



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)21/Ahd-South/2019-20 & V2(ST)195 /Ahd-South/2019-20 /14551 70
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- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-04 & 05-2020-21
दिनांक Date : 27-04-2020 जारी करने की तारीख Date of Issue 05/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals).
- ग Arising out of Order-in-Original No. STC/92/Joint Commr./2008 दिनांक: 24.03.2008 &
STC/85/Joint Commr./2008 दिनांक: 13.02.2008 , issued by Joint Commissioner, Div-STC,
Central Tax, Ahmedabad
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Jay Publicity
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 :

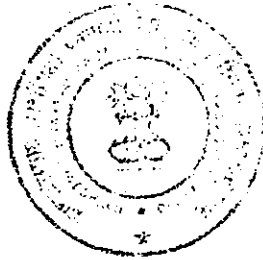
Revision application to Government of India :

(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 हों।

(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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."





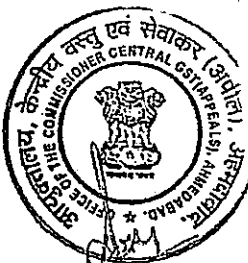
ORDER-IN-APPEAL

Order nos. A/10884-10885/2018 dated 04.04.2018 passed by the Hon'ble CESTAT, West Zonal Bench, Ahmedabad has been received by way of remand in case of appeals filed by the Commissioner of Service Tax, Ahmedabad (hereinafter referred to as "Department") against Orders-in-Appeal No. (i) 11/2009(STC)LMR/Commr.(A)/Ahd dated 27.01.2009 and (ii) 73/2009(STC)LMR/Commr.(A)/Ahd dated 16.03.2009 passed by the Commissioner(Appeals-IV), Central Excise, Ahmedabad, in respect of M/s. Jay Publicity, 35, Shrimali Society, Opp. Navrangpura Police Station, Navrangpura, Ahmedabad-380009 (hereinafter referred to as "Jay Publicity") wherein the Commissioner(Appeals) had allowed the two appeals filed by M/s. Jay Publicity against the Orders-in-Original No. (i) STC/92/Joint Commissioner/2008 dated 24.03.2008 and (ii) STC/85/Joint Commr./08 dated 13.02.2008 respectively (hereinafter referred to as "impugned orders") passed by the Joint Commissioner of Service Tax, Ahmedabad (hereinafter referred to as "adjudicating authority").

2(i). The fact of the case, in brief, are that during the course of audit of records of Jay Publicity, certain receipts/amount were found shown as receipt in bank/cash ledger on which no service tax to the tune of Rs.11,87,500/- appeared to have been paid for the period 01.10.2000 to 31.03.2001. Towards this, the reply of Jay Publicity was that the said receipts are either inter company transfer or loan received by them. However, they did not produce any evidence regarding that. Therefore a Show Cause Notice (hereinafter referred to as "SCN") dated 19.04.2006 was issued to them regarding this. Another SCN dated 22.10.2007 was issued to them for the period 2001-02 to 2004-05 for (a) short payment of service tax to the tune of Rs.56,050/- during the period 2001-02 and 2003-04 (shown under Annexure-A to SCN); (b) short payment of service tax to the tune of Rs.11,34,145/- on the difference of taxable receipt and the receipt shown in ST-3 returns for the period 2001-02 to 2004-05 (shown under Annexure-B to SCN), and (c) non payment of service tax to the tune of Rs.6,93,165/- on the receipts reflecting in their bank/cash ledger during the period 2001-02 to 2004-05 however no proof was submitted to substantiate their claim that the said amount is either inter company transfer or loan received by them.

2(ii). Both the SCNs were adjudicated separately and the demand of service tax alongwith interest and imposition of penalties as proposed in the SCNs were confirmed vide the impugned orders accordingly.

2(iii). Jay Publicity preferred appeals against both the impugned orders and the then Commissioner(Appeals-IV), Central Excise, Ahmedabad vide its Order-in-Appeals,



referred above, allowed both the appeals on the basis that the adjudicating authority failed to prove with sufficient evidence that the receipts reflecting in the accounts of Jay Publicity were against the taxable service. It was held that onus to prove the taxability of service is on the Department.

2(iv). The Department filed appeals against the said Orders-in-Appeal before the CESTAT, West Zonal Bench, Ahmedabad who vide its Order No.A/10884-10885/2018 dated 04.04.2018 allowed the appeals by way of remand. The operative part of the order under para-5 is as under :

"During the hearing, the Ld. Advocate was given a chance to assist the court in complete reconciliation of the figures in the Annexures to the show cause notices and the extracts from books of accounts. From the balance sheet pages provided by the respondents, he was not able to fully reconcile the figures and pleaded that he was not able to fully reconcile the figures by submitting further documentation in addition to the documentation already submitted before the Tribunal. We therefore, find force in the contention of the Revenue that the figures in the books of accounts and the ST-3 returns require proper reconciliation and the same requires to be done at the level of the adjudicating authority. In view of the above position, the matter requires to be remanded back to the adjudicating authority to re-examine the documentations and the submissions of the respondents explaining the receipts in their ledger and books of accounts and to reconcile the same with the returns filed by the Respondent. In view of above, both the matters are remanded to the Ld. Commissioner (Appeals) to carry out the reconciliation exercise between the books of accounts/bank/cash ledgers etc. and the ST-3 returns in comprehensive manner and in case of any discrepancy is found and established, to pass a speaking order justifying the quantified demand".

3. The opportunities of personal hearing was accorded to M/s. Jay Publicity on 03.07.2019, 19.08.2019, 11.9.2019, 09.10.2019, 11.11.2019 and 08.01.2020. However, the personal hearing notices issued to Jay Publicity on the address provided by them, were received back undelivered with a remark "Left".

4. It is observed from the order of the Hon'ble Tribunal that Jay Publicity was not able to fully reconcile the figures before it and they had requested to file additional documents for the same. Hence, the matter was remanded for proper reconciliation to be done at the level of adjudicating authority. Jay Publicity has not submitted any documents afterwards and has not appeared in response to the personal hearing memos and the hearing notices are also receiving back as undelivered. Thus, it would be prudent that both the matter may be remanded back to the adjudicating authority to carry out the reconciliation exercise between the books of accounts/bank/cash ledgers etc. and the ST-3 returns in a comprehensive manner and in case any discrepancy is found and established, to pass a speaking order justifying the quantified demand, as directed by the Hon'ble CESTAT. The adjudicating authority is also directed to ascertain the whereabouts of Jay Publicity. The assessee, i.e. Jay Publicity, is also directed to produce all the relevant documents in support of the reconciliation work as contended by them before the Tribunal.



5. With this direction, both the appeals stands disposed of in above manner.

Akhil
27/05/2020
(Akhillesh Kumar)
Commissioner (Appeals)

Date : 04.2020

Attested

Jitendra Dave
03/06/20

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



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

M/s. Jay Publicity,
35, Shrimali Co-Op. Housing Society,
Opp. Navrangpura Police Station,
Navrangpura, Ahmedabad-380009.

Copy to :-

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

