



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन, 7th Floor, GST Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)34/A-II/2017-18

2231-2235/17-18

Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-436-2017-18
दिनांक Date : 20-03-2018 जारी करने की तारीख Date of Issue 06.04.18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AHM-SVTAX-000-JC-025-16-17 दिनांक: 25/01/2017 issued
by Joint Commissioner, Service Tax.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
The Cap A Pie
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।



(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 दिनोंक 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 मैन्टल हास्पिटल 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, 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 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 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

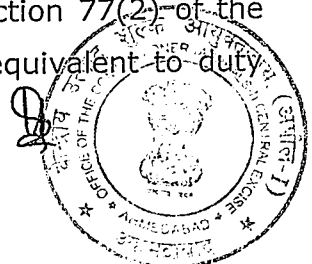
M/s. The Cap A Pie, D - 12, Pruthvi Towers, Behind Someshwar Bungalows, Near Jodhpur Cross Road, Satellite, Ahmedabad having Service Tax registered address at Ravivat Estate, 313/02, Behind Chandola Police Chowky, Near M I Rangwala, Dani Limda, Behrampura, Ahmedabad - 380022 (herein after referred to as the 'appellants') has filed the present appeal against the Order-in-Original No AHM-SVTAX-000-JC-025-16-17 dated 25.01.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Joint Commissioner of Service Tax, Ahmedabad, (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that, M/s. The Cap A Pie, is engaged in providing the services of washing and dry cleaning of clothes / linen to different Divisions of India Railway, hotels and clubs. The appellant had taken Service Tax Registration No. ACVPS6982N SD 002 dated 09.08.2012 with the Service Tax Commissionerate, Ahmedabad, under the category of Service "Other Than Negative List".

3. On the basis of intelligence gathered by the DGCEI indicated that the said appellants were not discharging the service tax liability on the taxable services being provided to their clients, search was conducted at the premises of the appellants under the panchnama dated 19.09.2013 and records found relevant for inquiry were resumed under the said panchnama. The documents seized during the panchnama revealed that the appellant was engaged in providing the "Dry Cleaning Services" other than the negative list services to different divisions of Indian Railways and other private parties like Hotels, Clubs etc. without discharging their Service Tax liability properly thereon.

4. The investigation culminated in issuance of show cause notice bearing F. No. DGCEI/AZU/36-70/2014-15 dated 11.01.2016 by the Additional Director, DGCEI, Ahmedabad Zonal Unit, Ahmedabad proposing demanding and recovery of service tax of Rs. 1,22,37,824/- on cleaning of bed rolls and other cloths / garments done by the appellants, besides proposal for recovery of Interest under Section 75 of the Act *ibid*, penalty under Section 68 and 70 of the Act *ibid* for not obtaining service tax registration, not filing ST 3 returns and not paying service tax in accordance to Section 68 of the Act *ibid*.

5. The adjudicating authority after due course of law i.e. three personal hearings were granted, decided the show cause notice vide OIO No. AHM-SVTAX-000-IC-025-16-17 dated 25.01.2017, wherein the proposals made under the show cause noticed were accepted and a service tax demand of Rs. 1,22,37,824/- was confirmed along with confirmation of demand of interest on the confirmed demand after appropriating amount of Rs. 30,36,101/- and Rs. 86,876/- already paid by the appellants at the time of investigation, imposition of penalty of Rs. 10,000/- under Section 77(1)(a) of the Finance Act, 1994 for failure to take registration, penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 for failure to file returns besides penalty equivalent to duty



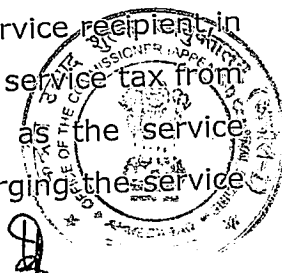
under Section 78 of the Finance Act, 1994 with an option to pay the confirmed demand along with interest and penalty of 25% of the confirmed demand within 30 days of receipt of the impugned order.

6. Being aggrieved with the impugned order the appellant has filed the present appeal. They had filed the appeal delayed by 26 days, and requested to condone the delay on following grounds;

6.1 The OIO was received by them on 2.2.2017, however the same could not be contested by them as they were in search of a consultant to defend their case. As soon as they contacted an advocate/consultant they could file the appeal on 28.04.2017 i.e. delayed by 26 days. Appellant make a humble submission to take into consideration the cause of delay as justified ground and delay may kindly be condoned.

Grounds of Appeal

- A. It is submitted that the impugned order passed by the learned Joint Commissioner of Service Tax, Ahmedabad is ex-facie untenable and unsustainable in law and is liable to set aside.
- B. It is submitted that the learned Joint Commissioner failed to appreciate that the appellant had been providing the services to Railways by inter alia engaging themselves in providing the service of washing / wet cleaning which did not attract Service Tax till 01.07.2012. The Indian Railways, one of the premium Organization was unaware about the taxability on wet drying / washing service w.e.f. 01.07.2012 and had not informed the appellant to pay the service tax by raising in the service providers invoice, then in such case how can the service Provider, who is a petty businessman can know about the liability and made liable to Service tax. **Para C to Para I** are nothing but only facts about the terms of contracts on the basis of which it is alleged in Show Cause Notice that the appellant had knowledge about chargeability of Service Tax on services being provided to their clients.
- J. We say and submit that it is a fact that w.e.f. 01.07.2012 all the services except those notified under negative list had become taxable and as such the services provided by our company had also become taxable and as such we are liable to pay service tax w.e.f. 01.07.2012. However, we say and submit that we wish to place on records certain facts, which will establish that the error occurred on our part, were due to ignorance of law and certain circumstances and not due to any malafide intention. **(Ignorance of law has no excuse in law).**
- L. We further say and submit that it is also a fact that in such cases, where the service provider has to collect service tax from the service recipient, in such cases, the chances of service provider not collecting service tax from the service recipient does not serve any advantage, as the service provider will by no means get any advantage of not charging the service



tax from the service receiver, especially, in those cases where the service recipient is Indian Railways, a Public Sector organization. The probability of the malafide intention of service provider does not get established in such cases, where the service provider has not charged service tax from the service recipient, only on the context of evading the service tax.

- M. We say and submit, that considering the provisions of charging Service tax, have always been complex, where most of common people have an understanding that service provided to an unit of Government of India, is in normal course exempt from payment of Service Tax, though, by no stretch of imagination can the above views sustained by a tax payer. Considering, all the above submissions, though we were required to charge Service Tax to our clients and recover the same and deposit it to the exchequer, however, the same has not happened. We further say and submit that the liability therefore is required to be discharged, irrespective of facts, that the said portion of service tax has been received by the appellants.
- N. We say and submit that the entire case has been built up on certain points. We say and submit that the appellants had entered into a contract with Sr. Divisional Mechanical Engineer, Ahmedabad vide letter of Acceptance No.M-442/19/3/1/LINEN/KKF dated 29.02.2012 wherein the letter of acceptance was accepted on 29.02.2012. We say and submit that the service tax was made liable on laundry service w.e.f. 1.7.2012 and as the letter of acceptance was accepted on 29.02.2012, the service was initially provided by our company without any service tax. We further say and submit that the service recipient has informed us that they will not be paying service tax to our company for all the contracts that were accepted by us prior to 01.07.2012. We say and submit that we are providing services to Indian Railways and the payment of the said amount usually takes a substantial period and with full of uncertainty. Considering the above situation, we had not discharged the service tax liability as Railways had informed us that they will not be discharging service tax in all such contracts that were entered by us prior to 01.07.2012. We therefore, request that the appellants may be granted cum-duty-benefit for all the services provided by us, wherein the Railways have declined to pay the service tax amount to our company.
- O. We further, say and submit that the following amounts are pending recovery from Railways, the details of which are submitted herewith :
- i. An amount of Rs. 1.25 Crores is pending recovery from Indian Railways, Western Railway, Ahmedabad from October, 2012 to July, 2014.
 - ii. An amount of Rs. 77.57 lakhs of service tax is pending recovery from different Divisions of Indian Railways for the period from 01.07.2012 to 31.03.2016.
 - iii. An amount of Rs.58 lakhs (Approximately) has been withheld by Jabalpur Railways for the period April, 2016 to July, 2016.

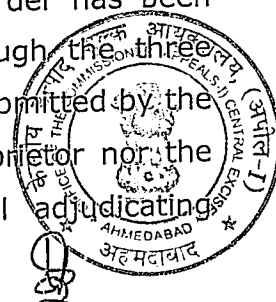


- P. We say and submit that the appellants had always been bearing an understanding that the service tax is required to be paid by them only after recovering the same from the Railways. We say and submit that considering the facts mentioned at para 'O' above, we have tried to bring on records that the above amount is pending recovery from the service recipient and in absence of recovery of such a huge amount, the appellant has failed to deposit the pending dues of service tax with the exchequer.
- Q. We say and submit that we are providing services of laundry to various service providers, wherein, we have to utilize material viz. laundry chemicals, fire wood, paper bag etc. We say and submit that the value of all such items is required to be deducted from the total services amount to reach to the assessable value. We say and submit that the said benefit has not been granted to our company at the time of adjudication. We say and submit that the said benefit may be granted to us to reach to the correct assessable value.
- R. We further say and submit that while providing the service, we are also availing services of various service providers for machinery maintenance, telephone bills, Chartered accountants etc. We say and submit that we are eligible for CENVAT Credit of the said input services. We say and submit that the benefit of the same may be granted to us.
- S. The appellant say and submit that all the above submissions were required to be made before the learned adjudicating authority, however, the same could not be made due to the casual approach of the consultant.
- T. Based on the above grounds, the appellant prays before the Hon'ble Commissioner (Appeals) to set aside the impugned Order-in-Original by providing relief to the appellant by setting aside the OIO No. AHM-SVTAX-000-JC-025-2016-17 dated 25.01.2017 passed by the Joint Commissioner, Service Tax, Ahmedabad and pass any orders with consequential relief and thus render justice.

7. Personal hearing in the matter was conducted on 22.01.2018 wherein Shri Bhupesh Shah Proprietor of the firm appeared before me and reiterated the Grounds of Appeal and makes additional submission.

8. I have gone through the fact of the case, grounds of appeal, additional submission and grounds for condonation of delay at the time of personal hearing Without going into merit of the case first condonation of delay is to be addressed by me.

9. From the OIO itself it transpires that the adjudication order has been passed ex-part as no one appeared for personal hearing though the three opportunities were given, also no written submission has been submitted by the appellant. It appears that it is a case wherein neither the proprietor nor the consultant has taken pain to defend the case with original adjudicating



authority, thus it will not be legal and proper if the delay of 26 days is not considered, hence though the grounds of delay are not so convincing but to follow the principle of natural justice, I condone the delay of 26 days.

9.1 Now coming to the merit of the case, It is concluded that the contracts awarded by various division of Railway prior to 1.7.2012 were inclusive of all taxes thus the grounds taken by them that Railway has not given or reimbursed Service Tax does not hold any water as the Railway has acted as per terms of Contracts however in such cases cum duty benefit can be extended to the appellant. Contracts awarded by various division of Railway after 1.7.2012 specifically mentioned service tax extra, in such cases no cum duty price benefit is available to them. In regards to documents submitted for claiming Input Tax Credit of Rs.26,191/- it is concluded that the Input Tax Credit Invoices pertain to period 2013-14 hence not eligible for taking credit, being older than one year.

9.2 In view of above the matter is required to be remanded back to ascertain the liability after giving benefit of cum duty price in respect of contracts awarded to the appellants prior to 1.7.2012. I hereby remand back the matter as discussed.

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

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

Usha Shankar

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:- 20.03.2018

ATTESTED

K.H. Singhal
(K.H. Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

BY R.P.A.D.

M/s. The Cap A Pie,
D - 12, Pruthvi Towers,
Behind Someshwar Bunglows,
Near Jodhpur Cross Road,
Satellite, Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Tax, Ahmedabad zone, Ahmedabad.
2. The Principle Commissioner, Central Tax, Ahmedabad-South.
3. The Assistant Commissioner, Central Tax, Division-VI, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South.
5. Guard File.
6. P.A. File.

