



आयुक्त (अपील) का कार्यालय

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

☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)162/Ahd-South/2018-19

/12255-39

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-041-2019-20

दिनांक Date : 19-09-2019 जारी करने की तारीख Date of Issue 23.09.2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित

Passed by Shri. Gopi Nath, Commissioner (Appeals)

ग Arising out of Order-in-Original No. SD-05/31/DKJ/AC/2015-16 दिनांक: 30.03.2016 issued by Asstt. Commissioner, Div-V, Service tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Jay 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 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 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 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."



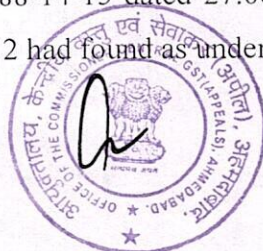
ORDER-IN-APPEAL

This appeal is filed by M/s. Jay Travels, situated at Shop No.U/1A, Shroff Chambers, Opp. Navchetan High School, Paldi, Ahmedabad-380007 (for short "appellant") against OIO No.SD-05/31/DKJ/AC/2015-16 dated 30.03.2016 (for short "impugned order") passed by the Assistant Commissioner of Service Tax, Division-V, Ahmedabad Commissionerate (for short "adjudicating authority").

2(i). The facts of the case in brief are that the appellant is providing service under the category of 'Travel Agent Service' (Other than Air and Rail) and holding service tax registration. On the basis of information, an enquiry/search was carried out on 16.03.2006. It was learnt that the appellant has paid the service tax upto March-2005. It was also found that during the period from April-2005 to December-2005, the appellant have received the total income of Rs.9,06,994/- as Commission but they neither paid the service tax of Rs.92,512/- on such receipt nor filed the ST-3 returns. The appellants paid their service tax liability in the month of March-2006 and June-2006.

2(ii). Thus a Show Cause Notice (for short "SCN") was issued to the appellant on 16.08.2007 for such act of them and was subsequently adjudicated vide Order-in-Original No.SD-02/OIO No.160/09-10 dated 29.07.2009 wherein demand of Rs.92,512/- was confirmed alongwith interest and penalty was imposed under Section 76, 77 and 78 of the Finance Act, 1994 upon the appellants. Being aggrieved with the Order-in-Original, the appellant preferred an appeal with Commissioner (Appeals-IV) who vide Order-in-Appeal (for short "OIA") No.83/2010(STC/HKJ/Commr(A)/Ahd dated 17.03.2010 rejected the appeal and upheld the Order-in-Original. The appellant challenged the said OIA before the Hon'ble CESTAT, Ahmedabad which vide its order dated 13.03.2012 remanded the case back to the adjudicating authority with direction to consider the specific plea of the appellant with regard to the eligibility/applicability of the benefits of exemption in terms of Notification No.06/2005-ST, after following the principles of natural justice.

2(iii). The adjudicating authority in remand proceedings, found that the ledger accounts of the appellant during the year 2004-05 had shown the commission income of Rs.6,49,872/- and hence crossed the exemption limit of Rs.4 Lakhs as prescribed under the said Notification. The commission income of the appellant during the year 2005-06 was also found to be more than the exemption limit. Therefore the adjudicating authority passed the Order-in-Original No.SD/02/04/AC/2013-14 dated 29.08.2013 confirming demand of service tax for Rs.92,512/- alongwith interest and imposed penalty under Section 76, 77 and 78 of the Finance Act, 1994. Being aggrieved with this Order-in-Original, the appellant preferred an appeal with the Commissioner (Appeals-IV) who under Para-7(i) of OIA No. Ahm-Svtax-000-App-088-14-15 dated 27.06.2014 observed that the Hon'ble CESTAT in its order dated 13.03.2012 had found as under :



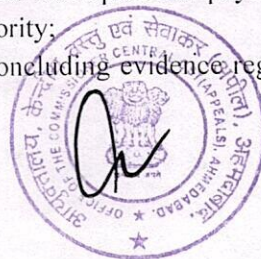
"5. After careful consideration of the submission made by both sides, I find that there being no dispute to the services rendered by the appellant under the category of Travel Agent Service, the benefit of notification which are there in the statute, should have been automatically be given to the assessee. Even in the absence of any such claim, the benefit should have been granted to them. Be that as it may, the specific plea of the assessee that they are eligible for the benefit of Notification No.6/2005-ST, can not be disregarded for the services rendered upto the first four lakhs, during the period April, 2005 to March, 2006 for which the appellant is eligible for the benefit of Notification, provided he has not crossed the limit of Rs. Four Lakhs during the preceding Financial Year. Since the issue was not taken up by the appellant before the lower authorities, in the interest of justice, this issue needs to be considered by the adjudicating authority in its correct perspective."

Commissioner (Appeals-IV) also found under Para-8.2 of the said OIA that the service of Travel Agent was made taxable from 10.09.2004 and therefore the taxable value towards the said service required to be considered from 10.09.2004 to 31.03.2005 only. Therefore the Commissioner(Appeals-IV) vide his OIA No.Ahm-Svtax-000-App-088-14-15 dated 27.06.2014 remanded the matter back to adjudicating authority for ascertaining the taxable value as per the direction. He also directed the appellant to put all the evidences before the adjudicating authority in support of their contention as well as any other details/documents etc. that may be asked for by the adjudicating authority.

2(iv). The adjudicating authority in the remand proceedings offered the appellants the opportunity of personal hearing on 12.02.2015, 08.04.2015, 25.05.2015 and on 15.03.2016. However, the appellant neither attended the hearing nor submitted any reply or documents. Thus the adjudicating authority proceeded to decide the matter on the basis of available records. Considering the direction of the appellate authority, the adjudicating authority found that the commission income for the year 2004-05 comes to Rs.3,97,437/- and thus is under the exemption limit of rupees four lakhs and therefore the benefit of Notification No.6/2005-ST is available to them for the year 2005-06. However the adjudicating authority found that the condition one of the said notification says that the service provider has the option not to avail the exemption and pay the service tax on the taxable service and such option once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year. The adjudicating authority further found that the appellant has opted for payment of service tax from the beginning and therefore they can not subsequently withdraw their option. Accordingly, the adjudicating authority vide the impugned order confirmed the demand of Rs.92,512/- along with interest and imposed penalty under Section 76, 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds :

- (i) that the benefit of exemption under Notification No.6/2005-ST is admissible to them for the financial year 2005-06;
- (ii) that the service tax payment for the period 2005-2006 has been made by them in March-2006 and June-2006 which means that they have not opted for payment of service tax from the beginning as contended by the adjudicating authority;
- (iii) that the adjudicating authority has no concluding evidence regarding acceptance of option for payment of tax from the beginning;



- (iv) that simultaneous penalty under Section 76 and 78 of the Finance Act, 1994 is not allowed and there are various case laws they relied upon;
- (v) that the travel agent service was brought under service tax net w.e.f. 10.09.2004 however they obtained service tax registration in November-2004; that they paid service tax during the year 2004-05 however they could not pay service tax in the beginning of the year 2005-06 because they were under impression that they are eligible for the exemption;
- (vi) that the adjudicating authority in the impugned order has accepted that the appellant is eligible for exemption of Rs.4 Lakhs in the financial year 2005-06;
- (vii) that the issue involved relates to interpretation of provisions of Notification No.6/2005-ST and therefore penalty should not be imposed when question of interpretation is involved.

4. Personal hearing in the matter was fixed on 20.08.2019, wherein Shri Bishan Shah, Chartered Accountant, appeared for the personal hearing and reiterated the submission of appeal memo for consideration.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum and the various plea putforth in the appeal memorandum and during personal hearing. The issue to be decided is whether the appellant is eligible for the SSI exemption in the year 2005-06 on the basis of their turnover in 2004-05. After issuance of the Hon'ble CESTAT's order dated 13.03.2012 and OIA dated 27.06.2014 ample clarity has been achieved in the matter. Therefore the adjudicating authority under its para (x) of the impugned order has come to the conclusion that since the appellant has not crossed the limit of rupees four lakhs in the F.Y. 2004-05, benefit of Notification No. 6/2005-ST is available to the appellant. However, the adjudicating authority has said that the exemption is not available to the appellant due to the condition (i) of the said notification which says that the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year. The facts of the case reveal that the appellant had not paid the amount of service tax during the year 2005-06 by their own till the enquiry/search carried out by the Department on 16.03.2006 and the amount was paid by them in March-2006 and June-2006 only after the enquiry/search. This act of the appellant made it clear that they have chose the option to avail exemption and not to pay service tax. I did not find anything on record, which convince me that the appellant chose to pay the service tax from the beginning. Therefore, I am not convinced with the plea of the adjudicating authority that the appellant chose to pay the service tax. I am therefore in agreement of the plea of the appellant in this regard.

6. From the discussion in para-5 above, it is clear that the appellant is eligible for the benefit of Notification No.6/2005-ST for the year 2005-06. Since the turnover of the appellant during 2005-06 was found to be over rupees four lakhs, there would definitely be some service tax liability on part of the appellant. Therefore, the adjudicating authority is directed to first grant SSI exemption to the appellant for the year 2005-06 and re-quantify the demand in view of such SSI exemption. It goes without saying that such demand will also attract interest as per the law. Thus the re-quantification of service tax liability is required in



terms of above. I further find that the turnover of the appellant was over rupees four lakhs during the period April-2005 to December-2005. This makes it clear that the appellant was well aware that his turnover has crossed the exemption limit of rupees four lakhs but they chose not to pay the service tax till the enquiry initiated on 16.03.2006. Therefore, the adjudicating authority has rightly imposed the penalty under Section 78 of the Finance Act, 1994 for such non-payment of service tax. However, the quantum of this penalty would be decided on the basis of the liability towards payment of service tax which would arise after granting the benefit of exemption available to the appellant. I also find that the penalty under Section 76 and 78 of the Finance Act, 1994 can not be imposed simultaneously in view of the case of M/s. Sai Consulting Engineering Pvt. Ltd. v/s. Commissioner of CGST & C.Ex. reported at 2018(15)GSTL 708(Guj). Thus the penalty imposed under Section 76 is set aside. I further find that the appellant did not file the required return though they were holding service tax registration. The appellant failed to produce any concrete evidence which goes to show that they were exempted from filing the required return though holding service tax registration. In view of this, I uphold the penalty imposed by the adjudicating authority on the appellant under Section 77 of the Finance Act, 1994.

7. In view of the foregoing, the appeal is remanded back to the adjudicating authority as per the direction contained hereinabove. The appeal is disposed of accordingly.

Nath
19/09/19
(Gopi Nath)
Commissioner (Appeals)

Date: .09.2019

Attested

Jitendra Dave
23/09/19

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Jay Travels,
Shop No.U/1A, Shroff Chambers,
Opp. Navchetan High School,
Paldi, Ahmedabad-380 007.

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
3. The Addl./Joint Commissioner, (Systems), CGST & Central Excise, Ahmedabad South Comm'rate.
4. The Dy. / Asstt. Commissioner, CGST & Central Excise, Division-I, Ahmedabad South Comm'rate.
5. Guard file.
6. P.A. File.

