



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
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 : टेलीफैक्स 26305136 - 079 :



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)47/Ahd-South/2019-20 / 12483 TO 12487
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-046-2019-20**
दिनांक Date : **30-09-2019** जारी करने की तारीख Date of Issue 01/10/2019
- श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri. **Gopi Nath**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST/WS07/Ref-51/MK/AC/2019-20** दिनांक: **29.03.2019** ,
issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Metro Publicity (Ahmedabad) 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, 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 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, where penalty alone is in dispute."



ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s Metro Publicity (Ahmedabad) Pvt. Ltd., 125, Azad Society, Ambawadi, Ellisbridge, Ahmedabad - 380 015 (in short 'appellant') against Order-in-Original No.CGST/WS07/Ref-51/MK/AC/2018-19 dated 29.03.2019 (in short 'impugned order') passed by the Assistant Commissioner, Central Excise, Division-VII, Ahmedabad South (in short 'adjudicating authority').

2. Brief facts of the case are that during the audit of records of the appellant by the department, it was observed that they had received certain amount i.e. Rs.7,30,511/- as incentive from their print media during the period of 2002-03 to 2004-05 for activities carried out which were taxable under the category of 'Business Auxiliary Service' defined under the Finance Act, 1994 (in short 'the Act'). As the appellant had not paid service tax on the said amount of incentive received, a Show Cause Notice (in short 'SCN') was issued to them demanding the service tax of Rs.51,241/- payable on the same. The said SCN was adjudicated vide OIO No.SD-01/48/AC/Metro/08-09 dated 20.03.2009 by the Assistant Commissioner, Division-I, Service Tax, Ahmedabad wherein he had confirmed the demand of service tax along with interest and also imposed penalty under Section 76 of the Act.

2.1. The appellant filed an appeal against the above OIO dated 20.03.2009 before the Commissioner (Appeals-IV), Central Excise, Ahmedabad who vide Order-in-Appeal No.220/2009 (STC) / HKJ / Commr (A)/Ahd dated 02.09.2009 issued on 15.09.2009 uphold the OIO and rejected the appeal filed by the appellant.

2.2 Being aggrieved with the above OIA dated 02.09.2009, the appellant filed an appeal before the Hon'ble CESTAT, Ahmedabad vide Appeal No.ST/371/2009-DB and the Hon'ble CESTAT, Ahmedabad vide its Final Order No.A/12604/2018 dated 01.10.2018 set aside the demand of service tax on the ground of limitation and allowed the appeal of the appellant.

2.3 Based on the above CESTAT Order dated 01.10.2018, setting aside the demand of service tax, the appellant filed an application for refund of an amount of Rs.1,31,452/- claiming as amount of service tax paid by them along with interest as per the demand. The adjudicating authority vide the impugned Order decided the claim of refund submitted by the appellant wherein he had sanctioned an amount of refund of Rs.66,218/- being service tax involved in the demand set aside by the Tribunal and rejected the remaining amount of Rs.65,234/- being not pertaining to the demand set aside.

3. Aggrieved with the impugned order, the appellant filed the present appeal on the ground that the amount of service tax of Rs.78,830/- plus interest of Rs.52,622/-



(totaling to Rs.1,31,452/-) paid by them was appropriated by the department and therefore at the time of refund, denial of the amount of service tax of Rs.27589/- plus interest amount of Rs.37,645/- on account of the same being pertaining to the period of 2000-2002 is not justifiable and that once demand has not been sustainable, denial of refund claim was not tenable and that once OIO has been set aside, pre-deposit amount required to be refunded.

4. A hearing in the matter was held on 11.09.2019. Shri Vipul Khandhar, Chartered Accountant appeared on behalf of the appellant and reiterated the submissions of appeal memo for consideration.

5. I have carefully gone through the facts of the case, appeal memorandum submissions made at the time of personal hearing and evidences available on records. I find that the refund in the present case has arisen as a result of the demand of service tax by the department being set aside by the Hon'ble Tribunal on ground of limitation. Therefore, it is clear that what would be refundable in view of the Tribunal's Order would be the amount of demand which has been set aside. However, it is the contention of the appellant that the entire amount of service tax paid by them on the issue is required to be refunded to them in view of the CESTAT's Order.

6. After going through the facts of the case, I notice that the amount of demand of service tax in the present case was Rs.51,241/- covering a period from 2002-2005 as revealed from the Show Cause Notice dated 05.12.2007, OIO dated 20.03.2009 and OIA dated 02.09.2009. On being pointed out about their above service tax liability by the Audit, the appellant had accepted their said tax liability and paid this amount of service tax of Rs.51,241/- along with their tax liability on the same issue amounting to Rs.27,589/- for the past period of 2000-01 to 2001-02 i.e. prior to the period of demand, along with interest which totally amounted to Rs.1,31,452/-. The amount of service tax of Rs.27,589/- for the period of 2000-01 to 2001-02 paid by the appellant along with interest was on their own volition and the said amount was not covered in the demand issued to them. Further, I find that the amount of service tax confirmed and appropriated vide the OIO dated 20.03.2009 was only the amount of service tax demanded and it is not that the entire amount of service tax of Rs.78,830/- plus interest of Rs.52,622/- paid by the appellant was appropriated by the adjudicating authority in the OIO. When the facts of the case being so, it is not correct to say that the entire amount of service tax paid by the appellant in the case was appropriated by the adjudicating authority. It is also to be noted that at the time of adjudication of the demand, the appellant had not disputed their tax liability as per facts seen from the OIO and it was on their volition that they had paid the amount pertaining to the past period of demand. As such, the amount of service tax paid by them on their own for the



period not covered in the notice of demand would not form a part of the tax liability involved in the demand. Since the Order of Hon'ble CESTAT dated 01.10.2018 has set aside the demand raised on the ground of limitation only and not on merits of the issue, the refund that legally arises in the case as a consequence to the said Order would be limited to the amount of demand that has been set aside. It is not that the issue stand decided in favour of the appellant on merits. Therefore, I hold that, in the facts and circumstances of the case, that the amount of refund eligible to the appellant in the case would be the amount of demand set aside only and accordingly the refund sanctioned by the adjudicating authority vide the impugned Order is legal and correct.

7. In view thereof, I do not find any merit in the contentions of the appellant and accordingly the appeal is rejected and the impugned Order is upheld.

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

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

(Handwritten Signature)
(Gopi Nath)
Commissioner (Appeals)

Date 30/09/2019

Attested:

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



BY SPEED POST TO:

M/s Metro Publicity (Ahmedabad) Pvt. Ltd.,
125, Azad Society,
Ambawadi, Ellisbridge,
Ahmedabad – 380 015.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad South (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division-I, Ahmedabad South.
- (4) The Asstt. Commr(System), CGST, Ahmedabad South.
(for uploading OIA on website)
- ✓ (5) Guard file
- (6) P.A. file.