



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:- 20240364SW0000018945

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4285/2023 1755353
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-294/2023-24 and 29.02.2024
(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	06.03.2024
(ङ)	Arising out of Order-In-Original No. 56/AC/Div-I/HKB/2023-24 dated 24.04.2023 passed by The Assistant Commissioner, Central GST, Division-I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Jain Travels, Prop. Nileshkumar Kailashchandra Jain, F-6, Ami Akhand Anand Society, CTM, Amraiwadi, 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 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 मामले 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 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 अपीलो 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. Jain Travels, Prop. Nileshkumar Kailashchandra Jain, F-6, Ami Akhand Anand Society, CTM, Amraiwadi, Ahmedabad-380015 (hereinafter referred to as "*the appellant*") against Order-in-Original No. 56/AC/Div-I/HKB/2022-23 dated 24.04.2023(hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant did not obtain service tax registration or pay service tax despite earning substantial service income as per information received from Income Tax Department. They are holding PAN No. AHBPJ5688D. Despite reminders and requests for documentation, the appellant failed to submit required details. The nature of their activities falls under taxable services as per the Finance Act, 1994, and they were alleged to have evaded service tax intentionally. The service tax liability for the financial year 2015-16 was calculated based on income reported by the Income Tax Department. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 11,61,270/- during the F.Y. 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax Registration nor paid the applicable service tax thereon. The appellant were called upon to submit required documents for the said period. However, the appellant had not responded to the letters issued by the department. As per the information/data received by the Income Tax Department, the appellant's service tax amount, totaling Rs. 1,74,190/-, was subject to recovery along with interest and penalties. Furthermore, the appellant failed to comply with various provisions of the Finance Act, 1994, including registration, record-keeping, furnishing information and documents,



and electronic tax payment, resulting in additional penalties under Sections 77(1) and 78 of the Finance Act, 1994.

2.1 Subsequently, the appellant were issued Show Cause Notice bearing F.No. V/15-174/Div.-I/Nileshkumar Kailashchandra Jain/21-22, wherein:

- a) Demand and recover an amount of Rs. 1,74,190/- for the period Financial Years 2015-16 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(1) and 78 of the Act.

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

- a) The demand of service tax amounting to Rs. 1,74,190/- was confirmed during the F.Y. 2014-15 under section 73(1) of the Act by invoking extended period along with interest under section 75 of the Act.
- b) Penalty amounting to Rs. 10,000/- was imposed under Section 77(1) of the Act.
- c) Penalty amounting to Rs. 1,74,190/- 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 on the following grounds:

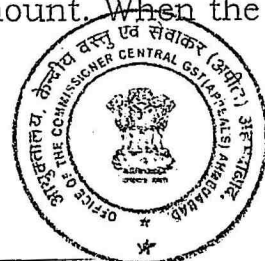
- That the appellant was engaged in the business of air travel agent.
- An air travel agent may purchase the ticket on behalf of his customer from a registered IATA Agent. The agent so





purchasing a ticket becomes the sub-agent of IATA registered agent and receives commission only from the IATA registered agent and not from the airlines. Only the IATA agent will receive the commission from the airlines. Hence, the commission received by the sub-agent from the IATA registered agent is not liable to service tax as an Air Travel Agents Services.

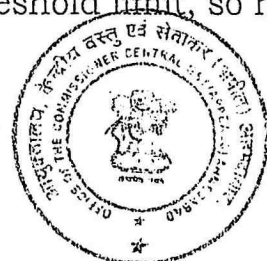
- The appellant submits that the appellant is purchasing ticket on discounted price from main IATA agent and thereafter they are selling at a higher price to the Customer, therefore, the trade margin is not taxable.
- He further submits that the appellant's services classifiable as an air travel agent service and on the issue of commission received from main IATA agent, and selling the tickets to the customer is not taxable as held in the case of CCE, Goa v. Zauri Travel Corporation vide Order dated 18-7-2013.
- Further, the appellant submits that purchasing a ticket on discounted price and selling them to customer is a trading activity hence the trade margin will not be taxable.
- The appellant relies on the case laws of Om Air Travel Pvt. Ltd. 2019(25)GSTL460 (Tri.-Anand).
- Thus, on the basis of supra submission, the appellant wants to submit that the business activity carried out by the appellant was of trading activity in nature and so the appellant was not liable for service tax thereon.
- The appellant hereby request you to drop the demand of service tax in the interest of law and justice.
- The appellant wants to draw attention towards the fact that the appellant was air travel agent as a sub-agent of IATA and earning commission income from such business activity. In respect thereof, the appellant wants to submit that the principal IATA was paying service tax on gross amount. The commission income was part of such gross amount. When the



principal IATA was paying service tax on gross amount, the appellant being sub-agent of such principal was not liable on commission income which was part of gross amount.

- It would be double taxation if the sub-agent was liable for service tax. So, the appellant wants to submit that the appellant being sub-agent of principal IATA, was not liable service tax on commission income
- The appellant submitted that the impugned income of Rs. 11,61,270/- as taken for the liability of service tax upon the appellant by the adjudicating authority includes interest income of Rs. 190150/- which is non-taxable as per the 66D of Finance Act, 1994.
- If the value of interest income has been deducted as per Supra, the taxable amount comes to Rs.9,71,120/- which is below threshold limit and so the appellant was not liable for service tax thereon.
- The threshold exemption, which was available to all service providers vide Notification No. 6/2005-ST dated 1.3.2005 as amended from time to time and last amended vide Notification No. 33/2012- ST dated 20.6.2012 (and new Notification No. 25/2012-ST dated 20.6.2012) has been superseded by Notification No. 33/2012 dated 20/06/2012. Since this exemption is available to the Service Provider only therefore only his transactions related to provision of service are eligible for the purpose of threshold exemption benefit.

4. The appellant were given opportunities for Personal Hearing on 13.02.2024. Shri Vipul Khandhar, Chartered Accountants, appeared for personal hearing. They stated that the client is air travel agent, but not registered with IATA (International Air Travel Association), so he cannot be liable for service tax as per the judgment of Om Air Travel Private Limited. His income is below the threshold limit, so he is not liable for service tax.



5. 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 Financial Years 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant.

7. As regard, the contention of the appellant that the impugned order was issued without conducting personal hearing i.e. **ex-parte**.

8. I find that the appellant have stated that they are sub-agent of the IATA agent. IATA agent takes the ticket from Airlines and the appellant purchases the ticket from the IATA agent and sells the ticket on higher value to the buyers. In this regard the appellant have placed reliance on the judgment passed by the CESTAT, Ahmedabad bench in the Case of Commissioner of Service Tax, Ahmedabad vs. Om Air Travels Pvt.

9. Further I find that as per the Profit a Loss Account the gross revenue received by the appellant during the F.Y. 2015-16 is as under:-

Sr. No.	Particulars	Amount (in Rs.)
1.	By Commission Income	6,20,993/-
2.	By Other Income	3,50,127/-
3.	By Interest Income	1,90,150/-
Total Income		11,61,270/-

From the P & L Account it is found that service turnover is Rs. 6,20,993/-. The appellant have claimed the benefit of threshold





exemption. For Threshold exemption the taxable service turnover should be below 10 lakhs in previous year. As per the P & L Account for the F.Y. 2014-15, the gross revenue received by the appellant is as under:

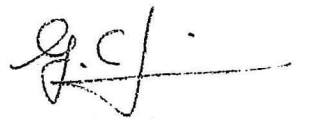
Sr. No.	Particulars	Amount (in Rs.)
1.	By Commission Income	6,07,770/-
2.	By Other Income	3,50,560/-
3.	By Interest Income	1,32,978/-
Total Income		10,91,308/-

Hence, total service turnover is only Rs. 6,07,770/-. The taxable turnover is below threshold. Hence the appellant are eligible for threshold exemption as per Notification No. 33/2012-ST dated 20.06.2012. Since the tax is not applicable the question of interest and penalty also does not arise.

10. In view of the above discussion, the impugned order is set aside and the appeal is allowed.

11. 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.

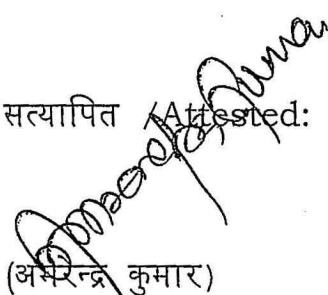


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 29.02.2024

सत्यापित / Attested:



(अनन्द कुमार)

अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

**By RPAD / SPEED POST**

To,  
M/s. Jain Travels,  
Prop. Nileshkumar Kailashchandra Jain,  
F-6, Ami Akhand Anand Society,  
CTM, Amraiwadi, Ahmedabad-380015

**Copy to :**

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Deputy/Assistant Commissioner, CGST, Division I, Ahmedabad South
- 4) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- ~~5) Guard File~~
- 6) PA file

