



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 - टेलिफैक्स 07926305136



DIN : 20230364SW0000333DBD

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2762/2022 / 2370 - 24
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-178/2022-23
दिनांक Date : 07-03-2023 जारी करने की तारीख Date of Issue 13.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 06/AC/Ashok Kumar Lodha/Div-1/A'bad-South/JDM/2022-23 दिनांक:
26.05.2022 passed by Assistant Commissioner, CGST, HQ, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Ashokkumar Chainraj Lodha
30, Vanijya Bhavan, Kankaria Road,
Ahmedabad - 380022

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 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 इ.का 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 अनुसूचि-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.

19⁰ 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:

- (lxvii) amount determined under Section 11 D;
- (lxviii) amount of erroneous Cenvat Credit taken;
- (lxix) 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

The present appeal has been filed by M/s. Ashokkumar Chainraj Lodha, 30, Vanijya Bhavan, Kankaria Road, Ahmedabad- 380 022 (hereinafter referred to as the "appellant") against Order in Original No. 06/AC/Ashok Kumar Lodha/Div-1/A'bad-South/JDM/2022-23 dated 26.05.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, H.Q., Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax department. They are holding PAN No. ABAPL6442J. As per the information received from the Income Tax Department, the appellant had earned substantial income from services. However, they did not obtain service tax registration and did not pay service tax on such income from service. The appellant was called upon to submit documents. The appellant vide letter dated 15.12.2020 submitted the documents and on scrutiny of the same, it was found that the appellant had received Commission Income amounting to Rs.35,86,590/- during F.Y. 2014-15, Rs.29,54,145/- during F.Y. 2015-16 and Rs.22,82,444/- during F.Y. 2016-17. It appeared that the services provided by the appellant was falling under Business Auxiliary Services in terms of Section 65(105) (zzb) of the Finance Act, 1994 and service tax totally amounting to Rs.12,14,020/- was required to be paid by them.

3. Therefore, the appellant was issued Show Cause Notice bearing No. V/15-683/Div-I/Ashokkumar Chainraj Lodha/20-21 dated 22.12.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs.12,14,020/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- b) Impose penalty under Sections 77(1) and 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein :



- I. The demand of service tax amounting to Rs.12,14,020/- was confirmed along with interest.
- II. Penalty amounting to Rs.10,000/- was imposed under Sections 77(1) of the Finance Act, 1994.
- III. Penalty amounting to Rs.12,14,020/- was imposed under Section 78 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. During the impugned period, they were in receipt of sharing of revenue from M/s. Shriram Transport Finance Limited (STFL) for which they claimed exemption from service tax, as share of profit. The income other than this is less than the threshold limit. So, they have not taken service tax registration.
- ii. They had not rendered any service to STFL under the agreement. The gross consideration received was shared on a set proportion between them and STFL.
- iii. The transaction between them and STFL was on a principal to principal basis and on revenue sharing basis.
- iv. The activities undertaken by them do not fall under the category of Business Auxiliary Services. There is no provision of service on behalf of the client.
- v. The demand raised for the extended period is not sustainable. The activities undertaken by them and all the relevant facts were within the knowledge of the department.
- vi. The overall scope of the agreement with STFL indicates that it is not for rendering of service by one to another. Rather a common pool of resources required for running and maintaining the facilities of STFL was successfully attempted and the gross revenue is also shared showing common intent. There is no service provider-service recipient relationship which is liable to service tax.
- vii. Reliance is placed upon the judgment in the case of Old World Hospitality Ltd. Vs. Commissioner of S.T., New Delhi – 2017 (3) GSTL 178 (Tri.-Del.).



- viii. The SCN covers the period from 01.04.2014 to 31.03.2017 and was issued on 22.12.2020 by invoking the extended period of limitation by baldly alleging suppression of information from the department.
- ix. They are regularly filing income tax returns. Extended period of limitation cannot be invoked as there is no suppression, wilful misstatement on their part.
- x. They have demonstrated that there have not suppresses any information from the department and there was no wilful misstatement on their part. The SCN has not brought any evidence to establish that they had suppresses anything from the department. As the present case is not of fraud, suppression or wilful misstatement of facts, penalty under Section 78 cannot be imposed. Reliance is placed upon the judgment in the case of Steel Cast Ltd. – 2011 (21) STR 500 (Guj.).
- xi. Penalty cannot be imposed under Section 77 of the Finance Act, 1994 as there is no short payment of service tax. They have been and are under the bona fide belief that they are not liable to pay service tax. There was no intent to evade payment of service tax. Therefore, penalty is not imposable.
- xii. Reliance is placed upon the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa – AIR 1970 (SC) 253; Kellner Pharmaceuticals Ltd. Vs. CCE – 1985 (20) ELT 80; Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC) and CCE Vs. Chemphar Drugs and Liniments – 1989 (40) ELT 276 (SC).
- xiii. 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 12.01.2023. Shri Vipul Khandar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum as well as those in additional written submissions. He relied upon the case laws in the



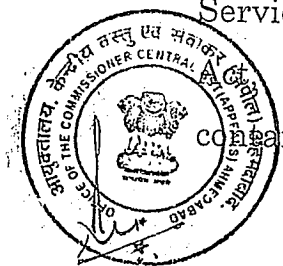
case of Maruti Suzuki India Ltd. -2020 (34) GSTL 532 (Tri.-Chennai.) and Inox Leisure Ltd. – 2022 (61) GSTL 342 (SC).

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

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax amounting to Rs.12,14,020/- along with interest and penalty. The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

9. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. The appellant had, as per the data received from Income Tax Department, received income totally amounting to Rs.88,23,179/- from sale of services during F.Y. 2014-15 to F.Y. 2016-17. It is observed that the appellant had contended before the adjudicating authority that they had received share of profit from STFL, which is exempted from service tax, and that the revenue other than the profit sharing from STFL was less than the threshold exemption limit. However, the contention of the appellant was rejected by the adjudicating authority and it was held by the adjudicating authority, at Para 46 of the impugned order, that the consideration received by the appellant is nothing but commission income and the same is generated by providing 'Business Auxiliary Service' to their clients.

10. It is observed from the impugned order that the adjudicating authority has examined the issue involved in the impugned SCN in light of the definition of Business Auxiliary Service as defined in Section 65(19) of the Finance Act, 1994. The demand raised vide the impugned SCN pertains to the period from F.Y. 2014-15 to F.Y. 2016-17. With the introduction of the Negative List of Services regime from 01.07.2012, the provisions of Section 65 of the Finance Act, 1994 were rescinded. Therefore, from 01.07.2012, the definitions contained in the erstwhile Section 65 of the Finance Act, 1994 had no bearing



on the determination of taxability of services. The adjudicating authority was, accordingly, required to examine the issues involved in the impugned SCN in the light of the amended provisions of the Finance Act, 1994. On this very ground, the impugned order deserves to be set aside. However, considering the facts of the case and also considering that the adjudicating authority has, except for elaborately quoting from the agreements/contracts of the appellant with their clients, not given any finding on the claim of the appellant that they were receiving a share of profit from their clients, I am of the considered view that it would be in the fitness of things if the matter is remanded back to the adjudicating authority for denovo proceedings.

10.1 In the remand proceedings the adjudicating authority should examine and decide the case based on the extant provisions of law post introduction of Negative List of Services from 01.07.2012. The adjudicating authority should also give his findings on the claim of the appellant that the consideration received by them is their share of the profits. Needless to state, the principles of natural justice is to be followed in the remand proceedings. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

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.

Akhilesh Kumar
7th March, 2023
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 07.03.2023

Attested:

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

BY RPAD / SPEED POST

To

M/s. Ashokkumar Chainraj Lodha,
30, Vanijya Bhavan, Kankaria Road,
Ahmedabad- 380 022

The Assistant Commissioner,
CGST, H.Q,



Appellant

Respondent

Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
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