



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  
07926305065- टेलीफैक्स 07926305136



### स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)11/Ahd-South/2019-20/14352 T 014356
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-117-2019-20**  
दिनांक Date : **16-03-2020** जारी करने की तारीख Date of Issue 20/03/2020  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST/DN-VI/02/DEM/SKC/Marinetrans/18-19** दिनांक: **18.12.2018**, issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Marinetrans India Pvt.ltd**  
**Ahmedabad**

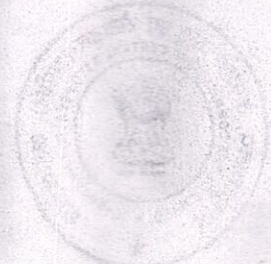
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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) केंद्रीय 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 अधिन 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 यथार्थिती 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती 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**

This order arises on account of an appeal filed by M/s. Marinetrans India Pvt. Ltd., Block No. 505, 5<sup>th</sup> Floor, Abhijeet-1, Mithakhali Six Roads, Ahmedabad (*hereinafter referred to as 'appellant'*) against Order-in-Original No.CGST/DN-VI/02/DEM/SKC/Marinetrans/18-19 dated 18.12.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST Division-VI, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellant is a freight forwarder providing taxable services covered under the category of "Business Auxiliary Services", for which they were holding Service Tax Registration number AADCM9361QST002. In the freight forwarding sector, it is a common practice among freight forwarders to book the space for export cargo with the shipping/airline companies in advance at a specified rate. The said space is sold by the freight forwarders to the exporters as and when they approach the freight forwarders at a higher rate than what has been agreed upon with the shipping/airline companies. The excess amount of freight charged from the exporters is the profit earned by the freight forwarders. In some instances, the exporters approach freight forwarders and book cargo at certain rate and the freight forwarders in turn negotiate with various carriers and book the said cargo at a much lesser rate and thus they earn profit even in such cases. It is the case of the department that the activity of the appellant as discussed above is nothing but provision of service and excess amount of ocean freight/freight collected from the exporters/clients is nothing but purely consideration towards the provision of service and therefore, the said excess amount collected was taxable under the provisions of the Finance Act, 1994 (in short '*the Act*'). Accordingly, the appellant was issued with a Show Cause Notice (in short '*the SCN*') F.No.ST/4-112/O&A/2015-16 dated 19.04.2016 demanding service tax amounting to Rs.58,53,655/- covering the period from 2010-11 to 2014-15. The said SCN was adjudicated vide Order-in-Original No.05/CE-I/Ahmd/ADC/MK/2018 dated 20.03.2018 wherein the adjudicating authority confirmed the demand along with interest and imposed penalties. Aggrieved with the said Order, the appellant preferred an appeal before the Commissioner (Appeals) which was rejected vide Order-in-Appeal No.AHM-EXCUS-001-APP-072-2018-19 dated 23.10.2018. Thereafter, they approached the Hon'ble CESTAT, Ahmedabad where their appeal against the Order of the Commissioner (Appeals) is pending for decision.

2.1 In the meanwhile, another SCN was issued under F.No.SD-02/SCN-76/O&A/Marinetrans/2016-17 dated 13.04.2017 on the same issue to the appellant covering subsequent period of 2015-16 demanding service tax amounting to Rs.8,60,091/-, which was decided against the appellant by the impugned order under appeal in the present case.



3. The appellants have filed the present appeal against the impugned Order mainly on the following grounds:

- (a) The Hon'ble Tribunal, Hyderabad's Order No.A/30120/2019 dated 17.01.2019 in the appellants' own matter, conclusively settles the issue favour of the appellants and in view of the same, the impugned order is liable to be aside;
- (b) The appellants had placed reliance on the various decisions of tribunals with regard to the said matter, which are also mentioned in the order of the Hon'ble Tribunal, Hyderabad and the said decisions are not even considered by the adjudicating authority;
- (c) The adjudicating authority has not elaborated as to how the activity of purchasing and selling of freight space by the appellants falls within the ambit of the term 'Service' as defined under Section 65(B)(44) of the Act; the SCN is silent as to whether service is being provided to the shipping line or the exporters. The adjudicating authority has simply concluded that the appellants are providing a service without any appreciation of the actual activity that is undertaken by the appellants;
- (d) They relied upon five case laws in support of their contention that there is no service much less taxable service being provided by them;
- (e) The adjudicating authority has held that the appellants in the present case act as an agent of the shipping line or the exporter. However, there is no explanation as to how the appellants are acting as an agent of the shipping line or the exporter. There is no certainty as to in what manner the appellants are acting as an agent;
- (f) The adjudicating authority has simply relied on the parts of the Circular No.197/7/2016-ST dated 22.08.2016 that is beneficial to their case while failing to consider the contents of the same in their entirety, while holding that the appellants act as an intermediary in the case. The main requirement for a freight forwarder being an intermediary under the said circular is that "*The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them.*" This clearly distinguishes the nature of an intermediary from that of the appellants. The appellants are purchasing the freight space on their own account and selling the same to the exporters on their own account. They are at no stage acting as an intermediary or agent of the shipping line, nor is there any connection between the shipping line and exporter;
- (g) In view of the Circular No.197/7/2016-ST dated 22.08.2016, the provisions of Rule 10 of the Place of Provision of Service Rules, 2012 are applicable to them according to which the place of provision of service in relation to transportation of goods shall be place of destination of goods and as the destination of goods are beyond the taxable territory of India, there can be no service tax levied on the same; and
- (h) In view of the decision of the Hon'ble Tribunal, Hyderabad vide Order No.A/30120/2019 dated 17.01.2019, there is no service element in the dealing between the appellants, the shipping lines and the exporters and in view of the same, no penalty can be imposed on the appellants.



4. The appellant was granted hearing on 09.10.2019 by the then Commissioner (Appeals), when Shri Rahul Gajeria, Advocate, appeared and reiterated the submissions of appeal memo for consideration. Due to change in appellate authority, the appellant was given further hearings in the matter on 07.01.2020 and 04.02.2020 which they did not attend. However, they submitted a letter dated 09.01.2020 and 04.02.2020 submitting that the issue at hand has already been decided by Hon'ble CESTAT, Hyderabad vide their order No.A/30120/2019 dated 17.01.2019 and hence the present appeal may be decided accordingly.

5. Before taking up the matter on merits, I find that there has been a delay in filing the appeal by the appellant. The impugned order was reported to be communicated on 28.01.2019 and the appellants have filed the appeal on 25.04.2019. I find that the appeal has been filed after 27 days of the last date of filing of appeal. 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, Appeal Memorandum, submissions made at the time of personal hearing and evidences available on records.

6.1 I find that the SCN in question is periodical in nature and the main SCN has been decided against the appellant by the adjudicating authority as well as the Commissioner (Appeals). The appellant have preferred an appeal against the same before the Hon'ble CESTAT, Ahmedabad where it is pending decision. As the issue in the principal demand for the past period is pending for decision in the jurisdictional Tribunal at Ahmedabad, I am not in a position to consider the Hon'ble Tribunal, Hyderabad's Order dated 17.01.2019 relied upon by the appellants in their appeal for deciding the present case.

6.2 It is further observed that this being periodical show cause notice, the findings of the adjudicating authority as well as of the Commissioner (Appeals) for the earlier period will hold good for subsequent period also. I find that the Commissioner (Appeals) in his OIA No. AHM-EXCUS-001-APP-072-2018-19 dated 09.10.2018 has observed as under:

*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. In the case of present appeal also, I find that the appellant has not produced any evidence to prove that they have undertaken all the legal responsibility for the transportation of the goods and all the attendant risks (as mentioned in the Board's Circular No.197/7/2016-ST dated 12.08.2016) and hence it can not be said that the transaction was on principal to principal basis. Under the circumstances, the facts of the present dispute being exactly the same, I fully concur with the above views expressed by the then Commissioner (Appeals) on the issue and I uphold the confirmation of the

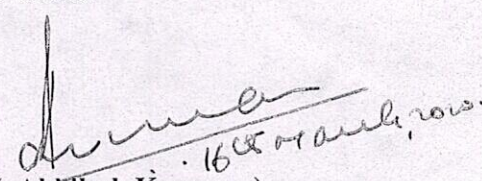


demand along with interest as well as penalty under Section 76 of the Act. As far as the contention of the appellant on the penalty under Section 78 of the Act is concerned, I find that the same is not correct as no such penalty under Section 78 has been imposed in the impugned order. On the penalty imposed under Section 77 of the Act, I find that the same is correctly imposed as the service tax demand confirmed in the case was not correctly assessed and declared by the appellant in the manner prescribed for the same.

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.

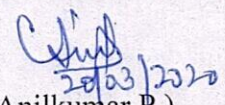
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Akhilesh Kumar )  
Commissioner (Appeals)

Date: .03.2020.

Attested:

  
(Anilkumar P.)  
Superintendent(Appeals),  
CGST, Ahmedabad.



To

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Ahmedabad.

Copy to:-

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