



**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: 20231164SW000001590C

स्पीड पोस्ट

- क पत्राङ्क संख्या : File No : GAPPL/COM/STP/3213/2023 / ४६५३-९१
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-166/2023-24**
दिनांक Date : 21-11-2023 जारी करने की तारीख Date of Issue 29.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain, Commissioner (Appeals)**
- ग Arising out of OIO No. MP/199/DC/Div-IV/2022-23 दिनांक: 04.01.2023 passed by The Deputy Commissioner, CGST, Division-IV, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s/Manoj Kumar Keshavaji Kosti,
2664/5, Indira Nagar,
Near Water Tank, Lambha,
Ahmedabad-382480.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए स्तम्भ 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को छप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अर्थात् सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(ii) 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 भण्डार या अन्य कारखाने में या किसी भण्डार से दूसरे भण्डार में माल ले जाते हुए मार्ग में, या किसी भण्डार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डार 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 मामले 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 an 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 द्वारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित हो समय पर या बाद में दित्त अधिनियम (नं.2) 1998 द्वारा 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। इसके 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 संलग्नरकम 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 परिषद क्षेत्रीय पीठिका, अहमदाबाद नं 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, Giridhar 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 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 और 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.

1* 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)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- दण्ड लिखत गलत सेनवैट क्रेडिट की राशि;
- दण्ड सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'संबंधित अपील' में पहले पूर्व जमा की तुलना में, अपील' वाकिल 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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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. Manoj Kumar Keshavlal Kosti, 2664/5, Indira Nagar, Near Water Tank, Lambha, Ahmedabad-382480 (hereinafter referred to as "the Appellant") against Order-in-Original No. MP/199/DC/Div-IV/22-223 dated 04.01.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-IV (Narol) Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the Appellant were not registered with Service Tax department holding PAN No. CAWPJ3987L. As per the information received from the Income Tax Department and on scrutiny of the data, it was noticed that the Appellant had earned substantial income from service provided during F.Y. 2015-16, however they failed to obtain Service Tax Registration and also failed to pay service tax on such income. The Appellant were called upon to submit copies of relevant documents for assessment for the said period, however, they neither submitted any required details/documents nor did offer any clarification/explanation regarding gross receipts from services rendered/income earned by them.

2.1. Subsequently, the appellant were issued Show Cause Notice bearing F. No. IV/Div-IV/SCN-487/2021-22 dated 22.04.2021 wherein it was proposed to:

- a) Demand and recover an amount of Rs. 4,42,467/- for F.Y. 2015-16 under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as 'the Act').
- b) Impose penalty under the provisions of Section 77 (1), 70 and



78 of the Act.

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

- a) The demand of service tax amounting to Rs. 4,42,467/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2015-16.
- b) Penalty amounting to Rs. 4,42,467/- was imposed under section 78 of the Act.
- c) Penalty amounting to Rs. 40,000/- was imposed under section 70 of the Act for non/late filing of ST-3 Return.
- d) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act for failure to include the supply services in their registration under the provision of 69 of the Act read with Rule 4 of Service Tax Rules, 1994.
- e) Penalty amounting to 5000/- was imposed for not submitting the documents when called for.

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

- The adjudicating authority erred in confirming the demand merely based on assumptions that total amount declared in Income tax return becomes taxable under service tax despite the fact that appellant has carried out activities which in nature distribution of SIM Card and prepaid recharge on behalf of Principal telecom operator which is exempted by virtue of Entry 29(f) of Mega Exemption Notification No. 25/2012-ST dated 20-06-2012. As such the adjudicating authority erred in confirming the demand without considering



the nature of activities carried out by the Appellant. The Appellant is engaged in the activities of distribution of SIM Card and prepaid recharge on behalf of Principal Telecom Operator which is exempted by virtue of Entry 29(f) of Mega Exemption Notification No. 25/2012-ST dated 20-06-2012.

- The adjudicating authority erred by imposing the penalty under Section 78(1), of the Act despite the fact is no suppression on the part of the Appellant.
- The adjudicating authority erred by confirming demand for the period April 2015 to March 2016 which is time barred.

5. Personal hearing in the case was held on 12.10.2023. Sh. Riddham Shah, C.A., appeared on behalf of the Appellant for personal hearing and reiterated the content of the written submission in the appeal memorandum and requested to allow their appeal.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16.

7. I find that the Appellant have stated that the sale amount of Rs. 30,51,500/- pertains to clause 29(f) of Notification No. 25/2012-ST dated 20.06.2012 (Mega Exemption Notification) which says "Services by way of selling agent or a distributor of SIM Card or recharge Coupons vouchers is exempt under Service Tax." However, whether the entire turnover of Rs. 30,51,500/- pertains to SIM Card



distribution or not, required detailed verification of documents.
Hence the matter needs to be remanded back.

8. In view of the above the impugned order is set aside and the matter is remanded back to adjudicating authority for fresh adjudication following the course of natural justice.

9. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

G.C. Jain
21.11.2023

शानचंद जैन

आयुक्त (अपील)

Date : 21.11.2023

Attested

Manoj Kumar
मनोहर कुमार
अधीक्षक (अपील)
सी. जी. एस. टी, अहमदाबाद



By RPAD / SPEED POST

To,
M/s. Manoj Kumar Keshavlal Kosti,
2664/5, Indira Nagar,
Near Water Tank, Lambha
Ahmedabad-382 480

Appellant

The Deputy Commissioner,
CGST, Division-IV, (Narol)
Ahmedabad South

Respondent

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
 2. The Commissioner, CGST, Ahmedabad South
 3. The Deputy Commissioner, CGST, Division IV (Narol), Ahmedabad South.
 4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
- Guard File

