



सत्यमेव जयते

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- टेलिफैक्स 07926305136



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)11/EA-2/Ahd-South/2019-20/14517 76/14521

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-01-2020-21
दिनांक Date : 21-04-2020 जारी करने की तारीख Date of Issue 04/06/2020

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS07(06)/O&A-5/MK/AC/2018-19 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
SRV Global Freight 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 :

(i) 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 म्नाला, 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 अनुसूचि-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।

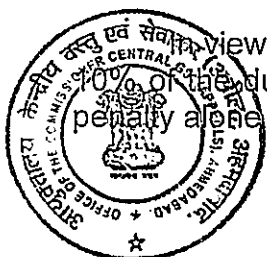
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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।

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 the Assistant Commissioner of CGST, Division-VI, Ahmedabad South, [hereinafter referred to as 'department'] in pursuance of Review Order No. 06/2019-20 dated 05.07.2019 passed by the Commissioner, CGST, Ahmedabad South against Order-in-Original No. CGST/WS07(06)/O&A-05/MK/AC/2018-19 dated 29.03.2019 [referred to as 'impugned order'] passed by the Assistant commissioner of CGST, Division-VII, Ahmedabad South [hereinafter referred to as 'adjudicating authority'] in case of M/s. SRV Global Freight Private Limited having registered office at A-901, Rudra Prayag Apartments, Ramdev Nagar Cross Road, Satellite, Ahmedabad-380015 [hereinafter referred to as 'respondent'].

2. Facts of the case, in brief, are that the respondent is a Freight Forwarder, providing end to end logistics solutions to the Exporters/Importers, Shipping Lines & Airlines. The activities include buying cargo space from airlines/shipping lines, filing Import/Export General Manifest, arranging transport for picking cargo from factory/shipment site, getting containers cleaned, loading, unloading, fumigating the container, preparing/obtaining various documents viz. Bill of Lading, handling the cargo, Customs clearance of import/export cargo etc. and it was receiving a lump sum amount for the said activities.

2.1 On verification of records/ invoices of the respondent by the audit officers of department and as detailed in Para 3 of FAR No. 301/15-16 dated 26.04.2016, it was observed that they had split the amount received into taxable and non-taxable portions. They had categorized "Ocean Freight/Air Freight" as "non-taxable" and some other charges such as Agency Charges, Customs Clearance Charges, Documentation Charges, Handling Charges, Delivery Order Charges as "taxable" and paid service tax on such charges only. They had in their ST-3 returns only shown value treated as taxable by them and did not show the ocean/air freight portion of value, which according to them was not taxable. It was observed by the audit officers that they were not engaged in actual transportation of goods in ocean going vessels/aircrafts, which was actually done by the shipping lines/airlines, but were booking the cargo space with the said airline/shipping lines on principal to principal basis. It appeared to the officers that the respondent had supported the business of their clients i.e. exporters and importers, by facilitating in arranging and managing the space in ocean/air going vessels. It was further contended that the activity carried out by the Respondent falls under the category of Business



Support Service and they were required to pay Service Tax on gross amount received by them from their clients under Business Support Service till 30.06.2012. Since, the Respondent did not agree with the audit's observation, they were issued a Show Cause Notice dated 07.10.2016 demanding Service Tax amounting to Rs. 44,57,956/- under proviso to Section 73(1) of the Finance Act, 1994 along with applicable interest and also proposing imposition of penalty under Section 76,77 and 78 of the Act by the Assistant Commissioner, Central Excise & Service Tax, Circle-V, Audit-II, Ahmedabad. The demand pertained to the period from 01.07.2011 to 30.06.2012.

3. The Adjudicating Authority vide the impugned order has dropped the proceedings against the respondent.

4. The Commissioner, CGST, Ahmedabad South has reviewed the impugned order vide Review Order No. 06/2019-20 and directed to file an appeal under Section 84(1) of Service Tax Act, 1994. He authorized Assistant Commissioner, CGST, Division-VI, Ahmedabad South to file an appeal.

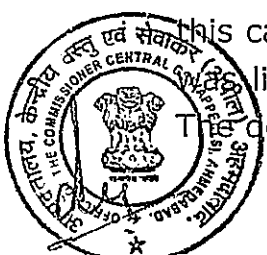
5. The ground of appeal preferred by the department are as under:

a. Adjudicating Authority has erred in relying upon Circular No. 197/7/2016-ST dated 12.08.2016. The assessee was not engaged in transportation of goods which was actually done by the shipping lines/airlines. The system followed is that they ask the Shipping Line/Airline to provide space in the Ocean going vessels/Aircrafts which they had booked in advance, anticipating such customer. The department observed that the essential nature of the service provided is one of business support to the clients by providing logistic support in relation to import/export of goods which essentially involves movement of goods from one place to another.

b. The assessee is providing only logistic support to their customers hence they are engaged in providing Business Support Service which is taxable.

6. Personal Hearing in the case was fixed on 17-12-2019. Shri Nilesh V. Suchak, Authorized Representative, attended hearing on behalf of the respondent and reiterated submissions made in cross objection and written submission filed by them.

7. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the respondent, both oral as well as written. It is observed that the issue to be decided in this case is whether the activities of Respondent, as elaborated in SCN, are liable for tax under service category of Business Support Service. The demand pertained to period 01.07.2011 to 30.06.2012.



7.1 It is observed that the department's contention is that since the Respondent was not actually engaged in transportation of goods by air/sea, which was actually done by the shipping lines/airlines, it was providing logistics support in relation to import and export of goods to the importers/exporters, which is exigible to service under support services of business or commerce as defined under erstwhile Section 65(104c) of the Finance Act, 1994.

7.2 The relevant Section 65(104c) of the Finance Act, 1994 is reproduced below:

"Support Services of Business or Commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation—For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;

(Section 65(104c) of the Finance Act, 1994)

"Taxable Service" means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner;

(Section 65 (105) (zzzq) of the Finance Act, 1994)

7.3 It is observed from the finding of the adjudicating authority, as detailed in para 23.15 and 23.16 of the Order-in-Original that the respondent is a multimodal transport operator. He is undertaking all the legal responsibility for the transportation of goods and undertakes all the attendant risks. He is not covered under the category of intermediary under Rule 2(f) read with Rule 9 of the Place of Provision of Service Rules, 2012. It has further held after analysis of various documents that the relationship between the respondent and exporter is on "Principal to Principal" category. Further, they were discharging their Service Tax liability under Clearing and Forwarding Agent Services. These are undisputed facts.

7.4 I find from the case records that the dispute pertains to the amount recovered by the Respondent from the exporter/importer on account of Ocean/Air Freight charges, which they considered non-taxable and excluded from taxable value.

7.5 In this regard, I find that the Board has vide Circular No. 197/7/2016-Service Tax dated 12.08.2016 provided the clarification on applicability of Service Tax on freight forwarders on transportation of goods from India. It has in Para 3 of the circular clearly stated that in cases where freight forwarders acts as a principal, they will not be liable for Service Tax when the destination of goods is from a place in



India to a place outside India. I find that the department has in its Grounds of Appeal has accepted this legal provision under Para C of Grounds of Appeal. It is apparent from the SCN as well as the O-I-O that the amount in dispute is the freight component only and as per the Board's circular supra, the freight component on foreign going vessel is not liable to be taxed under Service Tax as the transaction is on Principal to Principal basis.

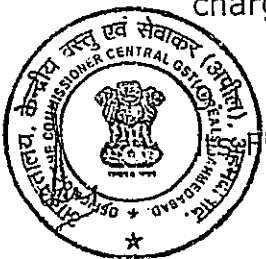
7.6 I find that this issue is also no more res integra as the Hon'ble Tribunal in Greenwich Meridian Logistics (India) Private Limited v/s Commissioner of Service Tax reported in 2016(43) STR 215 (Tri-Mumbai) has held that freight paid to the shipping line by the freight forwarders and freight collected by them from client shippers are two independent transactions. The notional surplus earned by the freight forwarders in such independent principal to principal transaction is not liable for Service Tax. The departmental appeal in this case to Hon'ble High Court, Mumbai as well as before the Hon'ble Supreme Court has been dismissed.

7.7 It is further observed that in case of M/s Agility Logistics Private Limited v/s CST[2014(35)STR 858 (Tri.-Chen.)] , the Hon'ble Tribunal has observed that *"while there are specific entries in Finance Act, 1994 levying tax on transportation of goods by road, rail, aircraft, pipeline, etc., there is no entry levying tax on transportation of goods by sea. It has to be reasonably presumed that this is kept outside the tax net and it cannot be taxed under a general entry like business support services."*

8 As regards the inclusion of freight amount by the Respondent considering classification under support services of business or commerce, I find that the SCN does not give any details of any particular agreement with any particular firm to substantiate that the Respondent was in any way providing service in relation to managing distribution and logistics. The Appeal Memorandum does not mention any such agreement either. The Adjudicating Authority after going through documents has categorically come to conclusion that the activities of Respondent did not fall under Business Support Service. I find that the Respondents have discharged Service Tax on various activities in relation to import/export. The disputed income on account of freight is not taxable as per Board's Circular and judicial pronouncement.

9. It is further observed that the Hon'ble CESTAT, Ahmedabad had in its Final Order No. A-12235-12236/2019 dated 22.08.2019 in case of M/s Surya Shipping v/s Commissioner of Central Excise and Service Tax, Rajkot decided the identical issue in favour of the Respondent. In the said order, the Tribunal has set aside the demand on the freight charged by the freight forwarder under Business Support Service.

The same view has been held by the Hon'ble CESTAT, Chennai in Final Order No. 40273-40274/2020 dated 10.02.2020 in case of M/s



Nilja Shipping Private Limited v/s Commissioner of Central Excise, Chennai-II. I am bound to follow the Order of Tribunal in judicial discipline.

10. Besides that, I also find that identical issue has been dealt by the Commissioner, Appeals, Ahmedabad in case of M/s Safe Sea Logistics Private Limited. In this case, the assessee was issued SCN by treating the entire transaction under Business Support Service. The observation of Commissioner (Appeals) is reproduced verbatim:

"The assessee had purchased and sold space in Airways as well as Shipping Lines, the SCN states that all the consideration are to be included in the value of service for charging Service Tax, by treating the entire transaction as 'Business Support Service', instead of splitting the receipts into taxable and non-taxable services."

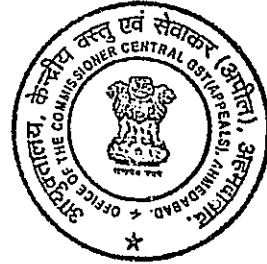
The Commissioner (Appeals) has, after consideration of details in Departmental Appeal, rejected the appeal on merit.

11. In view of the discussions made above, the appeal filed by the department is rejected.

12. The appeals stand disposed off in above terms.

Akhil Kumar
21st April, 2020
(Akhil Kumar)

Commissioner(Appeals)



Attested

Brijesh Sharma
(Brijesh Sharma)

Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D
M/s. SRV Global Freight Private Limited
A-901, Rudra Prayag Apartments,
Ramdev Nagar Cross Road, Satellite,
Ahmedabad-380015.

Copy to :

- 1 The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
- 2 The Commissioner CGST and Central Excise, Ahmedabad-South.

3. The Deputy /Asstt. Commissioner, Central Excise, Division-VI, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File



