



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 :

टैलेफैक्स 26305136 - 079 :

DIN-20220764SW0000323142

स्पीड पोस्ट

- क फाइल संख्या : File No :GAPPL/COM/STP/1736/2021 /2292 - 2298
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-035/2022-23**
दिनांक Date : 30.06.2022 जारी करने की तारीख Date of Issue : 04.07.2022.
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.01/AC/Div-I/RBB/2021-22 dated 20.04.2021
passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad South
Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Polo Forex Private Limited,
4, Sun Plaza, Abov Sheth Opticals,
Near Jain Dairy, Swastik Cross Road,
Navrangpura, Ahmedabad-380009.

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 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 (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.



- (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 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 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

This appeal has been filed by M/s Polo Forex Private Limited, 4, Sun Plaza, Above Sheth Optical, Near Jain Dairy, Swastik Cross Road, Navrangpura, Ahmedabad-380009 (hereinafter referred to as the '*appellant*'), against Order-In-Original No. 01/AC/Div-I/RBB/2021-22 dated 20.04.2021 (hereinafter referred to as "*impugned order*") passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad South Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is engaged in providing taxable services like Foreign Exchange Brokerage Services and was holding Service Tax Registration No. AAHCP5752CSD001. During the course of audit of records of the appellant, it was observed that the appellant had shown 'Commission income' for Tele Transfer of money from different clients in their financial books of accounts but no service tax was paid on such income by them. Since these commissions have been earned on account of promotion or marketing of sale of goods belonging to their client, the same were taxable and the appellant was liable to pay service tax on the same. It was observed by the audit that during the period from October, 2014 to June, 2017, the appellant had received a commission income of Rs.5,48,104/-, which was not declared in the ST-3 Returns filed for the period and on which service tax amounting to Rs.77,881/- was liable to be paid. It was further observed by the audit that the appellant was availing cenvat credit on certain input services which were commonly used by them for providing taxable as well as exempted services and hence they were liable to reverse the proportionate amount of cenvat credit availed which were attributable towards exempted services as per the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, which they have not done. Accordingly, an amount of cenvat credit of Rs.27,572/- taken on input services during the period from F.Y.2015-16 to F.Y. 2017-18 (up to June, 2017) was found liable to be paid by them in terms of Rule 6(3) *ibid*. Further, it was observed that the appellant had shown rent income amounting to Rs.35,000/- relating to renting of office for the Financial Year 2016-17, however, they have not discharged service tax on the rent income earned by them. Service tax thereon not paid was worked out to Rs.5,075/-. Based on the above audit objections, a Show Cause Notice dated 20.12.2019 was issued to the appellant proposing demand of (i) service tax amounting Rs. 77,881/- on the Commission Income; (ii) cenvat credit of Rs.27,572/- and (iii) service tax amounting to Rs.5,075/- on the Rent Income under proviso to Section 73(1) along with interest under Section 75 of the Finance Act, 1994 (hereinafter referred to as '*the Act*'). Penalty upon the appellant was also proposed under Section 78 of the Act.

2.1 The adjudicating authority vide the impugned order has confirmed the demand along with interest and penalty.



3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- The Ld. Assistant Commissioner C.G.S.T. has erred on fact and by law not allowing cenvat credit of Rs.27,572/- though the assessee is entitled for cenvat as per Foreign Exchange Broking Service Rules; and
- The Ld. Assistant Commissioner C.G.S.T. has erred on fact and by law imposing penalty under Section 78 (1) as the assessee has not wilfully ignore the payment of Service Tax.

4. Personal hearing in the matter was held on 28.06.2022 through virtual mode. Dr. Prerak K Soni, Advocate, appeared on behalf of the appellant for hearing. He re-iterated the submissions made in the appeal memorandum. He stated that there was no malafide and hence penalty was not imposable in the case. He further requested to allow Cenvat Credit.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. It is observed from the appeal memorandum that the appellant is only challenging the demand of cenvat credit and the imposition of penalty under Section 78(1) of the Act in their appeal under consideration. It is their case that they were entitled for cenvat credit as per Foreign Exchange Broking Service Rules and that penalty under Section 78(1) is not imposable as there was no malafide intention and they have not wilfully ignored the payment of service tax. I find that apart from the above contentions made in two statements, the appellant has not come up with any valid relevant arguments/grounds or evidences or case law in support of their contention against the impugned order either in the appeal memorandum or during the personal hearing.

5.1 In the first place, the above contentions of the appellant in no manner seem to be challenging the findings of the adjudicating authority on the issues under dispute. Their contention on eligibility of cenvat credit in the case does not have any base as the eligibility of cenvat credit is not governed by Foreign Exchange Broking Service Rules as contended by them but by the provisions of Cenvat Credit Rules, 2004. Secondly, the demand of cenvat credit in the case was not on the ground of ineligibility of the credit availed but was for the reason of non-following the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 and non-payment of the amount payable thereunder on account of the use of certain input services commonly for provision of taxable as well as exempted services by them. It clearly transpires from the argument of the appellant that they have failed to understand and appreciate the ground for rejection of the cenvat credit in the SCN.

5.2 As regards their contention on imposition of penalty, I find that the intent to evade payment of tax in the matter is apparent from the very fact of non-disclosure of the



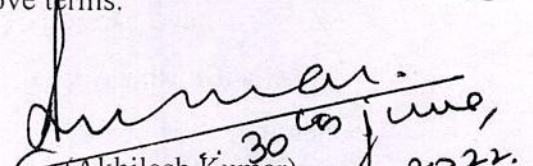
commission income in the ST-3 returns filed by the appellant and hence the contention of absence of malafide intention is not tenable on the facts of the case. Non-disclosure of correct taxable value in the periodical returns clearly tantamount to suppression of taxable value of service with an intent to evade payment of tax which attracts penalty under the provisions of Section 78 of the Act. The plea of ignorance of law raised by the appellant also does not help their cause as it is settled law that the ignorance of law is no excuse.

6. In view of the above, I do not find any merit in the contentions raised by the appellant in the appeal and consequently, I have no reason to interfere with the decision taken by the adjudicating authority in the matter vide the impugned order.

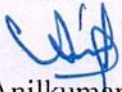
7. Accordingly, the impugned order passed by the adjudicating authority is upheld for being legal and proper and the appeal filed by the appellant is rejected for being devoid of merits.

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

The appeal filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 30.06.2022.

Attested


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



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

To

M/s Polo Forex Private Limited,
4, Sun Plaza, Above Sheth Opticals,
Near Jain Dairy, Swastik Cross Road,
Navrangpura, Ahmedabad-380009.

Copy To:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad-South.
3. The Assistant Commissioner, CGST&Central Excise, Division-I, Ahmedabad-South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.
(for uploading the OIA)

✓ 5. Guard file

6. P.A. File