



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :

DIN-20210264SW0000380233

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/200,281/2020
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-69-70/2020-21**
दिनांक Date : 22.01.2021 जारी करने की तारीख Date of Issue : 11.02.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WS07/REF-05/BSM/AC/2020-21 dated 29.04.2020 & No. CGST/WS07/REF-04/BSM/AC/2020-21 dated 29.04.2020 passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad South.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Paavan Bus Service,
Pritamnagar First Dhal,
Opp. UCO Bank,
Ellisbridge, 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 परित 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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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 (सिस्टेंट) 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, Girchar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 adjudicating authority shall bear 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 contained 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."



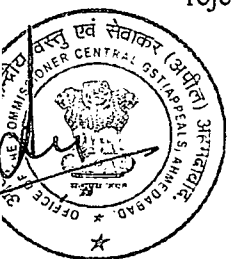
ORDER-IN-APPEAL

These two appeals have been filed by M/s Paavan Bus Service, Pritamnagar First Dhal, Opp. UCO Bank, Ellisbridge, Ahmedabad [hereinafter referred to "appellant"] against Orders-in-Original No. CGST/WS07/Ref-05/BSM/AC/2020-21 and No. CGST/WS07/Ref-04/BSM/AC/2020-21 both dated 29.04.2020 [hereinafter referred to as "impugned orders"] passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. The facts of the case, in brief, are that the appellant were engaged in providing the services under the category of 'Tour Operator' viz. Plying Buses from one city/town to another city and were holding Service Tax Registration No.ABCPT5208QST001. They had filed two refund claims amounting to Rs. 69,471/- and Rs. 1,50,667/- on 02.12.2010, claiming refund of service tax paid during the period October-2008 to March-2009, on the ground that they were not liable to pay service tax under the category 'Tour Operator' service as they are holding Contract Carriage Permit (CCP) and providing Point to Point Bus Service. The said refund claims filed by the appellant were rejected after issuing Show Cause Notice, vide Orders-in-Original No.SD-02/Ref-77/10-11 and No.SD-02/Ref-78/10-11 both dated 18.03.2011 on the ground that the services provided by them were taxable under the category 'Tour Operator Service' and they were liable to pay service tax on such services and therefore, their claim for refund was not admissible. It was also observed that the claim was liable for rejection as the appellant have failed to establish that they had not passed on the incidence of service tax to other persons, as required in terms of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

2.1 Aggrieved with the above Orders rejecting their claims for refund, the appellant had filed appeals before the Commissioner (Appeals), Ahmedabad who vide Orders-in-Appeal No.AHM-EXCUS-011-APP-071 to 074-2019-20 dated 29.11.2019 set aside the above order and allowed the appeals of the appellant with consequential relief.

2.2 Consequent upon the allowing of their appeals with consequential relief vide the above OIA, the appellant approached the adjudicating authority for sanctioning of the above refund claimed by them. The adjudicating authority vide the impugned orders rejected the refund claimed by the appellant on the ground that they have failed to produce (i) Chartered Accountant/ Statutory Auditor certificate regarding non-passing of the incidence of tax to any customers/unjust enrichment and (ii) Copy of the audited balance sheets along with relevant ledgers as called for vide his office letters dated 23.03.2020 and 20.04.2020 and thus they have failed to prove the aspect of unjust enrichment that they have borne the burden of tax for which refund is claimed under Section 11B of Central Excise Act, 1944. It was observed that the appellant has failed to appear in personal hearing or produced any documents as state above and that in absence of proper documentary evidence of payment of service tax, reasons for payment of tax, the refund claim filed by the appellant is not proper and hence is liable for rejection.

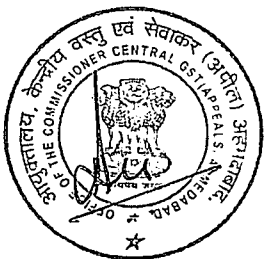


3. Aggrieved with the impugned order, the appellant has filed the instant appeal contending, *inter alia*, that the adjudicating authority has passed the impugned order in violation of principles of natural justice as the impugned order was passed without giving any proper opportunity of proper personal hearing. They have also submitted that the letters dated 23.03.2020 and 20.04.2020 said to have been issued by the adjudicating authority calling for certain documents from them were never received by them and that they would like to submit the documents so called for viz. (i) Chartered Accountant/ Statutory Auditor certificate regarding non-passing of the incidence of tax to any customers/unjust enrichment and (ii) Copy of the audited balance sheets along with relevant ledgers, as revealed from the impugned order.

4. Personal hearing in the matter was held on 24.12.2020. Shri R.R. Dave, Consultant, appeared on behalf of the appellant. He stated that the adjudicating authority has not granted personal hearing in violation of natural justice and has also not examined the documents submitted by them. He also submitted that service provided by the appellant is not in nature of 'Tour Operator' but it is 'Transportation of passengers' in vehicle from one point to another under contract carriage as per permit of contract carriage, which is exempted vide Notification No.20/2009-ST dated 07.07.2009. He requested to remand the case back to the adjudicating authority for granting natural justice.

5. I have gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as oral submissions made during the hearing. The main grievance of the appellant in their appeal is that natural justice was denied to them by the adjudicating authority as they were not given opportunity to represent their side of facts in the matter before rejecting their claim for refund in the case.

6. On perusal of records, I find that the contention raised by the appellant regarding non-adhering to the principles of natural justice is correct. In the instant case, I find that before rejecting the refund claim in question, no fair or proper opportunity of hearing was granted to the appellant. As per facts revealed from the impugned order, it is seen that the appellant was given opportunity of personal hearing only once on 23.03.2020. The appellant has submitted that they could not attend the same as the letter for hearing was not received by them. Further, it is a fact that since 24.03.2020, there was a nationwide lock down due to COVID-19 pandemic which was extended upto 31.05.2020. Thus, it is clear that the appellant were not in a position to represent their side of facts in the matter during the said period. It is a settled law that every assessee/appellant should have been afforded an opportunity to represent their case, as the impugned order is an order of adjudication. In terms of Section 33A of the Central Excise Act, 1944 which has been made applicable to service tax matter vide Section 83 of the Finance Act, 1994, the Respondent was duty bound to grant fair and proper opportunity of personal hearing to the appellant. In the instant case, it is clearly evident that the adjudicating authority has not given any such fair opportunity to the appellant. The impugned order is, therefore,



passed in violation of principles of natural justice and is against the settled principle of 'audi alteram partem'. The Hon'ble Supreme Court in the case of Uma Nath Pandey Vs. State of UP [2009 (3) TMI 526 – Supreme Court = 2009 (237) E.L.T. 241 (S.C.)] has held that:

“Natural justice is essence of fair adjudication and to be ranked as fundamental. Purpose of following principle of natural justice is to prevent miscarriage of justice. Notice and hearing required as principle of natural justice.”

In the circumstances, the impugned order calls for interference for violation of principles of natural justice and it is required to be set aside without going into the merit of the case.

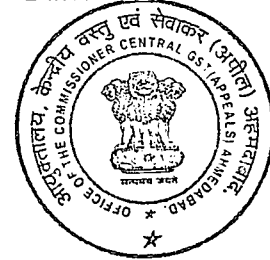
7. In view thereof, I set aside the impugned order and remand the matter to the adjudicating authority with a direction to decide the matter afresh after following principles of natural justice and considering the submission of the appellant. Needless to say, the Adjudicating Authority shall give Notice and a reasonable opportunity of hearing before passing the order. The appellant is at liberty to file all documentary evidences, in support of their contention, before the adjudicating authority.

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.

Akhilesh Kumar
22nd January 2021
(Akhilesh Kumar)
Commissioner (Appeals)

Date: 22.01.2021.



Attested:

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

By RPAD/Speed Post

To

M/s Paavan Bus Service,
Pritamnagar First Dhal,
Opp. UCO Bank,
Ellisbridge, Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central GST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central GST & Central Excise, Ahmedabad South.
3. The Assistant Commissioner, CGST & Central Excise, Division-VI, Ahmedabad South.
4. The Assistant Commissioner, HQ (Systems), CGST & Central Excise, Ahmedabad South. (for uploading the OIA)
5. Guard File.
6. P.A.