



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240164SW0000222EC2

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4469/2023 / 232 -36
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-218/2023-24 and 29.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. 276/WS08/AC/KSZ/2022-23 dated 17.02.2023 passed by The Assistant Commissioner, CGST, Divison-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Travel Way, C-901, Richmond Grand, Near Torrent Power Sub-Station, Prahladnagar Road, Makarba, 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :-

(क) 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।

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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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.

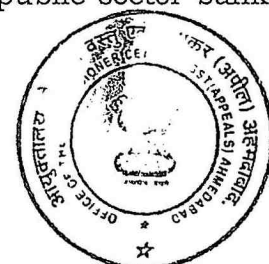
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup>floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -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 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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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. Travel Way, C-901, Richmond Grand, Near Torrent Power Sub-station, Prahladnagar Road, Makarba, Ahmedabad- 380 015 (hereinafter referred to as "*the appellant*") against Order-in-Original No. 276/WS08/AC/KSZ/2022-23 dated 17.02.2023 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division IV, 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. AKEPM0766FSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the gross value declared by them in their Income Tax Return ITR/TDS Returns. Accordingly, it appeared that the appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1 Subsequently, the Appellant were issued Show Cause Notice No.CGST/WS08/Range-I/O&A/TPDN(15-16)AKEPM0766FSD001/2020-21 dated 05.04.2021 wherein:

- a) Demand and recover an amount of Rs. 3,47,944/- under proviso to Sub Section (1) of Section 73 of the Act 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 and 78 of the Act.

2.2 The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein:

- a) The demand of service tax amounting to Rs. 3,47,944/- was confirmed under section 73(1) of the Act by invoking extended period of 5 years along with interest under section 75 of the Act.
- b) Penalty amounting to Rs. 10,000/- was imposed under section 77 (2) of the Act for failure to assess the tax due on the service provided and furnish a return in the format of ST-3 return within the specified time.
- c) Penalty amounting to Rs. 3,47,944/- was imposed under 78 of the Act.

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

- That the appellant are proprietorship firm of Ms. Maître M. Maheshwari and were providing Air Travel Agent service.
- That the SCN and OIO issued on presumption on third party data provided by Income Tax department without any independent inquiry or verification of the data before issuance of SCN and confirming the demand.
- That the calculation of service tax is erroneous as the SCN presumes entire receipt as consideration of Taxable service which is against the principle of law settled by the Hon'ble





Supreme Court in the case of Larsen and Tourbo as reported in 2014 (3030 ELT 3 (SC).

- The appellant submit that the applicable service tax is specified under Rule 6(7) of Service Tax Rules 1994 at the rate of notified rates (0.7% for the Domestic Air Booking and @ 1.4 % for International Air Bookings).
- That the appellant submit that the demand of Service Tax in the SCN is at normal rate of 14.5 % on total received, which is not sustainable.
- That the appellant submit that the demand of Service Tax under “Business Auxiliary Service” is not justified when the appellant provided services as “Air Travel Agents”. They provided service to clients for “booking passage by air” as the Air Travel Agents and not to IATA agents as their “Commission Agents”. The appellant does not become service provider when they have received discounted tickets from other IATA agents for there own business requirement. Service Tax labiality cannot be fastened on “Air Travel Agents” for purchasing discounted tickets.
- Whenever the appellant has received discounted tickets from the other IATA Agents etc. Such other IATA agents have charged service tax from them as per prevailing law. 2019 (25)GSTL 460 (Tri-Ahmd.)-CST, Ahmedabad vs. OM Air Travles Pvt. Ltd. has settled this position.
- The appellant submit that the other IATA agents who provided appellant discounted tickets have already paid service tax on entire taxable value of air ticket.



- The entire amount received has be treated as “Cum-tax-value”, even if service tax is held as payable. Service tax demand is required to be re-calculated on this aspect.
- The demand of Service tax is not sustainable on time limitation for issuance of SCN dated 05.04.2021 for F.Y. 2015-16.
- That the appellant further submit that when the service tax is not demandable when exemption is available penalty cannot be imposed.

4. Personal hearing in the case was held on 22.12.2023. Shri P.P.Jadeja, Chartered Accountant appeared on behalf of the appellant for personal hearing and reiterated the written submission. He stated that his client is an Air Treavel Agents. The service turnover is less that threshold limit. In ITR total income has been shown as service turnover while it includes the ticket price also. Benefit of Notification 33/2012-ST dated 20.06.2012 is available to the client.

5. The appellant has submitted following copy of documents (1) ITR for F.Y. 2014-15 & 2015-16 (2) P & L Account and Balance Sheet for F.Y. 2014-15 & 2015-16 (3) Trial Balance Sheet and ledger account for F.Y. 2014-15 & 2015-16.

6. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month



thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 1 day and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 F.Y. 2015-16.

8. I find that in the SCN in question, the demand has been raised for the period F.Y 2015-16 based on the Income Tax Returns filed by the appellant and the impugned order was issued without conducting personal hearing i.e. **ex-parte**.

9. I also find that, the appellant have contended that transaction of sale/purchase of the Air Tickets are not within the purview of Service Tax levy. They also contended that Rule 6(7) of Service Tax 1994 was available to the appellant before 01.07.2017 considering the income received as commission income, however as the amount of "Commission" was within exemption limit of Rs. 10 lacs allowed to small service providers under Notification No. 33/2012-ST dated 20<sup>th</sup> June, 2012. 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."*

10. I also find that the appellant submitted various documents in support of their claim for exemption from service tax, which was not produced by them before the adjudicating authority and first time submitted at appeal stage. In this regard, I am of the considered view that the appellant cannot seek to establish their eligibility for exemption at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption.

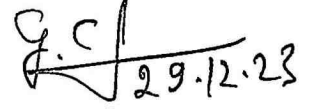
11. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant is directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.



12. 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.

13. 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 : 29.12.2023.



Attested



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

**BY RPAD/ SPEED POST**

To  
M/s. Travel Way,  
C-901, Richmond Grand,  
Near Torrent Power Sub-station  
Prahladnagar Road, Makarba,  
Ahmedabad - 380 015.

Appellant

The Assistant Commissioner  
CGST & Central Excise  
Division VIII, Ahmedabad.

Respondent

**Copy to :**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Assistant Commissioner, CGST, Division VIII, Ahmedabad South
4. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad South (for uploading the OIA).
- ✓ 5. Guard File.
6. P.A. File.



