



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 : 20230364SW0000999A3F

स्पीड पोस्ट

- क. फाइल संख्या : File No : GAPPL/COM/STP/2960/2022 /16 7020
- ख. अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-196/2022-23
दिनांक Date : 29-03-2023 जारी करने की तारीख Date of Issue 30.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग. Arising out of OIO No. WS07/O&A/OIO-30/AC-RAG/2022-23 दिनांक: 23.06.2022 passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ. अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Mahasagar Travels Agency
02LF, Manas Complex,
Near Jodhpur Cross Road,
Satellite, 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 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 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 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.

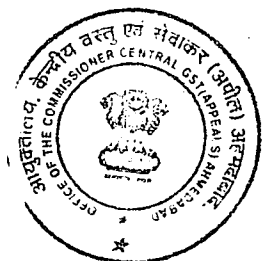
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.

3ण 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.

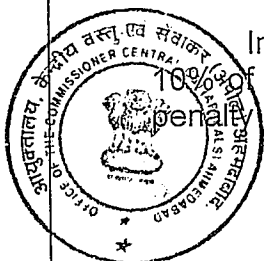
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (ciii) amount determined under Section 11 D;
- (civ) amount of erroneous Cenvat Credit taken;
- (cv) 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

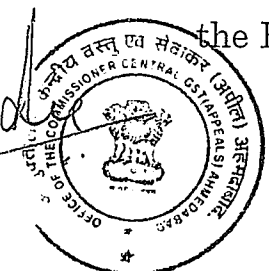
The present appeal has been filed by M/s. Mahasagar Travels Agency, 02LF, Manas Complex, Near Jodhpur Cross Road, Satellite, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. WS07/O&A/OIO-30/AC-RAG/2022-23 dated 23.06.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-VII, CGST, 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. AAPFM1359M. As per the information received from the Income Tax Department, the appellant had earned income from services amounting to Rs. 10,03,533/- during F.Y. 2014-15 and Rs. 10,26,981/- during F.Y. 2015-16. However, they did not obtain service tax registration and did not pay service tax on such income from service. The appellant were called upon to submit documents. However, they did not submit the called for documents and details. Therefore, the appellant were issued Show Cause Notice bearing No. V/WS07/O&A/SCN-287/AAPFM1359M/2020-21 dated 29.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs. 2,78,084/- 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.
- c) Prescribed late fee should not be recovered from them under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

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

- I. The demand of service tax amounting to Rs. 2,44,352/- was confirmed along with interest.
- II. Penalty amounting to Rs. 10,000/- was imposed under Section 77(1) of the Finance Act, 1994.

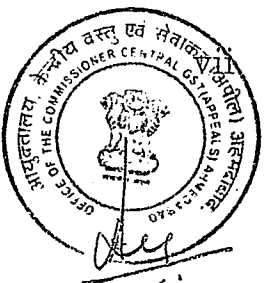


- III. Penalty amounting to Rs. 2,44,352/- was imposed under Section 78 (1) of the Finance Act, 1994.
- IV. Penalty amounting to Rs. 80,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- V. The demand of service tax amounting to Rs. 33,732/- was dropped.

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

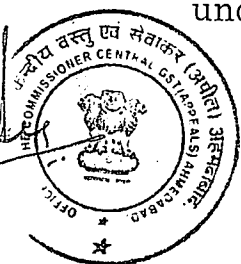
- i. The adjudicating authority has not considered the fact that they had provided service of transport of passengers in non-AC bus or travels and they also received commission income from booking of Bus or travels.
- ii. They had received commission income amounting to Rs. 8,75,003/- and Rs. 8,91,851/- during F.Y. 2014-15 and F.Y. 2015-16 respectively.
- iii. They had received income from transport of passengers amounting to Rs. 1,28,530/- and Rs. 1,35,400/- during F.Y. 2014-15 and F.Y. 2015-16 respectively.
- iv. Income from transport of passengers is exempted in terms of Serial No. 23(b) of Notification No. 25/2012-ST dated 20.06.2012.
- v. In terms of Notification No. 33/2012-ST dated 20.06.2012, if the value of taxable services is less than Rs. 10 lakhs, the service provider is not obligated to register under service tax regime. As their value of taxable services is less than Rs. 10 Lakhs, they are not obligated to register under service tax.
- vi. The demand is time barred as it is issued beyond the normal period of limitation. Notice invoking extended period of limitation can be issued only when there is fraud, collusion, suppression of facts, wilful misstatement with intent to evade payment of tax. No specific charge has been made in the SCN for invoking the extended period of limitation.

Reliance is placed upon the judgment in the case of CC Vs. MMK Jewellers -2008(225) ELT 3 (SC); Padmini Products Vs. Collector of



Central Excise – 1989 (43) ELT 195; Tamilnadu Housing Board Vs. CCE – 1994 (74) ELT 9 (SC); Sarabhai M. Chemicals Vs. CCE – 2005 (179) ELT 3 (SC); Bharat Hotels Limited Vs. CCE(Adjudication) – (2018) 2 TMI 23; Rainbow Industries Vs. CCE -1994 (74) ELT 3 (SC); ONGC Vs. CCE – 1995 (79) ELT 117 (Tribunal).

- viii. Reliance is also placed upon Circular No. 312/28/97-CX dated 22.04.1997 and 268/102/96-CX.
- ix. There can be no suppression of facts which are not required to be disclosed. Reliance is placed upon the various judgments of the Hon'ble Courts and Tribunals.
- x. The SCN does not specify as to for which activity the charge has been framed. The impugned order also does not specify the activities of the business for which service tax has been demanded.
- xi. Reliance is placed upon the judgment in the case of Pepsi Food Private Limited Vs. CST, Delhi – (2020) 6 TMI 554- CESTAT Chandigarh; Micromatic Grinding Technologies Ltd. Vs. CCE & ST, Ghaziabad – (2019) 8 TMI 320 – CESTAT Allahabad; CCE, Bangalore Vs. Brindavan Beverages (P) Ltd.- (2007) 6 TMI 3 – Supreme Court Commissioner of Central Excise Vs. Indian Oil Corporation – (2017) 6 TMI 573 – Madras High Court; Mahindra and Mahindra Vs. CCE – 2001 (129) ELT 188 (Tribunal).
- xii. The impugned order which does not specify the complete details of their services will be construed as non-speaking order which is illegal and against the principles of natural justice.
- xiii. Reliance is placed upon the judgment in the case of Aspinwall & Co Limited Vs. CCE, Mangalore – 2010(10) TMI 321-CESTAT Bangalore; Anil Product Ltd. Vs. CCE, Ahmedabad-II – 2010 (2) TMI 662 – Gujarat High Court.
- xiv. The extended period of limitation is not invocable and therefore, penalty under Section 78 also cannot be imposed.
- xv. As there is no levy of service tax, not interest is payable under Section 75 of the Finance Act, 1994.
- xvi. As they are not liable to get registered under service tax, penalty under Section 77(1) of the Finance Act, 1994 is not imposable.



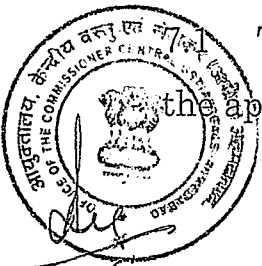
xvii. As they are not required to file service tax returns, penalty under Section 70 of the Act is not applicable.

5. Personal Hearing in the case was held on 09.02.2023 through virtual mode. Shri Rohan Thakkar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He stated that he would submit additional written submissions containing documents pertaining to operation of buses/vehicles under stage carriage.

6. 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. 2,44,352/- along with interest and penalties. The demand pertains to the period F.Y. 2014-15 and F.Y. 2015-16.

7. It is observed that the appellant had contended before the adjudicating authority that out of the total income of Rs. 10,03,533/- during F.Y. 2014-15, an amount of Rs. 8,75,003/- pertained to Commission Income and the remaining amount of Rs.1,28,530/- pertained to Vardhi Income. Similarly, during F.Y. 2015-16, out of the total income, the amount of Rs. 8,91,581/- pertained to Commission Income and Rs. 1,35,400/- pertained to Vardhi Income. The appellant have contended that Vardhi Income is exempted from payment of service tax as the same is income earned from transport of passengers in non-AC buses, which is exempted from payment of service tax in terms of Serial No. 23(b) of Notification No. 25/2012-ST dated 20.06.2012. In support of their contention, the appellant had submitted copies of Balance Sheet, P&L Account, Form 26AS and Computation of Income for the period under dispute.

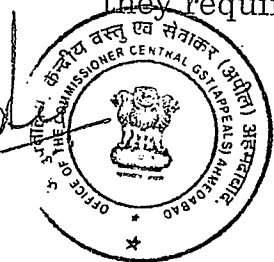
The adjudicating authority has, however, rejected the contention of the appellant on the grounds that "*the noticee has received Commission but*



to evade the service tax, they have bifurcated the same into Commission Income and Vardhi Income and submitted that Vardhi Income is exempted from service tax. The noticee have not produced any evidence regarding exemption of Vardhi Income from Total taxable value. In absence of evidence, I am of the view that the noticee are liable to pay service tax on the amount generated through Vardhi Commission". I find that the observation of the adjudicating authority as regards the appellant bifurcating their income into Commission and Vardhi income to evade service tax is not legally tenable being not supported by any evidence.

7.2 It is not disputed that services by way of transport of passengers by non-air-conditioned contract carriage is exempted from payment of service tax in terms of Serial No. 23(b) of Notification No. 25/2012. It is observed that the P&L account for the period under dispute, submitted by the appellant, clearly indicates that they had earned and shown Vardhi Income in the P&L accounts of the respective financial years. The appellant have subsequent to the personal hearing, submitted a copy of the Joint Operating Agreement for Transport of Passengers entered in to by them with M/s. Mahasagar Travels Limited, Junagadh on 15.05.2013. I have perused the said agreement and find that the same pertains to transport by bus, students of Subhash Academy, Junagadh. Further, in terms of the said agreement, the appellant are to be paid 20 per cent of the total revenue.

7.3 In view of the documentary evidences submitted by the appellant, I am of the considered view that they have substantiated their claim of having earned Vardhi income i.e. income earned from transport of passengers in non-AC bus. Since the said Vardhi income is exempt from payment of service tax, the same is required to be excluded from the total value taxable services provided by the appellant during the period under dispute. By excluding the Vardhi Income, the taxable value of the appellant during F.Y. 2013-14 to F.Y. 2014-15 is below the threshold exemption limit of Rs.10 lakhs in terms of Notification No. 33/2012-ST dated 20.06.2012. Consequently, the appellant are not liable to pay service tax and neither are they required to obtain service tax registration or file ST-3 returns.



8. In view of the above, I am of the considered view that the impugned order confirming the demand of service tax along with interest and penalties is not legally sustainable. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

9. 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
29 March, 2023
(Akhilesh Kumar) no 23..
Commissioner (Appeals)
Date: 29.03.2023

Attested:

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

BY RPAD / SPEED POST

To

M/s. Mahasagar Travels Agency,
02LF, Manas Complex,
Near Jodhpur Cross Road,
Satellite, Ahmedabad

Appellant

The Assistant Commissioner,
Division- VII, CGST,
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.

