



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: 20231264SW00008858D9

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1419/2023 / 257 - 61
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-193/2023-24**
दिनांक Date: 07-12-2023 जारी करने की तारीख Date of Issue 11.12.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. MP/8/AC/Div-III/2021-22 दिनांक: 08.03.2022 passed by The Assistant Commissioner, CGST, Division-III, Ahmedabad South.
- घ अपीलकर्ता का नाम व पता Name & Address

Appellant
M/s. Third Rock Trips,
C-1/264, Phase-II,
GIDC, Vatva, Ahmedabad.

वेई व्य वित्त 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 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.

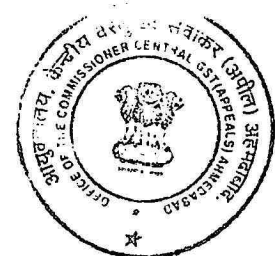
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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.

1^प 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.

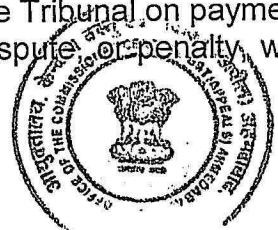
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (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

The present appeal has been filed by M/s. Third Rock Trips, C-1/264, Phase-II, GIDC, Vatva, Ahmedabad (hereinafter referred to as "*the Appellant*") against Order-in-Original No. MP/8/AC/Div-III/2021-22 dated 08.03.2022 issued on 09.03.2022 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division-III Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the Appellant were holding Service Tax Registration No. AAHFT6977ESD001 and engaged in providing Air Travel Agent Service and Tour Operator Service. During the course of audit of the records of the Appellant for the period from April, 2015 to June, 2017, conducted by the officers of Central Tax Audit Commissionerate, Ahmedabad, the objections as detailed in subsequent para were made vide FAR No. 791/18-19 (Service Tax) dated 19.12.2019:

2.1. **Revenue Para 1 :-** Short payment of service tax amounting to Rs. 5,34,521/- on the differential income found on reconciliation of their ST-3 returns with the financial statements.

2.2. **Revenue Para 2:-** Short payment of service tax amounting to Rs.1,86,812/- on Commission Income.

2.3. **Revenue Para 3:-** Non payment of service tax amounting to Rs.13,87,103/- on Miscellaneous Service Charge Income.

2.4. **Revenue Para 4:-** Irregular availment of cenvat credit amounting to Rs. 1,96,471/- without cover of duty paying documents.



3. Subsequently, the Appellant were issued a Show Cause Notice bearing No. 233/2019-20 dated 02.01.2020 from F.No. VI/1B)-317/C-I/AP4/Audit/Ahd/18-19 wherein it was proposed to:

- a) Demand and recover service tax totally amounting to Rs. 21,08,436/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- b) Demand and recover the cenvat credit amounting to Rs.1,96,471/- under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14(1)(ii) of the CCR, 2004.
- c) Recover interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the CCR, 2004.
- d) Impose penalty under Section 78(1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax and cenvat credit was confirmed along with interest. Penalty equivalent to the service tax and cenvat credit confirmed was imposed under Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the CCR, 2004.

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

- The Appellant are registered for providing taxable services in respect of air travel agent and tour operator services. They have been regularly depositing their service tax with the department. The records maintained by the present Appellant were audited by the Officers of Service Tax Department. During audit, it was observed that the Appellant had short paid service tax on reconciliation of financial records with service tax records and had further not paid service tax on commission received from air lines. It was also observed that



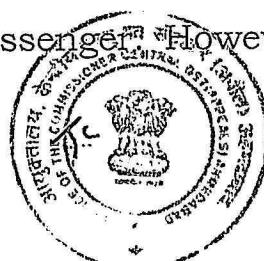
the Appellant had not paid service tax on miscellaneous income and had also failed to provide purchase invoices on which cenvat credit was availed. Based on such audit objection, a show cause notice bearing No. 233/2019-20 dated 02.01.2020 was issued for recovery of service tax.

- The Appellant submit that they had appeared before the adjudicating authority on 18.03.2021. However, due to change in authority, the hearing was re-fixed. It is stated in Para-36.2 that three different hearing intimations were issued. However, the Appellant had not received any of the intimation. In such facts, the Appellant are not heard in the matter and the order is passed ex-parte in violation of principles of natural justice. Hence, the same is not sustainable in law and requires to be quashed and set aside.
- It is submitted that in the first hearing, Mr. Darshit Shah had appeared and his contact details were also provided to the adjudicating authority. However, the adjudicating authority has not even tried to contact him, though he was officially representing the Appellant. The authority could not contact him for hearing purpose. However, without providing sufficient opportunity, the order is passed. Hence, the same is required to be quashed.
- It is further stated in Para-36.2 that three different opportunities were granted. The Hon'ble Gujarat High Court has held that before passing any order, the authority ought to have granted three adjournment i.e. four effective opportunity of hearing. The authority has thus failed to provide adequate opportunity of hearing. Hence also, the order is not sustainable and requires to be quashed and set aside.
- The Appellant submit that the order is non-reasoned and nonspeaking and is passed in gross violation of principles of



natural justice. The Appellant had relied upon various case laws which are in favour of the Appellant. However, none have been considered in its true perspective by the adjudicating authority. The adjudicating authority has further not clarified how the case laws are not relevant. Hence, the order is passed in clear violation of the principles of natural justice and hence the same is required to be quashed and set aside.

- It is also submitted that the issue in the present case is directly covered by the order of the Commissioner (Appeal) in the demand for earlier period. The adjudicating authority was duty bound to follow the same. However he has failed to follow the same. A copy of the OIA is annexed hereto and marked as Annexure-D. Hence also the order is passed in violation of principle of judicial discipline. Hence also the same is required to be quashed and set aside
- Even on merits, it is submitted that the demand is not sustainable. Regarding income earned as commission from the airlines, it is submitted that the entire demand is issued without considering Rule-6(7) of the Service Tax Rules and hence, demand is issued in contravention of Rule, which specifically provides payment on lumpsum basis.
- It is submitted that the air travel agent book tickets for passenger from airlines. The airlines pay service tax on basic fare. The said payment of service tax is Cenvatable to the agent. However, the agents are given option under the aforesaid rule in which they can opt for payment of service tax on lump-sum basis instead of availing Cenvat and then making payment of service tax on basic air fare plus their commission. The entire airline industries operate in a manner wherein the passenger can directly book the ticket from the airlines or through the agent of an airline company. The ticket charge remains same for the passenger. However, when the



ticket is booked through an agent, the passenger pays exactly the same amount which he has to pay for booking directly to the company and exactly the same amount is paid to the air travel agent. Hence, rate of ticket does not vary when ticket is booked from air travel agent. However, the agent gets commission on ticket bookings, which is pre-decided by the airline company. Hence, in the entire transaction, the air travel agent is given commission for the ticket booking by the airline company. This is the only income which air travel agent earns in his business. Now against the aforesaid commission income, the air travel agent has to pay service tax. However, as per the aforesaid sub-rule 6(7), the air travel agent has been given option to pay service tax at lump-sum rate and has not to pay service tax on commission, which is normally paid by airlines to the agent.

- The Appellant have opted for the aforesaid option and had been paying service tax at lump-sum rate. Hence, question of making payment again on commission income does not arise. It is reiterated that commission income is the only income in the business of air travel agents and the Legislature has sought to tax air travel agents on lump-sum basis and such option once, exercised, the demand notice on commission income is illogical and de horse the provisions of Service Tax Act. Hence, the impugned order is bad in law and requires to be quashed.
- It is submitted that the Ld. Adjudicating Authority has at all not given independent finding to the submissions made to him with regard to applicability of Rule 6(7) of Service Tax Rules and direct decision of the Hon'ble Tribunal on the aforesaid issue. The Ld. Authority has merely stated that the commission income was found to have been received during the course of audit and hence, service tax payable. It is submitted that the order is non-reason and non-speaking. The



Ld. Authority has merely repeated the allegations made in show cause notice and at all not dealt with submissions made by the Appellant.

- It is also submitted that the demand on miscellaneous income is nothing but demand on expenses incurred on behalf of clients on "pure agent" basis. The same is not taxable. The same are in the nature of Visa Fees etc. The Appellant will provide evidences at the time of hearing.
- It is also submitted that the purchase invoices were checked by the Auditors. The same will also be produced at the time of hearing. Hence also CENVAT credit is correctly availed and order confirming reversal is required to be quashed.
- Hence, the entire order is passed without considering basic nature of services and evidences produced before the adjudicating authority. Hence the same is not sustainable and requires to be quashed and set aside.

6. On scrutiny of the appeal papers filed by the Appellant on 20.05.2022, it was noticed that they had submitted Form DRC-03 showing payment of Rs.1,72,868/- towards pre-deposit in terms of Section 35F of the Central Excise Act, 1944.

7. The Board had consequent to the rollout of the Integrated CBIC-GST Portal, vide Circular No.1070/3/2019-CX dated 24.06.2019, directed that from 1st July, 2019 onwards, a new revised procedure has to be followed by the taxpayers for making arrears of Central Excise & Service Tax payments through portal "CBIC (ICEGATE) E-payment". Subsequently, the CBIC issued Instruction dated 28.10.2022, from F. No. CBIC-240137/14/2022-Service Tax Section-CBEC wherein it was instructed that the payments made through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under Section 35F of the CEA 1944 and Section 83 of the Finance Act, 1994.



8. The Appellant were, therefore, called upon vide letter dated 29.11.2022 and 15.12.2022 to make the pre-deposit in terms of Board's Circular No. 1070/3/2019-CX dated 24.06.2019 and submit the document evidencing payment, however, the Appellant have failed to furnish proof of revised payment of pre-deposit of 7.5% of the duty made. Therefore, the appeal filed by the Appellant was dismissed for non-compliance of the provisions of Section- 35F of the Central Excise Act, 1944 vide Order-in-Appeal No. AHM-EXCUS-001-APP-166/2022-23 dated. 22.02.2023.

9. Subsequently, the Appellant vide application dated requested for restoration of Appeal No. GAPPL/COM/STP/1419/2022. The Appellant have also submitted the copy of pre-deposit challan dated 13.03.2023 showing payment of Rs.1,72,868/- being paid in terms of Board's Circular No.1070/3/2019-CX dated 24.06.2019.

10. The Appellant have submitted that if the appeal is dismissed for non-removal of office objection, the same can be restored to the same file after removal of office objection. In this regard, the Appellant have relied on the judgment of the Hon'ble Gujarat High Court in the case of *Hussain Haji Harun vs UOI* reported at 1995 (77) ELT 803 and in the case of *Scan Computer Consultancy vs UOI* reported at 2006 (204) ELT 43.

11. In the case of *Scan Computer Consultancy vs UOI* reported at 2006 (204) ELT 43(Guj), the Hon'ble High Court of Gujarat had held that :

"10. Applying the aforesaid ratio to the facts of the case, it is apparent that Commissioner (Appeals) committed an error in law when he came to the conclusion that he could not restore the appeal and the only remedy was by way of preferring appeal before higher forum. Needless to state that, by mere default in making deposit as directed, the appellant does not stand to gain anything and only delays his right to have his case adjudicated. Nor does such a delay in making pre-deposit cause any prejudice to the revenue, in absence of any stay operating in favour of



the petitioner. It cannot be lost sight of that right of appeal is statutorily granted and it is hedged in by the requirement to make pre-deposit as directed by the appellate authority, as being a condition for hearing of the appeal on merits. However, that condition cannot be used by the appellate authority for the purposes of denying an appellant the right of adjudication which is otherwise statutorily granted. In a given case, even if no pre-deposit is made, the appeal may not be heard, but having dismissed the appeal for non-compliance of pre-deposit does not permit the appellate authority to refuse to restore the appeal upon compliance being shown.

11. In these circumstances, the two communications dated 10-1-2006 (Annexure "E") and dated 20-1-2006 (Annexure "G") are hereby quashed and set aside. In the circumstances, the Commissioner (Appeals) is directed to hear and decide afresh the Miscellaneous Application for restoration of appeal in accordance with law after giving reasonable opportunity of hearing to the petitioner."

12. In view of the above judgment of the Hon'ble High Court of Gujarat, the application filed by the Appellant for restoration of appeal is allowed by the Commissioner (Appeal), CGST, Ahmedabad and Appeal No. GAPPL/COM/STP/1419/2022 restored.

13. Personal hearing in the case was held on 21.11.2023. Shri Nirav Shah, Advocate, appeared for personal hearing on behalf of the Appellant and reiterated the contents of the written submission. He stated that the order is non speaking. The order needs to be remanded back.

14. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, 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 demand of service tax along with interest and penalty and confirming and order for recovery of wrongly availed cenvat credit along with interest and



penalty, in the facts and circumstance of the case, is legal and proper or otherwise.

15. At the outset, I observed that the demands of Service Tax confirmed by the adjudicating authority pertaining to the period of April-2015 to June-2017 represent three different issues. **(1)** As a result of reconciliation of books of account with ST-3 returns which resulted short payment of Rs. 5,34,521/-; **(2)** on account of non-payment of service tax on amount of Rs. 1,86,812/- received as Commission income; and **(3)** non-payment of service tax on amount of Rs. 13,87,103/- received as Misc. Service Charge income. All the aforesaid three demands of Service Tax were confirmed by the adjudicating authority without discussing the matter and simply held that the same is confirmed. I also observed that the wrongly availed cenvat credit confirmed by the adjudicating authority on the ground that the assessee failed to submit the proper duty paying documents on which the cenvat credit is to be taken as prescribed under Rule 9(1) of the Cenvat Credit Rules, 2004. I find that the contention of the Appellant in this regard made by them in their defence reply to the show cause notice has not been considered by the adjudicating authority and even not discussed by the adjudicating authority.

16. I find that, the Appellant have contended that they were paying service tax under Rule 6(7) of the Service Tax Rules, 1994 and therefore, the commission income is already tax paid. The Appellant also contended that the present case is directly covered by the order of the Commissioner (Appeal) in the demand for earlier period in respect of their own case. I find that the adjudicating authority has confirmed the demand of service tax as it demanded in the show cause notice issued based on observation of the audit officers, without giving any findings as mentioned supra. I find that the contention of the Appellant have not been considered and discussed by the adjudicating authority, though they argued before him. The Rule 6(7) of the Service Tax Rules states as under

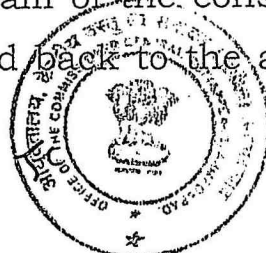


“Rule 6(7) The person liable for paying the service tax in relation to the services of booking of tickets for travel by air] provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of [0.7%] of the basic fare in the case of domestic bookings, and at the rate of [1.4%] of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax [at the rate of specified in Section 66B of Chapter V of the Act and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.”

16.1 As per the above provision of Rule 6(7) of the Service Tax Rules, 1994, once the Appellant have opted to pay an amount calculated at the rate of basic fare towards the discharge of service tax liability, question of making service tax payment at the rate specified in Section 66B of Chapter V of the Finance Act, 1994 does not arise. It is the arguments of the Appellant that they were paying service tax under Rule 6(7) of the Service Tax Rules, 1994. In other word, they have opted at the rate specified in the said rule. The adjudicating authority has neither considered the submission made by the Appellant in this regard nor verified the factual details in the impugned order. If the contention of the Appellant found to be in order, they are not liable to pay the service tax of Rs. 1,86,812/- on income booked as Commission Income. All the above mentioned facts need to be verified by the adjudicating authority which was not done by them while passing the impugned order. Thus, I find that the impugned order passed by the adjudicating authority is non-speaking order and not proper and correct.

17. Considering the facts of the case as discussed hereinabove and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating



authority (i) to consider the claim of the Appellant that there is no reconciliation difference in respect of Service Tax paid and payable on Air Travel Agent Service and Tour Operator Service; (ii) to consider the claim of the Appellant for exemption from Service Tax on Commission income on the basis of the contention that they have opted for Rule 6(7) of the Service Tax Rules, 1994, in the same matter OIA No. AHM-EXCUS-001-APP-01-2019-20 dated 16.04.2019 has already been passed by the Commissioner (Appeals), CGST, Ahmedabad for the earlier period in respect of the same Appellant; (iii) to consider the claim of the Appellant that they have acted as Pure Agent in respect of Misc. Service Charge income; and (iv) to consider the claim of the Appellant that they have all required duty paying documents on which they have availed cenvat credit after verification of the documents submitted by the Appellant, and decide the case afresh by following the principles of natural justice accordingly.

18. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

19. अपील कर्ता 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.



ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 07.12.2023

Attested


(अनंद कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद



By RPAD / SPEED POST

To,
M/s. Third Rock Trips,
C-1/264, Phase-II,
GIDC, Vatva,
Ahmedabad.

Appellant

The Assistant Commissioner,
Central GST, Division-III(Vatva-II),
Ahmedabad South.

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, Central GST Division-III, (Vatva-II), Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (For uploading the OIA)
- 5) Guard File
- 6) PA file



