



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

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रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20201264SW0000000BF7

क फाइल संख्या : File No : GAPPL/ADC/GSTP/260/2020

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001/APP-JC-026/20-21
दिनांक Date : 27-11-2020 जारी करने की तारीख Date of Issue : _____

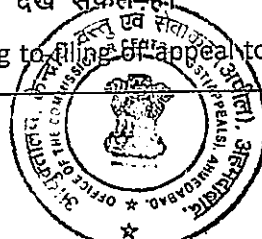
श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathore, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No 01/2020-21 दिनांक: 31.07.2020 issued by Assistant Commissioner, CGST, Division-VIII, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Rishab Tobacco Private Limited,
Block No. 482, Behind Sushma Namkeen,
Changodar, Dist: Ahmedabad

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL

This order arises out of appeal filed by M/s. Rishab Tobacco Private Limited, Block No. 482, Behind Sushma Namkeen, Changodar, Dist-Ahmedabad (herein referred to as the 'appellant') against the Order No. 01/2020-21 dated 31.07.2020 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief are that the Vehicle/Conveyance bearing Registration No. GJ-27-TT-2399 was intercepted by the officers of Jurisdictional CGST Authorities at 08.00 p.m on 24.07.2020 at S.G Highway, Ahmedabad and the details of the goods being carried out by the said vehicle was as under:

Sr.No.	Description of goods	HSN Code	Quantity	Taxable Value
1	Pan Masala- Silver MRP @4 [9180]	21069020	40 Bags	560000
2	M-1 Zarda MRP1/- [45900]	24039930	8 Bags	110440

The abovementioned goods and conveyance used for the movement of goods were detained by the said CGST officers under sub-section (1) of Section 129 of the CGST Act read with sub-section (3) of Section 68 of the State/Union Territory Goods and Service Tax Act, by issuing an order of detention in FORM GST MOV 06 served on the person in-charge of the conveyance on 28/07/2020, on the grounds of discrepancies re-produced herebelow:

"The goods mentioned in the E-way bill has already been delivered at consignee place at Deesa as the e-way bill has already verified at Mehsana, Becharaji Road by the Tax Officer at 02.30 PM on 24.07.2020 and the subject vehicle carrying goods second time on same e-way bill from Ahmedabad to Mehsana."

2.1 Subsequently, a notice FORM GST MOV-07 was issued and duly served on the person in-charge of the conveyance, providing him an opportunity to show cause against the demand of tax and penalty leviable in



terms of Section 129 (1) of the CGST Act, 2017, as mentioned herebelow and make payment of the same to get the goods and conveyance released.

Sr. No.	Description of goods	HSN Code	Qty.	Taxable Value (Rs.)	Tax Amount	Penalty amount
1	Pan Masala- Silver MRP @4 [9180]	2106	40 Bags	560000	492800	492800
2	M-1 Zarda MRP1/- [45900]	24039930	8 Bags	110440	207626	207626

Thereafter, the adjudicating authority has issued the impugned order and confirmed the tax and penalty proposed as above concluding that *"In response to the said notice, the owner of the goods/person in charge of the conveyance has come forward and made the payment of tax and penalty as proposed. In view of this, the applicable tax and penalty proposed are hereby confirmed."*

3. Being aggrieved, the appellant has filed the present appeal on 21.09.2020 against the impugned order passed by the adjudicating authority, to the extent of the tax and penalty involved in respect of the following goods, which was carrying by the subject conveyance/vehicle bearing Registration No. GJ-27-TT-2399:

Sr. No.	Description of goods	HSN Code	Qty.	Taxable Value (Rs.)	Tax Amount	Penalty amount
1	M-1 Zarda MRP1/- [45900]	24039930	8 Bags	110440	207628	207628

3.1 The appellant has also produced copy of corresponding Invoice No. 0424/2020-21 dated 24.07.2020 and E-Way Bill No. 671205804700 dated 24.07.2020 [valid from 24.07.2020 (11.07 AM) upto 27.07.2020] which was accompanied by the in-charge of said conveyance/vehicle in respect of the above mentioned goods.

3.2 They have also produced copy of Form GST DRC-3 dated 30.07.2020 vide which voluntary tax amounting to total Rs. 415256/- [Tax Rs. 207628/- + Penalty Rs. 207628/-] has been deposited against GST MOV-06 Ref. No. Div.VIII/E Way/19-20 dated 28.07.2020 issued by the adjudicating authority.



3.3 The appellant also produced a copy of their letter dated 30/31.07.2020 submitted to the adjudicating authority and contents thereof are reproduced as below:

"With reference to the above caption subject since last 5 days our vehicle is detained by your office and the same is lying at your premise in open due to these facts our whole material is damaged. We are communicating these facts with your office in written and personal since the last 5 days. Still the vehicle is not released by your office. So herewith we are voluntarily paying dues and attaching DRC-03 and Challan of GST payment U/S 129 of GST Act. We request you to please consider the facts and release our vehicle."

3.4 In the appeal memorandum, the appellant has submitted that:

- (i) *The conveyance has not made multiple trips on the same E-Way Bill as alleged in the impugned order.*
- (ii) *Due to ill health of driver, he was not able to drive vehicle properly and due to COVID-19 situation, we were not in position to arrange new driver on highway. So we guide him to take some rest on the highway and come back to Ahmedabad because our buyer's unloading team was not available till next day. In the return journey of driver our vehicle was detained by your office.*
- (iii) *The movement of the conveyance was with proper required documents and all goods were as per the accompanied bills which have also been checked by the officers during the verification.*
- (iv) *Accordingly, the adjudicating authority erred on facts by not considering the conveyance has not made multiple trips on the same E-Way Bill and the movement of the conveyance was with proper documents and all goods were as per the corresponding bills.*

4. Personal Hearing in the matter was held on 10.11.2020. Shri Kandarp Shah, Chartered Accountant appeared on behalf of the appellant and re-iterated the submissions made in the appeal memorandum filed in the said appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the present appeal and oral submissions made at the time of Personal Hearing.

5.1 As regards to the goods mentioned in the table at above para-3 [which was owned and supplied by the appellant], I find that while transporting through the Vehicle No. GJ-27-TT-2399 it was accompanied by

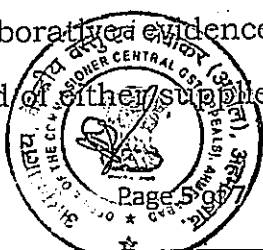


the Invoice No. 0424/2020-21 dated 24.07.2020 and E-Way Bill No. 671205804700 dated 24.07.2020 [valid from 24.07.2020 (11.07 AM) upto 27.07.2020]. Further, it is observed that during in-transit inspection of the subject conveyance/vehicle by the CGST officers or even at later stage verification, no discrepancy is noticed in respect of either description or quantity of the goods against the accompanying invoice.

5.2 Further, it is observed from the copy of the corresponding E-Way Bill No. 671205804700 dated 24.07.2020, it was valid at the time of interception of the conveyance done by the CGST officer and also, nothing contradictory to that extent is mentioned by the adjudicating authority in the impugned order.

5.3 Further, I find that the conclusion of the adjudicating authority that multiple trip has been done by the conveyance/vehicle is on the basis of the fact that *"the e-way bill has already verified at Mehsana, Becharaji Road by the Tax Officer at 02.30 PM on 24.07.2020"* and in turn concluded that *"The goods mentioned in the E-way bill has already been delivered at consignee place at Deesa and the subject vehicle carrying goods second time on same e-way bill from Ahmedabad to Mehsana."* As mentioned in the impugned order, it is observed that the conveyance/vehicle was intercepted and inspected by CGST officers at 08.00 PM on 24.07.2020. However, it is observed that there is no such findings produced in the impugned order or any other evidences justifying movement of the conveyance [from the place of first verification (at 02.30 PM) to the place of delivery and then return journey upto supplier's own place of dispatch and again repeated journey upto the place where the conveyance/vehicle is again intercepted (at 08.00 PM)] as alleged and that too, within such short time gap. Further, it is also observed that the adjudicating authority neither produced nor discussed any contrary facts or evidences against the submission of the appellant, as reproduced in para-3.4 (ii) above.

5.4 Further, I find that the adjudicating authority could not be able to produce any other corroborative evidences or findings on the basis of verification done at the end of either supplier or recipient, in support of their



contention that multiple trip has been done by the subject vehicle/conveyance on the same EWB/Invoice.

6 I find that the provisions of Section 129 of CGST Act, 2017 are as reproduced here below:

"(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130."

7. In the present case, I find that the adjudicating authority failed to produce any substantial evidences in respect of his only contention that multiple trip has been done by the subject vehicle/conveyance on the same EWB/Invoice and it is settled law that the demand of duty cannot be based upon the surmises and conjunctures or on the basis of doubts entertained by the officers. Accordingly, it is observed that the allegation of clandestine removal of goods by way of multiple trip on same EWB is not duly supported by any substantial evidences and hence the charges framed by the adjudicating authority in respect of the goods [as mentioned in above para-3] of the appellant that *"the said goods were being transported in contravention of the provisions of the CGST Act, 2017 or the rules made thereunder while they are in transit"* is not sustainable. Accordingly, the demand of tax &



penalty on the goods raised and confirmed under Section 129 of CGST Act, 2017 vide the impugned order is not legally correct and maintainable.

8. In view of the foregoing discussions, I find no reasons to uphold the impugned order issued by the adjudicating authority confirming the demand of tax & penalty on the goods of the appellant [as mentioned in the table at Para-3 above which was covered under Invoice No. 0424/2020-21 dated 24.07.2020 and E-Way Bill No. 671205804700 dated 24.07.2020]. Accordingly, the impugned order is set aside and the appeals are allowed with consequential relief to the appellants.

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

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

(Mukesh Rathore)

Joint Commissioner (Appeals)

Date: .11.2020.

Attested

Seind...

(M.P.Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad.



By Regd. Post A. D/Speed Post

To

M/s. Rishab Tobacco Private Limited,
Block No. 482,
Behind Sushma Namkeen,
Changodar, Dist-Ahmedabad

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Dy./Asst. Commissioner, Central GST, Division-VIII, Ahmedabad South.
5. The Dy./Asstt. Commissioner, CGST, HQ (Systems), Ahmedabad South.
(for uploading OIA)
6. Guard File.
7. P.A. File.

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