



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय, Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20221264SW000000B3B0

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/14/2022 / 36 B 2 - 56
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-088/2022:23
दिनांक Date : 07-12-2022 जारी करने की तारीख Date of Issue 09.12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-23/AC-RAG/2021-22 दिनांक: 28.10.2021 passed by
Assistant Commissioner, CGST, Division VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VII, Ahmedabad South
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad

Respondent

- M/s Jamnagar Travels Pvt Ltd
09/10, Abhishree, Opposite Star Bazar,
Satellite, 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:

(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।

(iii) 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 बंताए 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 पढ़ी 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 रु.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.

20 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;
इए लिया गलत सेनवैट क्रेडिट की राशि;
बए 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.

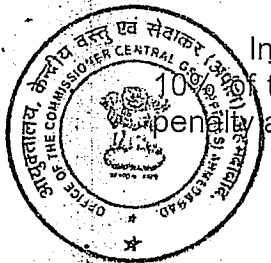
For an-appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxxii) amount determined under Section 11 D;
(clxxxiii) amount of erroneous Cenvat Credit taken;
(clxxxiiii) 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

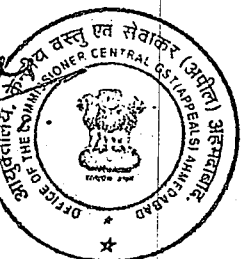
The present appeal has been filed by the Assistant Commissioner, CGST, Division-VII, Commissionerate Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 55/2021-22 dated 09.02.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. WS07/O&A/OIO-23/AC-RAG/2021-22 dated 28.10.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Jamnagar Travels Pvt. Ltd., 09/10, Abhishree, Opposite Star Bazar, Satellite, Ahmedabad - 380015 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that a difference in the income shown in the ITR filed by the respondent for F.Y. 2015-16 and the income shown by them in their ST-3 return was noticed. Therefore, the respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-717/2015-16/REG/2020 dated 29.12.2020 wherein it was proposed to :

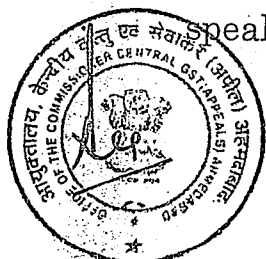
- A. Demand and recover the service tax amounting to Rs.31,46,270/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- B. Impose penalty under Sections 77(c) and 78 of the Finance Act, 1994.
- C. Recover late fee in terms of Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

2. The SCN was adjudicated vide the impugned order and the proceedings initiated against the respondent were dropped.

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



- 5
- i. The adjudicating authority has erred in dropping the demand of service tax without recording any finding on the merits of the case and the impugned order is a non-speaking order.
 - ii. The adjudicating authority has just reproduced Entry No.23 of Notification No.25/2012-ST dated 20.06.2012 and held that the respondent is not liable to pay service tax. However, the adjudicating authority has not given any finding as to how the respondent is covered by the said Notification.
 - iii. The adjudicating authority has not even mentioned about any documentary evidence on the basis of which he concluded that the respondent is covered by the said Notification and not liable to pay service tax.
 - iv. It has been held that the services provided by the respondent are neither falling under the category of GTA nor does it fall under the category of Courier Agency. It has also been held that Parcel bookings provided by the respondent are in the Negative List and service tax cannot be charged.
 - v. The adjudicating authority has just reproduced the definition of GTA and held that the respondent are not falling under GTA. No finding has been given as to how the respondent is not covered under GTA. The respondent themselves have admitted that they are under category of GTA but not liable to service tax as they are exempted under Notification No.25/2012.
 - vi. No findings have been given on the submission of the respondent and not justification has also been given as to how the respondent are not liable for service tax.
4. Personal Hearing in the case was held on-07.12.2022. Shri Dilip Jodhani, Chartered Accountant, appeared on behalf of the respondent for the hearing. He stated that they have all the documents which they are willing to submit again. He further stated that the adjudicating authority has verified the documents and submissions made by them and passed speaking order.



5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order dropping the demand of service tax amounting to Rs.31,46,270/-, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to F.Y. 2015-16.

6. I find that the appellant department has challenged the impugned order on the grounds that the adjudicating authority has not recorded any findings on the merits of the case. I find merit in the contention of the department inasmuch as the adjudicating authority has in the impugned order merely reproduced the submissions of the respondent and the provisions of the relevant entries of Notification No. 25/2012-ST dated 20.06.2012 without recording any finding as to how the respondent is covered by the exemption under the said Notification. It is further observed that the adjudicating authority has not given any finding as to whether the transportation of passenger service provided by the respondent is through air-conditioned or non air-conditioned contract carriage. This is relevant as only transportation of passengers through non air-conditioned contract carriage is exempted.

6.1 It is observed that the respondent has submitted before the adjudicating authority copies of 26AS Statement, ITR, Tax Audit Report, ST-3 returns and copy of challan of service tax payment. However, in my considered view, these documents do not in any way help in determining whether the appellant are eligible for exemption. It is also seen from the impugned order that the adjudicating authority has not examined the invoices and other relevant documents for determining the appellant's eligibility to exemption in terms of the said Notification.

7. It is also observed that the adjudicating authority has dropped the demand of service tax in respect of the parcel booking service by holding that the same are exempted in terms of Notification No.25/2012-ST dated 20.06.2012. However, even the specific entry of the said Notification under



which the services are exempted is also not mentioned. If the reference is to Serial No. 21 of the said Notification, the respondent are apparently not eligible for exemption as the same is in respect of transportation of goods by a 'goods carriage'. The adjudicating authority has also not recorded any finding regarding whether the parcels are transported by a 'stage carriage' or by a 'goods carriage'. In the absence of any finding regarding the nature of carriage used for transport of the goods, it would not be possible to determine whether the respondent are eligible for exemption or otherwise.

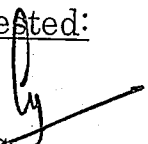
8. Considering the above shortcomings in the impugned order, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for a decision afresh giving clear findings on the individual issues in respect of which demand of service tax was raised against the respondent. The respondent are directed to furnish before the adjudicating authority copies of the invoices and other relevant documents in support of their claim for exemption. The adjudicating authority shall give the respondent the opportunity personal hearing before deciding the matter in the remand proceedings.

9. In view of the facts discussed hereinabove, the impugned order is set aside and the appeal filed by the appellant department is allowed by way of remand.


10. 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.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST


(Akhilesh Kumar) 7th December, 2022.
Commissioner (Appeals)
Date: 07.12.2022.



To

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

Appellant

M/s. Jamnagar Travels Pvt. Ltd.,
09/10, Abhishree, Opposite Star Bazar,
Satellite, Ahmedabad - 380015

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.

