



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)19/EA-2/Ahd-South/2019-20/14972 7014976
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-023-2020-21
दिनांक Date : 19-06-2020 जारी करने की तारीख Date of Issue 29/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. MP/02/Dem-2019-20 दिनांक: 28.05.2019 , issued by Deputy Commissioner, Div-V, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Dastan Private 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 हैं।

(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।

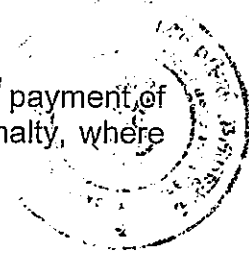
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where one is in dispute."



ORDER-IN-APPEAL

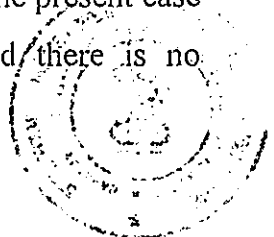
The Deputy Commissioner of CGST & Central Excise, Division-V, Ahmedabad South Commissionerate, (hereinafter referred to as the 'Department'), in pursuance of the Review Order No.12/2019-20 dated 17.09.2019 passed by the Principal Commissioner of CGST & Central Excise, Ahmedabad South, has filed this appeal against the Order-in-Original No.MP/02/Dem.2019-20 dated 28.05.2019 (hereinafter referred to as the "impugned order") passed by the Dy. Commissioner of CGST, Ahmedabad South Commissionerate (hereinafter referred to as the "adjudicating authority") in case of M/s. Dastan Pvt. Ltd., Dastan, Naroda-Kathwada Road, Taluka-Daskroi, Ahmedabad-382430 (hereinafter referred to as the "respondent").

2(i). The facts of the case, in brief, are that during the course of audit of the records of the respondent, it was noticed that they have an area in the premises of the hotel, where the vintage cars of different models are exhibited. It is open to visitors on payment of entry fee. The respondent was paying service tax on the amount so collected on account of Auto World Museum Entry Fees Collection and Vintage Classic Car Collection for the period upto 31.03.2015. However, subsequently from 01.04.2015 to 31.03.2017, they did not pay the service tax in view of Notification No.06/2015-ST dated 01.03.2015 (w.e.f. 01.04.2015), by which, by inserting Sl. No.45 in the Exemption Notification No.25/2012-ST dated 25.06.2012, exemption from payment of service tax was granted to admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo. The term museum is not defined in Chapter V of the Finance Act, 1994 or in the Service Tax Rules, 1994. It was observed by audit that the exhibits put up for exhibitions were cars, some of which were registered with the RTO and hence capable of being run on road. Hence, they could not be categorized as heritage property or objects of historical or cultural interest. Further, they were not registered with ASI or the Rajasthan Monuments Archaeological Sites and Antiquities Rules, 1968 etc. It was contended by the Audit that they were not eligible for the exemption. Based on audit observation, a Show Cause Notice was issued by the Asstt. Commissioner of Circle-III of CGST Audit, Ahmedabad to the respondent proposing demand of service tax amount of Rs.10,91,138/- (including Cess) under Section 73(1) alongwith interest under Section 75 of the Finance Act, 1994 by invoking extended period. Penalty was also proposed to be imposed upon the respondent under Section 78(1) of the Finance Act, 1994.



2(ii). After hearing the respondent, the adjudicating authority dropped the demand alongwith interest and penalty on the grounds that she found that service tax on the cars, which have got registration certificate from the RTO, were paid till the period under dispute; that for remaining cars, the exemption was available to the respondent by virtue of Notification No.06/2015-ST dated 01.03.2015; that it was not mandatory for a museum to become a member of ICOM (i.e. International Council of Museum) by registering itself with ICOM; that the ASI (i.e. Archaeological Survey of India) mainly deals with the historical, archaeological, cultural, ecological and aesthetic significance of site and its related collections, for local and global audiences and also noticed that large number of antiquities is in house either in various private museums or in the individual collections; that since these museums/individuals have their interest in cultural wealth and there is no need to register with the ASI and it is clearly mentioned in the ASI terms and condition that many freelance individuals having interest in cultural heritage involve themselves in the study and preservation of monuments and antiquities may also be considered as stake holders (i.e. museum); that there is no need to be registered with the ASI as a museum owned by the private stake holder and the respondent is a private stake holder having such cars and is a individual having interest in cultural heritage involved themselves in the study and preservation of antiquities may also be considered as a stake holder i.e. museum; that the service tax for the period under dispute is found paid on the cars which were having registration certificate from RTO; that the serial no.45 in the Notification No.25/2012-ST dated 01.03.2012 as amended by Notification No.06/2015-ST dated 01.03.2015 exempts the payment of service tax on the services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.

3. Being aggrieved with the impugned order, the Department preferred the appeal on the grounds that according to ICOM statutes "*A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment*"; that the said definition indicate that museum is a place where artifacts or objects of historical, scientific, artistic or cultural interest are placed for exhibition; that the vital aspect for an institute to be considered as "museum" is that no profit ought to have been generated whereas in the present case the adjudicating authority has missed out this crucial aspect and there is no



examination of the fact whether profit has been booked or otherwise; in the event the respondent is booking profit, they can not be considered as "museum" on the count that they are not a non-profit institution; that the respondent who is holding "Auto World Museum" is nowhere covered under (i) the list of museums given on the website of ASI (ii) the Rajasthan Monuments Archaeological Sites and Antiquities Rules, 1968 (iii) Antiquities and Art Treasure Act, 1972 (iv) The Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965; that the respondent is not entitled to the exemption granted under Notification 25/2012-ST dated 01.03.2012 as amended vide Notification No.06/2015 dated 01.03.2015.

4. The respondent in their cross-objection dated 12.11.2019 in appeal, has submitted that the definition of "museum" has not been provided in the service tax law; that only after introduction of Notification 06/2015-ST dated 01.03.2015, they stopped collecting the service tax w.e.f. 01.04.2015; that they are having large collection of cars which have artistic value for display; that for this reason also it attains popularity as "car museum"; that the intrinsic value over a period of time attains a display as museum; that their museum do not have temporary element; that they also reiterate the reply made by them towards the Show Cause Notice; that out of 112 cars, 108 cars are not in working condition and can not be driven on road and placed on jack for display purpose in museum; that majority of cars they have, become a display model as the parts of the same are not being manufactured by the main company and not available in the market; that for the remaining 4 cars, which are used for rides or given on rental basis at any event, they are paying service tax on the same; that they have brought outstanding repute to Ahmedabad and Gujarat for the purpose of Car Auto Museum.

5. Personal Hearing in this Appeal was held on 12.02.2020. Shri Hansh Patel and Shri Akshat Vithalani, both Chartered Accountant, appeared on behalf of the respondent. They reiterated the submissions made in cross objection filed by them and requested to consider the same.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum, cross-objection made by the Respondent and the submissions made at the time of personal hearing. The issue to be decided in the present appeal is whether the Respondent is eligible for exemption on the amount received on account of Auto World Museum i.e. Exhibition of rare vintage and classic cars entry fee collection for the period 2015-16 to 2016-17.



7(i). It is observed that the Government vide Notification No.6/2015-ST dated 01.03.2015 amended Notification No.25/2012-ST dated 20.06.2012 and extended the tax exemption by way of insertion of Srl. No.45 as under :

"Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo".

7(ii). It is pertinent to mention that the "museum" was not defined under the provisions of law pertaining to service tax therefore the adjudicating authority has examined the definition from other authoritative texts to see what is "museum". The adjudicating authority has gone through various meanings available for the term "museum" in the impugned order, and they are as under :

(a) the International Council of Museum (ICOM) defined the "museum" as

"A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates, and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment"

(b) Wikipedia free encyclopedia defined the term "museum" as

"A museum is an institution that cares for (conserves) a collection of artifacts and other objects of artistic, cultural, historical or scientific importance".

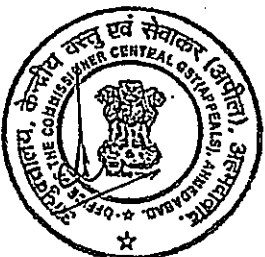
(c) As per Oxford Dictionary, "museum" is

"A building in which objects of historical, scientific, artistic or cultural interest are stored and exhibited".

(d) As per Cambridge Dictionary, "museum" is

"A building where object of historical, scientific or artistic interest are kept".

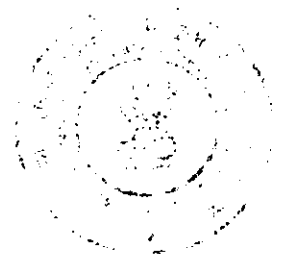
7(iii). From the above, it can be inferred that "museum" is a building/institution where artefacts or objects of historical, scientific, artistic or cultural interest are kept, preserved and exhibited for education, study and enjoyment. Since the service tax law did not explain the term "museum", accepting only a single explanation would be very unjustifiable or narrow, when there was intention of Government to extend the exemption benefit to admission to a museum. The Department has accepted or relied upon the term "museum", as defined by ICOM and did not consider the other terms as discussed in para 7(ii), though available. Further, the Department has particularly stressed upon the point that for being classified as museum, it has to be non-profit making, an aspect, missed by the adjudicating authority.



7(iv) It is observed from the case records that it is not necessary to be registered with ICOM for being called as museum and that they do not provide any such certificate. This is borne out of the facts that the site of ICOM mentions that there are more than 35,000 museum globally out of which only 20,000 museums are members of ICOM. This has been clearly mentioned at page 22 of the impugned order. The site of Wikipedia also shows that the ICOM is a Non-governmental organization. Besides that, it is a common knowledge that museum can be both public and private which is also acknowledged by the Archaeological Survey of India in their Mission. The vintage and classical cars displayed by the Respondent are not in running condition and have been displayed for enjoyment, which is covered under the definition as discussed here-in-above.

8. It is an undisputed fact that the cars, the respondent is putting up on display, are vintage, or old or classic in its own and are not available in the market for general use. Moreover, it is observed that the adjudicating authority has come to the conclusion that the service tax had been paid on the 4 cars, which were having registration certificate from RTO. It is also pressed upon by the respondent that till 31.03.2015, they were paying service tax regularly. Only after consideration of the exemption available vide Notification No.06/2015-ST dated 01.03.2015, they stopped paying service tax from 01.04.2015. These are undisputed facts. It is further observed that the Show Cause Notice has not raised the issue of the Respondent being a profit making or non-profit making and hence any such determination is outside the purview of Show Cause Notice. I find that the adjudicating authority has come to a categorical findings that the Ahmedabad Auto World is a museum owned by private stakeholder.

9. The Government while issuing the said Notification No.06/2015-ST dated 01.03.2015 has not distinguished/discriminated, between the profit-making or non-profit-making institutions or registered or non-registered institutions with some authorities like Archaeological Survey of India or ICOM or Government or Private Institutions, for extending the benefit of exemption from payment of service tax. Thus, it can be inferred that the intention of the Government was to provide the exemption to the entities without any discrimination, which are museum as commonly understood. It is also pertinent to mention that the State of Gujarat through its site of Gujarat Tourism has also shown the place of Respondent as "Auto World Vintage Car Museum", thereby accepting the Respondent place as "Museum". Respondent has availed the exemption, as the same was provided by



the Government to the entities like them. It is pertinent to mention that there is no restriction on private entities for being known as "museum". Thus, the respondent has rightly availed the exemption available for them and the impugned order has correctly extended the benefit of such exemption to them by dropping the said Show Cause Notice.

9. In view of the foregoing discussion, the impugned order is upheld and the appeal of the Department is rejected.

Date: .06.2020

Attested


22/06/20

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

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

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Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Pr. Commissioner/Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
3. The Asstt./Dy. Commissioner, CGST & Cen. Excise, Division-V, Ahmedabad South Comm'rate.
4. The Asstt. Commissioner, System, CGST & Central Excise, Ahmedabad South Comm'rate.
- ✓ 5. Guard File.
6. P.A. File.



