



आयुक्त का कार्यालय, अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)14&15/Ahd-South/2019-20 / 10898 to 10903

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-024 & 025-2019-20
दिनांक Date : 28-05-2019 जारी करने की तारीख Date of Issue _____

03/06/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr. Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS07/Ref-44&45/MK/AC/2018-19 दिनांक: 30.11.2018
issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
True Value Buildtech LLP
True Value Business bay LLP
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 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।



(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 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 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

This order arises on account of two appeals filed by following appellants against the below mention OIOs passed by the Assistant Commissioner, CGST, Division- VII, Ahmedabad South (in short adjudicating authority):

Sr. No.	Name of the appellant	OIO No and date	Amount of Refund	Appeal No.
1.	M/s True Value Build Teach LLP (AAYFM5977CSD001) Ground Floor, True Value House, Near Sundarvan, Near ISRO, Satellite, Ahmedabad-380015	CGST/WS07/Ref - 44/MK/AC/2018 -19 dated 30.11.2018	Rs. 7,44,581/-	V2(ST)14/Ahd-South/19-20
2.	M/s True Value Business Bay LLP (AAJFT8357LSD002) Ground Floor, True Value House, Near Sundarvan, Near ISRO, Satellite, Ahmedabad-380015	CGST/WS07/Ref - 45/MK/AC/2018 -19 dated 30.11.2018	Rs. 27,06,402/-	V2(ST)15/Ahd-South/19-20

2. The appellant had paid service tax before July-2017 on booking proceedings received towards Residential Units. The applicant refunded back entire booking amount to some members as they had cancelled the units. The appellants filed the refund claims to the department for the service tax paid on such amount returned to members. The appellant filed the refund claims for the period April-2017 to June-2017 under Section 11B of the Central Excise Act, 1944, made applicable to Service Tax vide Section 83 of Chapter V of Finance Act, 1994.

3. The refund claims were rejected vide above said impugned OIOs on the following grounds:

- (i) Service tax amount is not refunded to members,
- (ii) There is no ledger account named service Tax Receivable and KKC receivable.
- (iii) There is no legal proof of booking and cancellation like Sale Agreement and Cancellation Deed.
- (iv) The bank statement and ledger accounts are not co-related.

4. Feeling aggrieved, the appellant has filed the present appeals grounds and requested to set-aside the impugned order and allow the refund claims with interest.



5. Personal hearing in the matter was held 25.05.2019. Shri Nitesh Jain and Shri Jay Dalwadi both CA appeared on behalf of the appellant and reiterated the grounds of appeal and explained the case in detail also submitted additional submissions.

6. I have gone through the facts of the case, the grounds of appeal, the additional submission and the oral averments raised by the appellant during the course of personal hearing. I find that there is delay of 05 days in filling above said appeals at Sr. No. 1 and 2 of the above table. The appellant has filed an application for the condonation of delay and in terms of proviso to Section 85 of the Finance Act, 1994, I condone the delay.

7. I find that the primary and only issue to be decided by me in this appeal is whether the appellant returned total booking amount to the members or not.

7.1 While rejecting the refund claim, the adjudicating authority has given the reference of two members (i) Bharat Kumar Tekwani and (ii) Shital P. Shah and held that the service tax amount were not returned to them by the appellant.

7.2 The adjudicating authority has stated in para 9 of the impugned order that in ledger account of Shri Bharat Kumar Tekwani, amount refunded has been shown only Rs. 4,78,469/- and no entry for Rs. 21,531/- is reflected in ledger account named **Service Tax Receivable**, and **KKC Receivable**. Similarly in case of Shital P Shah, no entry for Rs. 7,50,360/- has been reflected in ledger account named **Service Tax Receivable**, and **KKC Receivable**.

7.3 From the grounds of appeal, I find that the appellant maintains two separate accounts in Balance Sheet, for posting of booking amount received from members (a) Advances from Members and (b) Service Tax from Members.

The same can be understood from the following table:

Name of the Members	Total advance amount received from Members	Posting of booking amount	
		Advances from Members	Service Tax from Members
Bharat Kumar Tekwani	Rs. 5,00,000/-	Rs. 4,78,469/-	Rs. 21,531/-
Shital P Shah	Rs. 1,80,00,000/-	Rs. 1,72,49,640/-	Rs. 7,50,360/-



- 7.4 Appellant stated in the grounds of appellant that at the time of crediting (reversing) Rs. 4,78,469/- towards booking, service tax of Rs. 21,531/- is also credited.
- 7.5 The adjudicating authority held that there is no ledger account named Service Tax Receivable and KKC receivable, however, the appellant has argued they maintain the same with the name of 'Service Tax from Members'.
- 7.6 I also find from the documents submitted by the appellant that booking amount is received in pre GST regime while amount refunded to the members are in post GST regime.
- 7.7 Further, the appellant has stated that all such refunds are of the units which were booked before GST regime i.e. before April-2017, hence the original collection entries with service tax would have been passed in respective financial year. So the same entry is not available in the submitted ledger.
- 7.8 The adjudicating authority has held that there is no legal proof of booking and cancellation of the units. In this regard, the appellant has given the reference of Indian Contract Act, and said an oral agreement is also a valid contract and it is accepted by all the Courts as well as Apex Court of India. I agree with the contention.
- 7.9 Further, the adjudicating authority has stated that the bank statements and ledger accounts are not co-related. In this regard the appellant has stated that the reason behind the same is that the cheque clearing date is different from the bank payment entry date in the books of account, that they book the entry of payment in the books of account on the date of issuance of the cheque to the member or as instructed to bank RTGS/NEFT. The appellant has further stated that member would have deposited the cheque after two three days or a week, resulting in mismatch between bank statement and ledger, that they have submitted the ledger, with detailed print at the time of adjudication itself.
8. From the above discussion, I find that there is some commutation gap between appellant and the adjudicating authority for submission of the required documents in respect of the refund claim. There are relevant documents viz. ledger **Service tax from Members, Advances from Members** etc. for the relevant period which should be verified properly. The bank statements in respect of the members whose booking were cancelled needs to be verified properly.



9. In view of the above facts and discussions held in the above paragraph, I remand both the cases back to the adjudicating authority to verify the fact afresh after taking all the relevant ledgers and bank statements and other relevant aspects in to consideration.

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

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: 28.05.2019

Attested

Vinod Lukose

(Vinod Lukose)
Superintendent (Appeals),
CGST, Ahmedabad.



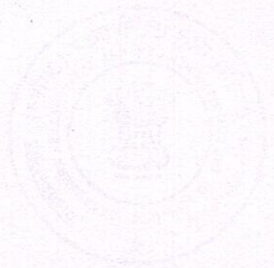
By RPAD.

To,

1. M/s True Value Build Teach LLP
Ground Floor, True Value
House, Near Sundarvan, Near
ISRO, Satellite, Ahmedabad-
380015
2. M/s True Value Business Bay LLP
Ground Floor, True Value
House, Near Sundarvan, Near
ISRO, Satellite, Ahmedabad-
380015

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-VII, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.



Book

2