



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पॉलिटेक्निक के पास,

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/80/Ahd-II/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-267-2017-18
दिनांक Date : 24-01-2018 जारी करने की तारीख Date of Issue 5/2/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं
STC/Ref/06/DKJANGID/DC/Div-V/17-18 दिनांक: 5/6/2017, से सृजित

Arising out of Order-in-Original No. STC/Ref/06/DKJANGID/DC/Div-V/17-18 दिनांक: 5/6/2017
issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Anand Mangal Travels
Ahmedabad

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 पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(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 :

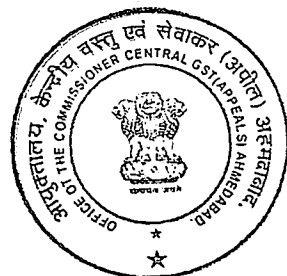
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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।

... 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 हो।

(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.

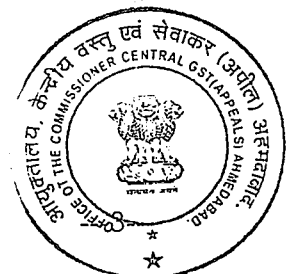
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपील 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, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या 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 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. Anand Mangal Travels, 123- Bharvi Tower shopping Center, NH-8 road, Amraiwadi Ahmedabad- 380 026 (STR APWP P3163L SD001) (hereinafter referred to as 'appellants') have filed the present appeal against the Order-in-Original number STC/Ref/06/DK Jangid/DC/Div-V/17-18 dated 05.06.2017 (hereinafter referred to as 'impugned order') passed by the then Deputy Commissioner, Service Tax, Div-V, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief are that appellants had provided Rent-a-Cab service during April-2014 to March-2016 to M/s. Troikaa Pharmaceuticals Ltd., Ahmedabad (service receiver) and had charged and collected Service Tax from the said service receiver. The appellants had deposited Service Tax of ₹3,17,510/- to the government exchequer but had returned back said Service Tax on 20.02.2017 to the service receiver as the appellants were not required to charge and collect Service Tax in terms of the exemption Notification number 30/2012-ST dated 20.06.2012 but only service receiver was required to pay the Service Tax under reverse charge mechanism. The service receiver had also paid Service Tax under reverse charge and hence it was considered to be double payment of Service Tax. The service receiver had not availed the credit of Service Tax charged from them by the appellants. Therefore, the appellants had filed the refund claim of ₹3,17,510/- on 27.03.2017.

3. The adjudicating authority concluded that only payment of ₹80,617/- made vide GAR Challn number 1936 dated 27.04.2016 was within one year and rest of the amount of ₹2,36,893/- made vide six GAR challans were beyond one year from refund filing date. The adjudicating authority sanctioned refund claim of ₹80,617/- and rejected the claim of ₹2,36,893/- as time barred by limitation of time under Section 11B of CEA, 1944.

4. Being aggrieved with the impugned order rejecting the claim of ₹2,36,893/-, the appellants preferred an appeal on 21.08.2017 before me wherein it was contended by them that as they were not legally required to pay Service Tax, the amount deposited is in nature of deposit and moreover one year should be considered from the date on which said amount was returned back i.e from 20.02.2017.

5. Personal hearing in the case was granted on 22.01.2018. Shree R. Subramanyam, Advocate, appeared before me and reiterated the grounds of appeal. He stated that adjudicating authority did not grant them the benefit of personal hearing and therefore, they could not substantiate their point and submit necessary document before the former.



6.. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing.

7. Question to be decided is regarding fixing relevant date from which one year should be reckoned for filing refund in case of excess payment. Appellants have simply stated that same should be considered from date of return of excess payment collected from service receiver whereas adjudicating authority has concluded that one year should be considered from date of excess payment to government exchequer.

8. Now, before I start, I would like to discuss Section 11B of CEA, 1944 as reproduced below for easy understanding of relevant date-

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) *Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise **before the expiry of one year from the relevant date** in such form and manner as may be prescribed*

(2)

(3)

(4)

(5)

Explanation. - For the purposes of this section, -

(A)

(B) **"relevant date" means, -**

(a) *in the case of goods exported out of India.....,*

(i), or

(ii), or

(iii)

(b) *in the case of goods returned for.....;*

(c) *in the case of goods to which banderols.....;*

(d) *in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed....;*

(e) *in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;*

(ea) *in the case of goods which are exempt from payment of duty by a special order issued.....;*

(eb) *in case where duty of excise is paid provisionally under.....;*



(ec) in case where the duty becomes refundable as a consequence of judgment.....;"

(f) in any other case, the date of payment of duty."

9. From above explanation B(f), it is quite clear that relevant date i.e. date from which one year should be reckoned, is the **date of payment of duty**. The refund is filed on 27.03.2017, and all the duty of Rs. 2,36,893/- paid prior to one year from 27.03.2017.

10. Now, the next question of law is whether amount deposited is nature of "deposit". I find the appellants got themselves registered with the Service Tax Department under the category of Rent-a-cab service. They paid the Service Tax unquestioningly. No protest was lodged. They were regularly filing the Service Tax Returns, which were being assessed by the proper officer. Therefore, what has been paid by them during the material period was Service Tax only. Therefore, it does not mean that what was paid by them earlier did not constitute Service Tax but was only a deposit. The character cannot change from tax to deposit. It can, at best be said that the Service Tax was paid by them for the impugned period on account of mis-construction, mis-application or wrong interpretation of a provision of law. It is to be noted that the provisions of Section 11B of the Central Excise Act, 1944, which have been made applicable to Service Tax matters vide Section 83 of Chapter V of the Finance Act, 1994, constitute "law" within the meaning of Article 265 of the Constitution of India and in the face of the said provisions, which is exclusive in its nature, no claim for refund is maintainable except under and in accordance therewith.

11. The amount was deposited considering it as "duty", remains in nature of "duty" only even if it is learnt later on that the appellants were not required to pay duty in terms of exemption notification. Service Tax levied under the said exemption notification has not been held as unconstitutional levy of Service Tax, therefore whatever is paid cannot be termed as "deposit". Amount deposited with Government is in nature of duty and not in nature of deposit.

12. Hon`ble Supreme Court in the case of M/s. Mafatlal Industries & Others vs. UOI, [reported in 1997 (5) SSC 536] wherein the verdict of Hon`ble Supreme Court as held in para 108(i) is as follows; ".....All refund claims except those mentioned under proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excise Act, 1944 or Customs Act, 1962 as the case may. It is necessary to emphasize in this behalf that Act provides a complete mechanism or correcting any errors whether of fact or of law and that not only an appeal is provided to a tribunal- which is not departmental organ- but to this court, which is civil

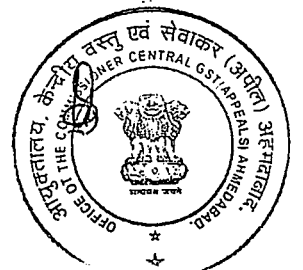


court.....". As per paragraph 108(ii) of the above judgment, it was made clear that the provisions of Act under which the tax was levied has been held to be unconstitutional, such a claim, being claim outside the purview of enactment, can be made either by way of suit or by way of writ petition.

13. The law does cover the transaction for payment of Service Tax hence whatever is paid, by ignoring the exemption Notification number 30/2012-ST dated 20.06.2012, is in nature of duty only. Payment made is by mistake of facts and not by mistake of law. Tax was paid on own volition but under authority of law, hence the time limit under Section 11B of the Act, is applicable.

14. Regarding the issue that the appellants were not given any opportunity to present their case personally as per the principle of natural justice; I consider that the adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased arbitrary or based on mere conjectures and surmises. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The Supreme Court in the case of S.N. Mukherjee vs Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under;

".....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the



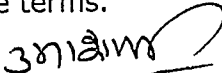
adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ...".

The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

15. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh following the principle of natural justice. The adjudicating authority is further instructed to pass an order in light of the merit of the documents submitted by the appellants and my observations/discussions as narrated above in paragraphs 8 to 13. The appellants are also directed to provide all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.

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

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

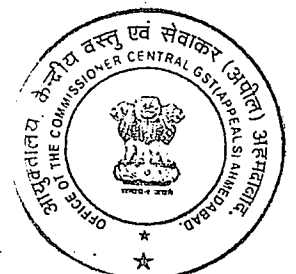

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(S. DUTTA) 050298

SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD



To,

M/s. Anand Mangal Travels,
123- Bharvi Tower shopping Center,
NH-8 road, Amraiwadi,
Ahmedabad- 380 026

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST,Ahmedabad South.
- 3) The Asst. Commissioner, Central Tax, Div-I, Ahmedabad South
- 4) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 5) Guard File.
- 6) P.A. File.

