



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 : टेलिफैक्स 26305136 - 079 :



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)46/Ahd-South/2019-20

12493-97

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-047-2019-20**
दिनांक Date : **30-09-2019** जारी करने की तारीख Date of Issue **9.10.2019**

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri **Gopi Nath**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **03/DC/Div-I/NT/2018-19** दिनांक: **30.03.2019** , issued by
Deputy Commissioner, Div-I, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Mukul Harish Chhablani
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 .

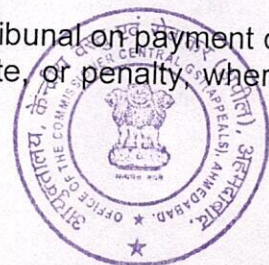
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 has been filed by Shri Mukul Harish Chhablani, F/101, Westend Park, Near Gurudwara, S.G.Highway, Ahmedabad-380054 (for short "appellant") against Order-In-Original No.03/DC/Div-I/NT/2018-19 (for short "impugned order") passed by the Deputy Commissioner of CGST, Division-I, Ahmedabad South Comm'rate (for short "adjudicating authority").

2(i). The facts of the case in brief are that the appellant is a actor/performing artist providing taxable service under the category of "Other Taxable Service – other than the 119 listed" and holding service tax registration from 07.01.2013. On the basis of a letter issued by the Addl.Commissioner of Service Tax, Audit-III, Matunga-East, Mumbai from F.No.ST/Audit-III/Gr.01/RSTF/2015/4165 dated 23.09.2015 regarding the EA-2000 audit of M/s. Rashmi Sharma Telefilm, an inquiry was initiated on 28.12.2015 against the appellant and their certain documents alongwith financial records were called for, for period 2012-13 to 2015-16. The documents were produced on 17.06.2016. The scrutiny of documents revealed that the service rendered by the appellant became taxable from 01.07.2012 and after granting them the benefit of SSI exemption of Rs.10 Lakh, there was still some income of the appellant for the period from 01.07.2012 to 31.03.2014, which skipped payment of service tax.

2(ii). Thus a Show Cause Notice (for short "SCN") was issued to the appellant on 16.10.2017 proposing demand of service tax under Section 73(1) by invoking extended period alongwith interest under Section 75 under the Finance Act, 1994. The penalties under Section 77(1)(c)(ii), 77(1)(c)(iii), 77(2) and 78 of the Finance Act, 1994 upon the appellant were also proposed. The adjudicating authority vide the impugned order confirmed the demand along with interest and penalties.

3(i). Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds :

- (a) that the due tax has been paid for the year 2012-13 and 2013-14;
- (b) that since they have paid the tax, the entire proceedings is void ab initio;
- (c) that SCN was not received by them;
- (d) that the income during the last quarter of the year 2012-13 comes to Rs.11,90,000/- only whereas the income in the impugned order has been taken as 13,54,883/-;
- (e) that they had paid service tax for F.Y. 2012-13 in 2013 itself and therefore penalty can not be levied;
- (f) that impugned order does not speak of any suppression for F.Y. 2012-13 and therefore penalty can not be imposed under Section 78(1);
- (g) that the para-8 of the impugned order mentions the Gross Income disclosed in ST-3, which proves that ST3 was duly submitted by them and tax was also paid in 2013 therefore there is no suppression and non-payment of service tax;
- (h) that the tax has been paid before SCN and therefore penalty is unwarranted;
- (i) that the service tax was not paid for the F.Y. 2013-14 due to oversight and the same was paid later on and therefore proceedings is void ab initio;
- (j) that all necessary information and documents were provided and therefore there can not be suppression;



- (k) that since the demand for the year 2012-13 and 2013-14 was paid more than 1 year before the issuance of SCN the proceedings was ought to have been dropped;
- (l) that the entire demand is barred by limitation as it is issued beyond the period of 18 months and they presume the SCN to be issued on 01.01.2018 as the same was not received by them;
- (m) that they rely upon some case laws as
- (i) CCE v/s. CMS Computer [2005(182) ELT 20] wherein it has been held by the Apex Court that where all facts were in the knowledge of department, extended period of limitation not available;
 - (ii) Microsoft Corpn. India Pvt. Ltd. v/s. Commr. Of Ser.Tax, New Delhi [2014(36) STR 766(Tri-Del) wherein it was held that burden to prove suppression is on the revenue and it should be with intent to evade payment of duty;
 - (iii) Commr. of C.Excise, Bangalore-II v/s. ITC Ltd. [2010(257)ELT 514(Kar.) wherein it was held that intention to evade duty by invoking extended period of limitation has to be proved by the department;
 - (iv) Uniworth Textiles Ltd. v/s. Comm. C.Excise, Raipur [2013(288)ELT 161(SC) wherein the Supreme Court has held that mere non-payment of duties is not equivalent to collusion or wilful misstatement or suppression of facts;
 - (v) Crescent Shipping Agency (India) Ltd. v/s. Commissioner Appeals [2012 STR 0066 Comm] wherein it was held that as long as the assessee is registered under the service tax legislation, has been filing regular returns and has participated in audits conducted by the department, the same is sufficient to prove that department was aware of the facts and hence extended period of limitation can not be invoked;
 - (vi) Comm. v/s. Meghmani Dyes & Intermediates Ltd. [2013(288) ELT 514(Guj)] wherein the Gujarat High Court has held that revenue is required to establish by cogent evidence fraud, collusion, willful mis-statement, suppression of facts or contravention of statutory provisions/rules with intent to evade payment of duty;

3(ii). The appellant further referred the Circular No.137/167/2006-CX-4 dated 03.10.2017 issued by the CBEC which clarifies the situation, under which the adjudication proceedings gets concluded where SCN is issued.

4. Personal hearing in the matter was held on 11.09.2019, wherein Shri Nitesh Tibrewal, 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 liable to pay service tax as confirmed in the impugned order.

6. The facts which are coming out of the records reveal that the appellant is providing taxable service and is also holding service tax registration for that. An inquiry was initiated on 28.12.2015 against the appellant on the basis of a letter issued by the Addl.Commissioner of Service Tax, Audit-III, Matunga-East, Mumbai. Certain documents were called for from the appellant which were provided by the appellant on 17.06.2016. On the basis of the documents provided by the appellant it was found that during the year 2012-13 and 2013-14 the amount of service reflected in the ST-3 returns were not matching with the amount reflecting in the financial records of the appellant. The appellant in its appeal memorandum has already admitted that the due service tax for the year 2013-14 was not paid by them in time and has been paid only on 08.07.2016 i.e. after initiation of inquiry.



7. I find that the appellant has not disputed their service tax liability for the F.Y. 2013-14 and accepted that due to oversight they have paid it late though it is pertinent to note here, that the same has been paid by them only on 08.07.2016 which is after initiation of inquiry on 28.12.2015. Till that time appellant enjoyed the non-payment. Their argument that due to oversight they have not paid the due amount of service tax pertaining to the period 2013-14 is nothing but an after-thought and vague argument which is not acceptable as it is clearly evident from the records itself that the appellant has not paid the due service tax for the F.Y. 2013-14 till 08.07.2016. Therefore the demand of service tax pertaining to the F.Y. 2013-14 in the impugned order alongwith interest is upheld. Now coming to the demand of service tax pertaining to the period 01.07.2012 to March, 2013, if I see the submission of the appellant in the appeal memorandum, they have stated that according to them, the income during the last quarter of the year 2012-13 comes to Rs.11,90,000/- only, whereas the income in the impugned order has been taken as 13,54,883/-. Had the appellant been gone through the para-8 at page-3 of the impugned order, they could have easily understood that the difference is due to the amount reflecting in their balance sheet and the amount reflected in their ST3 return. This resulted into the short payment of service tax. For ascertaining their service tax liability even the benefit of SSI exemption has also been granted to the appellant. From the table, it is also evident that even the appellant itself also has considered and taken the benefit of SSI exemption for the period pertaining to 01.07.2012 to 31.03.2013. The impugned order and the SCN have explained everything in detail regarding the amount short paid by the appellant. Even the amount paid by the appellant towards their service tax liability till the time of issuance of the impugned order has been taken into consideration. Therefore the amount which is short paid by the appellant has been demanded from the appellant alongwith interest. I do not find any infirmity in the impugned order in this regard. If the act of the appellant is seen in totality, the intent to escape payment of service tax can be observed clearly. Therefore the extended period has been rightly invoked and I do not find any infirmity in the impugned order in this respect also. Since the case of the appellant has already been held as a case where intention to evade payment of service tax exist and appellant has not followed the proviso prescribed under Section 78 of the Finance Act, 1994 for concluding the case, the same is not available to the appellant. Moreover, the circular referred by the appellant can not come to their rescue since it is old one and the law has been amended afterwards.

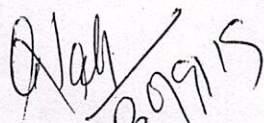
8. The appellant has also submitted that the SCN was not received by them. However available records show that the said SCN dated 16.10.2017 was received by Shri Rahul Chhablani on 23.10.2017 on behalf of the appellant. It is also pertinent to mention here that the same person i.e. Shri Rahul Chhablani came to appear for the personal hearing on behalf of the appellant on 03.07.2019 however since Shri Rahul was not having authority letter from the appellant, he was not allowed to appear for the hearing. This goes to show that the submission/argument of the appellant is not genuine, is far away from the truth and therefore can not be believed.



9. I have also gone through the case laws relied upon by the appellant. All the principles laid down in the said case laws are proper. However, they are not applicable to the present case looking to the facts of this case as explained hereinabove.

10. Now regarding the penalties imposed upon the appellant in the impugned order, I had already upheld the demand of service tax alongwith interest by invoking extended period, therefore the imposition of penalty under Section 78 in the impugned order is also upheld. Regarding the penalty imposed under Section 77(1)(c)(ii) for non producing the documents, I find that the documents have been submitted on 17.06.2016 therefore I set aside the penalty imposed upon the appellant under Section 77(1)(c)(ii) of the Finance Act, 1994. Regarding the penalty imposed under Section 77(1)(c)(iii) for non appearance by disobeying the Summons issued to the appellant, I feel that disobeying of summons issued by an authority is definitely an act serious in nature, however there is nothing on record which goes to show that the Summons were received by the appellant or served upon the appellant. In such situation, I feel that the imposition of penalty under Section 77(1)(c)(iii) is not justified. I therefore set aside the penalty imposed upon the appellant under Section 77(1)(c)(iii) of the Finance Act, 1994. Regarding the penalty imposed under Section 77(2) for failure to self assess the taxable value and service tax liability, there is definitely the failure on part of the appellant to self assess the taxable value and service tax liability correctly and therefore the adjudicating authority has correctly imposed penalty on the appellant under Section 77(2) for such contravention. I therefore uphold the penalty imposed upon the appellant under Section 77(2) of the Finance Act, 1994 in the impugned order.

11. In view of the above, the appeal of the appellant is partly allowed and stands disposed of in above terms accordingly.


(Gopi Nath)
Commissioner (Appeals)

Date: .09.2019

Attested


09/10/19

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

BY R.P.A.D. / SPEED POST TO :
Shri Mukul Harish Chhablani,
F/101, Westend Park, Near Gurudwara,
S.G.Highway, Ahmedabad-380054



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.

