

 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b> <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 7 <sup>th</sup> Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 : 079-26305065	टेलिफैक्स : 079 - 26305136	

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)40/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-072-2018-19  
दिनांक Date : 09-10-2018 जारी करने की तारीख Date of Issue

23/10/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 05/CE-I/Ahmd/ADC/MK/2018 दिनांक: 20.03.2018 issued by  
Addl. Commissioner, Div-Ahmd. South, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Merinetrans India Pvt. Ltd.**  
**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, 4<sup>th</sup> 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 प्रकिया 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 कें 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 मैटल 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, 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 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 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 alone is in dispute."



**ORDER IN APPEAL**

M/s. Marinetrans India Pvt. Ltd., Block No. 505, 5<sup>th</sup> Floor, Abhijeet-1, Mithakhali Six Roads, Ahmedabad (*hereinafter referred to as 'appellants'*) has filed the present appeal against Order-in-Original number 05/CE-I/Ahmd/ADC/MK/2018 dated 20.03.2018 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Central GST, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellants are engaged in the business of providing taxable services covered under the definition of "Business Auxiliary Services", for which they were holding Service Tax Registration number AADCM9361QST002. On the basis of intelligence gathered and during the course of scrutiny of documents, it was observed that the appellants operated in freight forwarding sector and appeared to be indulged in evasion of Service Tax on profit earned in the selling of space for export freight to the exporters purchased from shipping line. It is a general trend that exporters and importers do not directly go to the transporters/ shipping line for freight booking of ocean going vessels or aircrafts but approach the forwarding agents for getting the work done. In this situation, the forwarding agents either ask the shipping line to provide space in the ocean going vessels which they book in advance in anticipation or they make such bookings with the shipping line on behalf of exporters/ importers (their clients) whenever there was such request. The amount paid to the shipping line for such freight booking is termed as 'purchase value' and the amount collected from the exporters/ importers, is termed as 'sales value' by the appellants. It was noticed that the appellants did not disclose their income generated in the name of freight variation during the period from 01.10.2010 to 31.03.2015. They also did not pay Service Tax on the amount received by undergoing above mentioned practice. Accordingly, a show cause notice dated 19.04.2016 was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 58,53,655/- under Section 73(1) of the Finance Act 1994 and ordered recovery of interest under Section 75 of the Finance Act 1994. The adjudicating authority, vide the impugned order, also imposed penalty under Sections 70, 77(2) and 78 of the Finance Act 1994.

3. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that the adjudicating authority did not appreciate the contentions of the appellants that they were filing ST-3 returns regularly and maintained statutory records as required

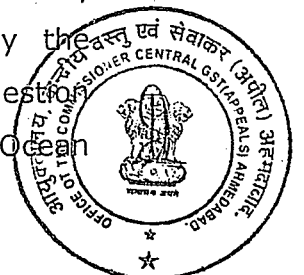


under various laws. Further, they being a private limited company, the balance sheets, profit and loss accounts and other books of records were available in public domain but the said aspect was not considered. Therefore, there has been no suppression of facts with the intent to evade payment of Service Tax. They further argued that the activity undertaken by them did not fall under the ambit of Business Auxiliary Services for the period prior to 01.07.2012 as mere purchase and sale of cargo space and earning profit was not a taxable activity. They further stated that they did not procure the space on behalf of any client but purchased the same on their own account. The appellants further argued that demand of duty for the period after 01.07.2012 is also devoid of any merit.

4. Personal hearing in the matter was granted and held on 28.08.2018. Shri Arjun R. Nair, Advocate, appeared before me and reiterated the contents of appeal memo and stated that same issue is pending in CESTAT, Hyderabad. Shri Nair tabled before me additional submission and quoted Circular number 197/7/2016-ST dated 12.08.2016. He cited several judgments where ocean freight is not taxable.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellants 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 dispatched on 26.03.2018 and the appellants have filed the appeal on 21.06.2018. I find that the appeals are delayed by 27 days. The appellants filed an application for condonation of delay, and I condone the delay and proceed to decide the case on merit.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I do not want to accept the argument tabled by the appellants that they were not producing any service that attract Service Tax. I find that they were booking space on behalf of their clients and pay to the shipping line for that. Then they collect an amount higher than the booking amount and treat the differential amount as their profit. This activity is nothing but an act of Commission Agent offering a service under Business Auxiliary Service. This is nowhere an activity from principal to principal as the appellants are neither consuming the space themselves (instead they sell the space to actual consumer) nor are they the original providers of the space. They simply act as a commission agent and pass on the service for a certain sum of fee in terms of differential amount, which is not Ocean Freight. Regarding the case laws quoted by the appellants, I find that the same are not relevant to the situation in question as they all speak about Ocean Freight whereas here the case is not of Ocean



Freight. The ocean freight is always paid by the person who utilizes the services of shipping line for carrying goods. Further, I have gone through the Circular number 197/7/2016-ST dated 12.08.2016 as quoted by the appellants. Now, I am going to reproduce, below, related contents mentioned in paragraph 2.2 of the said circular;

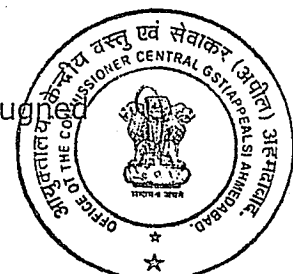
"2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account."

During the course of personal hearing, I asked Shri Arjun Nair, the authorized representative of the appellants, whether the appellants have undertaken all the legal responsibility for the transportation of the goods and whether they have undertaken all the attendant risks (as mentioned in the above circular); Shri Nair could not give any satisfactory answer. Therefore, it is quite clear that the appellants are trying to show that the activity conducted by them pertains to Ocean Freight but it is not so.

7. Further, regarding their argument that no suppression can be invoked as they had clearly indicated in books of accounts, Income Tax returns and financial statements, I would like to quote below the judgement of Hon'ble CESTAT, Mumbai in the case of M/s. Daichi Karkaria Ltd. vs. CCE, Pune-I where the Hon'ble CESTAT, Mumbai proclaimed that;

"...if some information is available in various reports and returns which are to be formulated in compliance to other statutes, it does not lead to a conclusion that the utilization of credit for the activity of renting is known to the Department. The Department is not supposed to know each and every declaration made outside the Central Excise and Service Tax law. Even if the Financial Report is available to the audit, the same is meaningless in the sense that it does not indicate that input Service Tax credit utilized to pay the tax liability on such renting of property. The appellant's argument on limitation is rejected."

8. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.



9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellants stands disposed off in above terms.

*उमा शंकर*  
(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

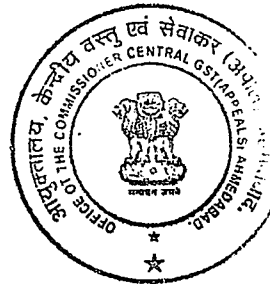
*S. DUTTA*  
(S. DUTTA) 23/10/18

SUPERINTENDENT,  
CENTRAL TAX (APPEALS), AHMEDABAD.

To,  
M/s. Marinetrans India Pvt. Ltd.,  
Block No. 505, 5<sup>th</sup> Floor, Abhijeet-1,  
Mithakhali Six Roads,  
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-South.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-VI, Ahmedabad-South.
4. The Addl. Commissioner, Central Tax, Ahmedabad-South.
5. The Assistant Commissioner (System), HQ, Ahmedabad-South.
6. Guard file.
7. P.A file.



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