



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/58 /A-II/2017-18
Stay Appl.No. NA/2017-18

1866 10870

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-263-2017-18
दिनांक Date : 24-01-2018 जारी करने की तारीख Date of Issue 08/02/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. SD-05/08/DKJ/DC/2016-17 दिनांक: 31/01/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s S.K Logistics.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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 पूर्वोक्त धारा को उप-धारा के प्रथम पशुनुक 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 हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूरार 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 पड़िभा 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.

(b) 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।

Original

... 2 ...



(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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।

(c) 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 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 हों।

(d) 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 दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

(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 ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद--380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghaṇ Nagar, Ahmedabad : 380 016. 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. 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन 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.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

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."

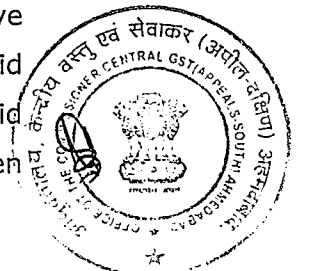


ORDER IN APPEAL

M/s. S. K. Logistics, 72, Raghuvir Estate, National Highway Number 8, Aslali, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original number SD-05/08/DKJ/DC/2016-17 dated 31.01.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Deputy Commissioner, Service Tax, Division-V, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellants were holding Service Tax Registration number ABQFS9402DSD001 with the Service Tax Commissionerate, Ahmedabad and engaged in providing 'Clearing & Forwarding Service'. During the course of audit it was observed that the appellants had availed CENVAT credit on club membership during the period 2013-14 on the invoices issued by M/s. Sports Club of Gujarat Ltd. and M/s. Ellisbridge Gymkhana. As CENVAT credit on club membership service is not eligible as defined under Rule 2 of the CENVAT Credit Rules, 2004, the appellants were issued a show cause notice dated 08.09.2015. Since, it was observed that the appellants had continued with the same practice during the period of 2014-15, another show cause noticed dated 06.10.2016 was issued to them. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of ₹ 2,16,030/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994 and ordered to appropriate an amount of ₹ 20,267/- already paid by them. He also demanded interest on the above said amount under Section 75 of the Finance Act, 1994 and imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that they are located at village Aslali which is far away from city area where not enough facilities are available. They are working as clearing & forwarding agents of various national level companies and top level executives from such companies visit them for business purpose. As they do not have enough facility to conduct business meetings with such clients, they decided to obtain the membership of some renowned clubs in Ahmedabad. The said clubs, according to the appellants, do not offer membership to the partnership firms and therefore, the appellants have obtained membership in the name of one of their partners Shri Jatin Shah. In support of their claim, the appellants have submitted copies of Memorandum of Understanding entered between the said partner (Shri Jatin Shah) and the firm (the appellants). In the said memorandums it has been mentioned that the membership has been

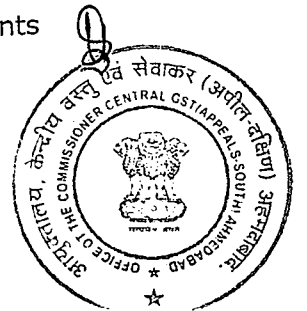


obtained for the purpose of arranging meeting, conferences etc. for the development of business. In view of the above, the appellants requested to set aside the impugned order along with consequential relief.

4. Personal hearing in the matter was granted and held on 22.01.2018. Shri Punit Prajapati, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 31.01.2017 and the appellants have claimed, in Form ST-4, to have received the same on 10.03.2017. However, they have not submitted any documentary evidence in support of their claim. Mere verbal assertion has no legal base under the eyes of law. In view of the above, I find that the claim is delayed by 41 days and the appellants have not pleaded for condonation of delay. On this ground itself, I reject the appeal filed by the appellants. However, as per the principle of natural justice, I would like to discuss the case on merit.

6. I find that the appellants have obtained club membership in the name of one of the partners and accordingly claimed that the said membership is used for the enhancement of business. In support of their claim, they have submitted photocopies of memorandum of understanding between the said partner and the appellants (i.e. the firm). They have further submitted photocopies of "Money Receipts" for Entrance Fees of Ordinary Membership of The Sports Club of Gujarat Ltd. and Ellisbridge Gymkhana amounting to ₹ 7,88,168/-, ₹ 3,94,084/-, ₹ 3,94,702/- and ₹ 3,98,260/- in the names of "Shah Haresh Sevatilal", "Shah Vachika Jatinbhai", "Shah Mrugank Jatin" and "Shah Haresh Sevatilal" respectively. The above receipts pertain to the club membership of some individual which hardly effect the merit of the case. I also found a bill in the name of Shri Jatin Shah (the partner) issued by the caterer of M/s. Sports Club of Gujarat. They have also submitted photocopy of a flight ticket from Mumbai to Ahmedabad issued by the Indigo Airlines and a cash memo issued by M/s. Mahavir Travels in the name of one Shri Hemant Gawde. These documents are mere piece of papers unless it is very clearly established that the said person was their client and they had undergone business relations with the said person and Shri Jatin Shah had actually entertained Shri Hemant Gawde as a business client for the augmentation of business. The memorandums submitted by the appellants are also insufficient to prove the same. In the judgments quoted by the appellants the Tribunal is satisfied by the documents submitted by the assesses but in the present case the documents submitted by the appellants



are not at all sufficient to conclude that the club membership was utilized by them for business purpose. In the case of M/s. Jai Corporation Ltd. vs. the Commissioner of Central Excise, Aurangabad, the Hon'ble CESTAT, West Zonal Bench, Mumbai had rejected the appeal of the assessee stating that the latter had failed to prove any nexus of the service availed by the director and the firm.

"Appellants firm are not the member of the Club – Appellants failed to produce any evidence that they hold their business meeting in the Club for which directors of appellants took membership of the Club – In absence of any nexus of service availed by directors and business activity of appellants firm, input service credit as per Rule 2(l) of Cenvat Credit Rules, 2004 not available".

The same situation is applicable in the present case as the appellants have failed to establish any relation of the services availed by Shri Jatin Shah, as a club member, and the business activity of the firm (the appellants).

6. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(S. DUTTA) 05/02/18

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,
M/s. S. K. Logistics,
72, Raghuvir Estate,
National Highway Number 8, Aslali,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, CGST, Division-IV (Narol), Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Hq, Ahmedabad (South).
- 5) Guard File.
- 6) P. A. File.

