not contesting this issue.

11. As regards the availment and utilization of Cenvat Credit of E.Cess /SHEC cess of Rs. 2,602/-for payment of Service tax, the adjudicating authority has held that in terms of 1st and 2nd proviso to Rule 3(7) (b) of the Cenvat Credit Rules, 2004, the Cenvat credit of Education Cess and Secondary & Higher Education cess availed on taxable services could only be utilized for payment of Education Cess and Secondary & Higher education cess on taxable services. He has held that the said proviso does not allow transfer of education cess and secondary & higher education cess to the service tax credit. It is observed that exemption from levy of Education Cess and Secondary & Higher Education Cess has been provided w.e.f 1-3-2015 vide Notification No. 14/2015-C.E. & 15/2015-C.E. both dated 1-3-2015. Sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004, specifies that CENVAT credit of specified duties shall be utilized for payment of those specified duties only. CENVAT Credit of Education Cess and Secondary & Higher Education Cess can be utilized only for payment of Education Cess and Secondary & Higher Education Cess, respectively. However, vide Notification No. 22/2015-C.E. (N.T.), dated 29-10-2015, in the CENVAT Credit Rules, 2004, in Rule 3, in sub-rule (7), in clause (b), after the fifth proviso, the following proviso was inserted, namely :-

> *"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service :*
>
> *Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 can be utilized for payment of service tax on any output service :*
>
> *Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service.".*

In terms of above proviso of Rule 3(7)(b), there is no bar and the credit of Education Cess and Secondary & Higher Education Cess can be utilized by the output service provider for payment of service tax on any output service. In the instant case, the appellant in the ST-3 Returns for F.Y. 2016-17 (April-Sept) availed and utilized the Cenvat Credit of Rs. 2,602/- related to Education Cess and Secondary & Higher Education Cess against Service tax, which, I find is admissible. I, therefore, set-aside the demand of Rs. 2,602/-, upheld in the impugned order.

12. In view of the above discussions and findings, I, therefore, remand the matter to the adjudicating authority to re-examine the demand pertaining to Revenue Para-1, 2 and 3 above. The appellant is, therefore, directed to submit all relevant documents / details before the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions. The adjudicating authority shall decide these issues on merits and accordingly, pass a reasoned order, following the principles of natural justice.

13. Accordingly, I remand the matter pertaining to service tax demand raised under Revenue Para-1, 2 and 3 above to the adjudicating authority. I uphold the late fees of Rs. 2,000/- pertaining to Revenue Para-4 and set-aside the demand of Rs. 2,602/- in respect of Revenue para-5. Thus, the appeal of the appellant to that extent is partially rejected and partially allowed by way of remand.

14. 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) 28th April, 2023..
आयुक्त(अपील्स)

Date: 28.04.2023

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

By RPAD/SPEED POST

To,
M/s All Four Season Travels, - **Appellant**
54, Sardar Patel Nagar, Opp. Nabard Vihar,
Behind Navrangpura Telephone Exchange,
Ahmedabad- 380006

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

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.