



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136



DIN : 20230164SW000052045F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/771/2022 1025n-58
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-146/2022-23
दिनांक Date : 25-01-2023 जारी करने की तारीख Date of Issue 30.01.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-02/Trans Travel/AC/DAP/21-22 दिनांक: 31.01.2022
passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Trans Travel
1-B, Goyal Tower,
Polytechnic Cross Road,
Ahmedabad - 380015

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) केंद्रीय 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 हानिकार खाने 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 प्रक्रिया 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष 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 होतो 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 सेवा कर 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

- 23^प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (cccxxxi) amount determined under Section 11 D;
(cccxxxii) amount of erroneous Cenvat Credit taken;
(cccxxxiii) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

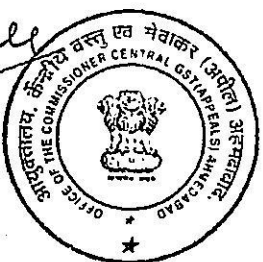


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Trans Travels, 1-B, Goyal Tower, Polytechnic Cross Road, Ahmedabad – 380 015 (hereinafter referred to as the “appellant”) against Order in Original No. CGST-VI/Dem-02/Trans Travel/AC/DAP/21-22 dated 31.01.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division – VI, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ABDPM3910HST001 and engaged in providing Air Travel Agent Services, Tour Operator Services, Rent-a-Cab Scheme Operator Services and Business Auxiliary Services. During the course of Audit of the records of the appellant, for the period from April, 2014 to June, 2017, conducted by the Officers of Central Tax Audit Commissionerate, Ahmedabad, the following observations were raised in Final Audit Report No. 616/2019-20 dated 17.10.2019 :

- Revenue Para No. 1 : Non payment of service tax amounting to Rs.1,07,403/- on Commission received from airways, travel agencies, hotels and resorts.
- Revenue Para No. 2 : Short payment of service tax amounting to Rs.19,547/- on charges received for Visa service and other service under Business Auxiliary Services.
- Revenue Para No. 3 : Short payment of service tax amounting to Rs.1,05,914/- on charges received for hotel bookings.
- Revenue Para No. 4 : Short payment of service tax amounting to Rs.5,973/- on Rent-a-Cab services.
- Revenue Para No. 5 : Short payment of service tax amounting to Rs.68,080/- on Air Travel Agent Services.



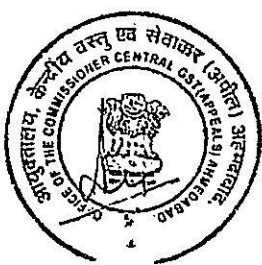
3. The appellant was, subsequently, issued a Show Cause Notice bearing No. 169/2019-20 dated 17.10.2019 from F.No. VI/1(b)-468/Cir-III/AP-17/2018-19 wherein it was proposed to :

- a) Demand and recover the service tax totally amounting to Rs.3,06,918/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- b) Recover interest under Section 75 of the Finance Act, 1994.
- c) Impose penalty under Section 78(1) of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax totally amounting to Rs.3,06,918/- was confirmed along with interest. Penalty equivalent to the amount of service tax confirmed was imposed under Section 78(1) of the Finance Act, 1994.

5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds :

- i. The reconciliation mentioned in the SCN is not correct. If factual details are taken into account then there is no such liabilities. So the working of the department is required to be re-worked. They submit the sales reconciliation.
- ii. The demand has been raised without looking to the factual data and details. The demand on the basis of the reconciliation is not sustainable.
- iii. Regarding the service tax liabilities on commission reflected in Form 26AS, it is submitted that they had opted for special rate as per Rule 6 (7). So, once the travel agent has opted for the specific rate, then there was no requirement for payment of service tax on gross basis. They had already produced the bill specifying that on the gross amount including commission, they are discharging service tax at the specific rate. So demand of service tax again on commission is not sustainable.
- iv. Regarding difference in reconciliation of visa service and other service, it is submitted that the department has not allowed deduction of legal expenses (reimbursement of expenses) included in the sale of visa and



other services. If it is allowed there would be no short payment of service tax.

- v. Regarding Rent-a-Cab service differential value, it is submitted that such value is pertaining to service provided to corporate wherein the service tax is to be paid by the recipient.
- vi. Regarding Air Travel Agent Service, it is submitted that the department has not taken into account cancellation of booking. If such deduction is allowed, then there is no difference of value.
- vii. Reliance is placed upon the judgment in the case of Regional Manager, Tobacco Board Vs. Commissioner of C.Ex., Mysore – 2013 (31) STR 673 (Tri.-Bang.); Anvil Capital Management (P) Ltd. Vs. Commissioner of Service Tax, Mumbai – 2010 (20) STR 789 (Tri.-Mumbai); Commissioner of Service Tax, Ahmedabad Vs. Purni Ads. Pvt. Ltd. – 2010 (19) STR 242 (Tri.-Ahmd.); Sify Technologies Ltd. Vs. Commissioner of Service Tax, Chennai – 2009 (16) STR 63 (Tri.-Chennai); Bhogilal Chhagulal & Sons Vs. Commissioner of Service Tax, Ahmedabad – 2013 (30) STR 62 (Tri.-Ahmd.).
- viii. The SCN covers the period from 01.04.2014 to 30.06.2017 and was issued on 17.10.2019 by invoking the extended period of limitation. Extended period cannot be invoked as there is no suppression, wilful mis-statement on their part. No case of suppression, wilful mis-statement has been made out in the SCN.
- ix. Penalty cannot be imposed under Section 78 of the Finance Act, 1994. They have demonstrated that they have not suppressed any information from the department and there was no wilful mis-statement on their part. They are entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the department. They rely upon the decision in the case of Steel Cast Ltd. – 2011 (21) STR 500 (Guj.).
- x. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon & Engg. Co Ltd. Vs. Commissioner of C.Ex., Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs. Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-



Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur –
2001 (129) ELT 458 (Tri._Del).

6. Personal Hearing in the case was held on 16.12.2022. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted a written submission, during the hearing, containing ledgers and work order.

7. In the written submission filed during course of the personal hearing, the appellant reiterated the submissions made in the appeal memorandum.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax on different counts as raised in the SCN dated 17.10.2019. The demand pertains to the period F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

9. I have perused the impugned order and find that the adjudicating authority has recorded the submissions of the appellant at Para 5 of the impugned order. However, it is observed that none of the contentions of the appellant have been discussed or considered while passing the impugned order. The adjudicating authority has also not discussed the merits of the allegations made against the appellant in the SCN issued to them. He has merely reproduced the legal provisions and proceeded to hold that the appellant are liable to pay service tax. Apart from being a non-speaking order, the impugned order has been passed in violation of the principles of natural justice inasmuch as none of the issues raised by the appellant have been discussed or dealt with by the adjudicating authority. The appellant have contended that certain deductions admissible to them have not been allowed while raising demand of service tax. Further, it has also been contended by them that in respect of the service for which Commission was levied by them, they have opted for the specific rate in terms of Rule 6 (7)



of the Service Tax Rules, 1994. However, it is observed that none of these aspects has been considered by the adjudicating authority while passing the impugned order confirming the demand of service tax.

10. The deduction claimed by the appellant as well as computation of demand of service tax in view of the claim of the appellant of paying service tax, in respect of service for which Commission was received, at the specific rate are all matters which require verification. Accordingly, I am of the considered view that the matter is required to be remanded matter back to the adjudicating authority for denovo adjudication after considering the submissions of the appellant and passing a speaking order on the issues raised by the appellant in their defense. Needless to state, the principles of natural justice should be adhered to in the remand proceedings.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

Akhil Kumar
25 January, 2023..
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 25.01.2023

Attested:

(Signature)

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Trans Travels,
1-B, Goyal Tower,
Polytechnic Cross Road,
Ahmedabad – 380 015

Appellant

The Assistant Commissioner,
CGST, Division- VI,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.



