



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-20201264SW000000B4D4

क फाइल संख्या : File No : GAPPL/ADC/GSTP/261/2020

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001/APP-JC-027/20-21
दिनांक Date : 27-11-2020 जारी करने की तारीख Date of Issue : _____

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

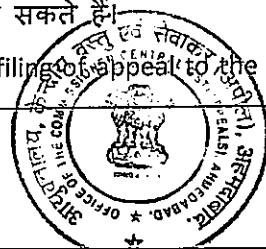
Passed by Shri. Mukesh Rathore, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No DIV-III/E-WAY/01/20-21 दिनांक: 31.07.2020 issued by
Assistant Commissioner, CGST, Division-III, 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 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 having GSTIN:24AAGCR5901A1ZX (herein referred to as the 'appellant') against the Order No. Div.III/E-Way/01/2020-21 dated 31.07.2020 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST, Division-III, 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-01-AT-7491 was intercepted by the officers of Jurisdictional CGST Authorities at 00.30 Hrs. on 25.07.2020 at Ring Road, 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]	2106	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/driver of the conveyance and by email to the appellant on 28/07/2020, on the grounds of discrepancies re-produced herebelow:

- (i) *The genuineness of the goods in transit (its quantity etc.) and/or tendered documents requires further verification.*
- (ii) *Others (Specify)- Multiple Trip on same EWB/Invoice.*

2.1 Subsequently, confiscation of the goods as well as the conveyance was proposed under the provisions of Section 130 of the CGST Act, 2017 read with SGST Act, 2017 on the basis of the presumption that the goods were transported for the purpose of evading the taxes by doing multiple trip on same E-Way Bill considering the fact that the goods were transported after more than 30 hours of generation of EWB. The person in-charge had filed objections and were also found to be acceptable for the reasons stated that "Due to lock down in wake of COVID-19 as well as traffic situations at Bodeli, driver started vehicle on 24/07/2020." However, the adjudicating authority



vide impugned order, confiscated the following goods and conveyance under the provisions of Section 130 of the CGST Act, 2017 read with Section 130 of Gujarat GST Act, 2017 & relevant provisions under GST (Compensation to States) Act, 2017.

Sr.No.	Description of goods	HSN Code	Quantity	Total Value including Tax (Rs.)
1	Pan Masala- Silver MRP @4 [9180]	2106	40 Bags	10,52,800/-
2	M-1 Zarda MRP1/- [45900]	24039930	8 Bags	3,18,067/-

2.2 The adjudicating authority vide the impugned order also informed that the above goods and conveyance shall be released on the payment of following tax, penalty and fines in lieu of confiscation, if the same is made within 14 days from the date of issue of impugned order.

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

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-01-AT-7491:

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	207626	207626

3.1 The appellant has also produced copy of corresponding Invoice No. 0423/2020-21 dated 23.07.2020 and E-Way Bill No. 641205711654 dated 23.07.2020 [valid from 23.07.2020 (05.39 pm) upto 25.07.2020] 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.III/E-Way/19-20 dated 28.07.2020 issued by the adjudicating authority, as a compliance of the conditions for release of the subject goods and conveyance.

3.3 In the present appeal, I find that the appellant has submitted that the conveyance has not made multiple trips on the same E-Way Bill as alleged in the impugned order. 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. 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.

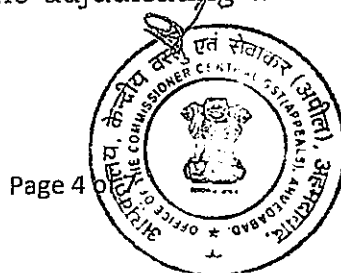
3.4 They also produced a copy of the letter dated 31.07.2020 submitted by the driver of the conveyance to the adjudicating authority stating that there were no multiple movements of goods on the same E-Way Bill.

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-01-AT-7491 it was accompanied by the corresponding Invoice and E-Way Bill. Further, it is observed that during in-transit inspection of the subject conveyance/vehicle by the CGST officers or even at later stage, 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. 641205711654 dated 23.07.2020, 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 only on the basis of the fact that the goods were transported after more than 30 hours of generation of E-Way Bill.

5.4 Further, it is also observed that the adjudicating authority in the impugned order at para-6 mentioned that *"The person in charge has filed objections and were found to be acceptable for the reasons stated below:- "Due to lock down in wake of COVID-19 as well as traffic situations at Bodeli, driver started vehicle on 24/07/2020."*

5.5 Further, I find that the adjudicating authority could not be able to produce any corroborative evidences or any verification report done at the end of either supplier or recipient, in support of their conclusion that multiple trip has been done by the subject vehicle/conveyance on the same EWB/Invoice.

6.1 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."*

6.2 Further, I find that the provisions of Section 130 (1) of CGST Act, 2017 are as re-produced here below:

- "Notwithstanding anything contained in this Act, if any person—*
- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or*
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or*



- (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

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, in the present case, the allegation of clandestine removal of goods by way of multiple trip on same EWB is not sustainable and hence, the demand of tax & penalty on the goods raised under Section 129 of CGST Act, 2017 as well as the impugned order issued for confiscation of goods and conveyance under the provisions of Section 130 of CGST Act, 2017 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 for confiscation of the goods [as mentioned in the table at Para-3 above which was covered under Invoice No. 0423/2020-21 dated 23.07.2020 & E-Way Bill No. 641205711654 dated 23.07.2020] and conveyance with a direction to pay the tax, penalty and fine in lieu of confiscation, as mentioned therein. 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।

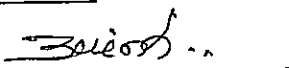
The appeal filed by the appellant stand disposed off in above terms.

(Mukesh Rathore)

Joint Commissioner (Appeals)

Date: .11.2020.

Attested

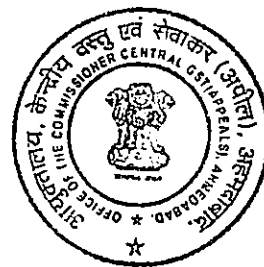


(M.P.Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad.

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

