



सत्यमेव जयते

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

By SPEED POST

DIN:- 20240264SW000000B4B7

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3257/2023 1629 - 1629
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-258/2023-24 and 09.02.2024
(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	13.02.2024
(ङ)	Arising out of Order-In-Original No. 75/CGST/Ahmedabad South/JC/SR/2022-23 dated 13.01.2023 passed by The Joint Commissioner, Central GST & Excise, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Toll Global Forwarding India Pvt. Ltd., B-1008, Infinity Tower, Corporate Road, Near Prahaladpur, 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:

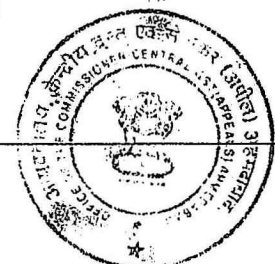
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 :-

(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 प्रकिया 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 उपयोग शुल्क कच्चे माल पर 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.

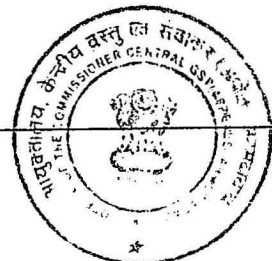
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 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 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.

(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 Toll Global Forwarding India Pvt. Ltd., B-1008, Infinity Tower, Corporate Road, Near Prahaladpur, Ahmedabad-380015 (hereinafter referred to as "the appellant") against Order-in-Original No. 75/CGST/Ahmedabad South/JC/SR/2022-23 dated 13.01.2023 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST & Excise, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is engaged in providing services under the category of "Clearing and Forwarding Agent services, Steamer Agent Service and Goods Transport Agency" and holding Service Tax Registration Number AACCD1028QSD006.

2.1 Audit of the records of the appellant was carried out by the departmental audit officers for the period from 2014-15 to 2016-17 and a Final Audit Report No. 1567/2018-19-Service Tax was issued on 04.04.2019 -by the Assistant Commissioner, Circle-IV, Central Tax, Ahmedabad. Subsequently, a Show Cause Notice was issued to the said appellant by the Additional Commissioner, CGST, Audit, Ahmedabad vide F.No. VI/1(b)/Tech-11/5CN/Toll Global/2019-20 dated 20.06.2019 for demand and recovery of the amounts on the following revenue paras raised during the course of audit.

- (i) **Revenue Para 1 :-** Short payment of service tax noticed on reconciliation of income.
- (ii) **Revenue Para 2:-** Non-payment of service tax on legal service.
- (iii) **Revenue Para 3:-** Wrong availment of Cenvat Credit on invoices issued to other unit.
- (iv) **Revenue Para 4:-** Wrong availment of Cenvat Credit without proper documents.



(v) **Revenue Para 5:-** Non-submission of documents.

2.2 After reviewing the defense reply submitted by the appellant, the adjudicating authority issued Order-in-Original (OIO) No. 21/CX-I/Ahmd/ADC/MA/2019 dated 14.02.2020 confirming the demand of service tax and disallowing the Cenvat Credit with interest and penalty proposed in the SCN dated 20.06.2019. However, the adjudicating authority dropped the demand of Rs. 3,107/- towards service tax demand on legal service under RCM. Aggrieved with the demand order the appellant filed appeal before Commissioner (Appeals) and vide OIA No. AHM-EXCUS-001-APP-64/2020-21 dated 29.12.2020 the appellate authority remanded back the matter for fresh consideration. In view of the directions of the Commissioner (Appeals), CGST, Appeal Commissionerate, the matter was re-adjudicated vide OIO NO. 75/CGST/Ahmd-South/JC/SR/2022-23 dated 27.01.202, (hereinafter referred to as “*the impugned order*”) wherein:-

- a) The demand of service tax amounting to Rs. 1,26,81,462/- on the differential income not disclosed in ST-3 returns and was confirmed under section 73(1) of the Act by invoking extended period along with interest under section 75 of the Act.
- b) Wrongly availed Cenvat Credit amounting to Rs. 1,07,413/- was disallowed and ordered to recovery of the same in terms of proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules, by invoking extended period along with interest under section 75 of the Act.
- c) Wrongly availed Cenvat Credit amounting to Rs. 39,13,604/- was disallowed and ordered to recovery of the same in terms of proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules, by invoking extended period along with interest under section 75 of the Act.



- d) Penalty amounting to Rs. 1,21,600/- was imposed under section 77(1)(c) of the Act.
- e) Penalty amounting to Rs. 1,26,81,462/- was imposed under section 78) of the Act.
- f) Penalty amounting to Rs. 40,21,017/- was imposed under section 78 of the Act read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004.

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:

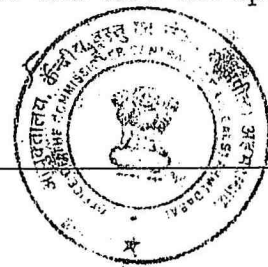
- The impugned order has been passed ignoring the facts place on records.
- The impugned order has been passed in gross violation of principal of natural justice and with pre-determined mindset.
- The appellant is not liable to pay service tax on differential income noticed on reconciliation of income as per books of Account.
- The respondent is unjustified in disallowing Cenvat Credit amounting to Rs. 1,07,413/- on invoices issued to other states.
- The respondent cannot disallow Cenvat credit on invoices amounting to Rs. 39,13,604/- based on sample documents submitted.
- Demand is time barred and extended period of limitation is completely unwarranted.
- Interest is not liable to be paid by the appellant.
- Penalty under Section 77 and 78 of the Act should not be imposed on the appellant.

4. Personal Hearing in the case was held on 11.12.2023. Ms. Veerta Bhatia, Chartered Accountant, appeared on behalf of appellant. She stated that their matter is factual. The matter was



earlier remanded back to adjudicating authority. However due to Covid time period, the appellant could not properly explain the matter to the adjudicating authority. So the matter may be remanded back to the adjudicating authority.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and submission made at the time of personal hearing. First I take up the matter in respect to the demand of Service Tax Rs. 1,26,81,462/- against the appellant pertaining to the differential income for the years 2014-15, 2015-16 & 2016-17. The demand is based on the difference in the trial balance and the service tax returns. On going through the submission of the appellant I find that the appellant have admitted that they had not reported certain turnovers in service tax return filed during the relevant period. I find that the income which was not shown in the ST-3 return by the appellant was Rs. 8,80,20,578/-. The appellant contends that out of the differential income Rs. 8,80,20,578/-, income of Rs. 8,65,11,139/- pertains to transactions not subject to service tax. The appellant submitted that the turnover reported in the service tax returns during the relevant period only included taxable turnover. They inadvertently omitted to report certain key turnovers in the service tax returns, including exempt services/services covered under the negative list, services qualified as exports, and services to SEZ units, totaling Rs. 4,76,74,466/-; Rs. 3,20,50,835/-; and Rs. 42,27,312/- respectively. In respect to the remaining amount of Rs. 15,09,439/- out of impugned value Rs. 8,80,20,578/- the appellant informed vide their submission Service Tax Rs. 2,18,469/- along with interest was paid through DRC-03 dated 21.04.2020. This needs to be examined by the adjudicating authority. In respect to the issue related to payment of service tax on the taxable service amounting to Rs. 4,76,74,466/-, Rs. 3,20,50,835/-, and Rs. 42,27,312/-, the adjudicating authority in the absence of substantial evidence provided by the appellant did not accept the



appellant's claim regarding the non-taxability of services, export of services, or exemptions and abatements for the amounts not declared in the service tax returns.

5.1. The appellant contends that due to COVID time period, they could not properly explain the matter to the adjudicating authority. To ensure justice, it is suggested that the issue may be remanded back to the adjudicating authority for reevaluation, following the principles of natural justice.

6. As regards to the confirmation of demand in respect of Cenvat Credit amounting to Rs. 1,07,413/- by the appellant on the basis of invoices issued to the office of the appellant situated at Gurgaon and Mumbai or on the basis of invoices not bearing the service tax registration numbers, the appellant were granted last opportunity to produce relevant documents such as input invoices and ledgers to satisfy the adjudicating authority for verification vide the OIA No. AHM-EXCUS-001-APP-64/2020-21 dated 29.12.2020. However, the appellant did not produce before the adjudicating authority that they had availed Cenvat Credit on invoices which contain name/address of their registered premises or service tax registration number of the appellant. Accordingly, I find that the matter needs to be remand back to conduct necessary verification.

7. As regards to the confirmation of demand in respect of availment of Cenvat Credit amounting to Rs. 39,13,604/- by the appellant without proper documents, the adjudicating authority reiterated their earlier finding that the appellant had taken CENVAT credit without providing proper documentation, amounting to Rs. 39,13,604/-. The authority cited rules stating that CENVAT credit must be based on valid documents, and the burden of proof lies with the provider of output service. Despite the appellant's submission of invoices, they failed to provide proof of the eligibility of the credit for services utilized at their Ahmedabad office. The



adjudicating authority mentioned that the jurisdictional Assistant Commissioner found discrepancies in the invoices and lack of records regarding payment to service providers. I find that the appellant failed to provide enough documentary evidences before the adjudicating authority, particularly regarding whether the appellant had paid the service providers as indicated in the invoices. The appellant contends that due to COVID time period, the appellant could not properly explain the matter to the adjudicating authority. To ensure justice, it is suggested that the issue may be remanded back to the adjudicating authority for reevaluation, following the principles of natural justice. The appellant are instructed to present relevant documents supporting their exemption claims for further examination by the adjudicating authority.

8. In view of the above discussion, the appeal is allowed by way of remand

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

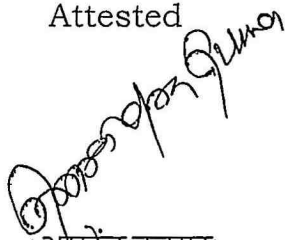
The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : ०९ .02.2024

Attested



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



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- 4) The Deputy/Assistant Commissioner (RRA), Ahmedabad South
- 5) The Assistant Commissioner (Appeal System), CGST, Ahmedabad South (For uploading the OIA)
- ~~6) Guard File~~
- 7) PA file

