



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240364SW0000666C10

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STP/4292/2023/uu96 - 4500 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date | AHM-EXCUS-001-APP-327/2023-24 and 20.03.2024 |
| (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 | 21.03.2024 |
| (ङ) | Arising out of Order-In-Original No. CGST-VI/DEM-450/DAYDEE/AC/DAP/2022-23 dated 28.03.2023 passed by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South. | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s KAYDEE CARGO (Prop - Priyanka J Shah), 41, Kaycrest, Near Parimal Garden, C.G. Road, Ahmedabad-380006 |

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 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 उपयोग शुल्क के 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.

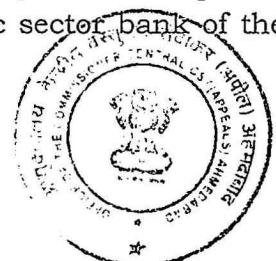
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 Kaydee Cargo, Proprietor of Priyanka J. Shah, 41, Kaycrest, Near Parimal Garden, C.G. Road, Ahmedabad-380006 (hereinafter referred to as "*the appellant*") against Order in Original No. CGST-VI/Dem-450/Kaydee/AC/DAP/2022-23 dated 28.03.2023 [hereinafter referred to as "*the impugned order*"] passed by the Assistant Commissioner, CGST, Division -VI, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant having service tax registration No. APDPS9044nsd001 are found under discrepancy between the gross value of services declared in Income Tax and TDS returns compared to the Service Tax returns for the financial year 2015-16. The Central Board of Direct Taxes (CBDT) forwarded this analysis to the Central Board of Indirect Taxes and Customs (CBIC). It appears that the appellant may have mis-declared the gross value of services in the Service Tax Returns, resulting in underpayment or non-payment of applicable service tax. Due to the appellant's failure to provide required details, the service tax liability is being calculated accordingly.

| Sr. No. | Period (F.Y.) | Taxable Value i.e. value difference in sales of service as per ITR/TDS & STR (in Rs.) | Rate of Service Tax incl. Cess | Service Tax payable (in Rs.) |
|---------|---------------|---|--------------------------------|------------------------------|
| 1. | 2015-16 | 63,56,169 | 14.5% | 9,21,644 |

3. The appellant were issued Show Cause Notice No. V/WS06/O & A/SCN-24/2021-22 dated 12.04.2021 proposing to demand and recover Service Tax amounting to Rs. 9,21,644/- for the period F.Y. 2015-16, under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 77(1)(c) and Section 78 of the Finance Act, 1994.

4. The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of



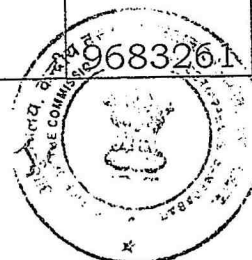
Service Tax amounting to Rs. 9,21,644/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period F.Y. 2015-16. Further (i) Penalty of Rs. 9,21,644/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- under Section 77(1)(c) of the Finance Act, 1994.

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- That the appellant submits that they have given explanation about difference in income as per profit and loss account and as per service tax return. The appellant has rendered certain services on which service tax is to be paid by receiver of services.
- The order dt. 28.03.2023 is passed without considering explanation of the appellant.
- That the appellant are carrying on business of clearing & forwarding agent in the name of M/s. Kaydee Cargo. The appellant had filed return of income for 31.03.2016 on 04.07.2016 vide receipt no. 233183830040716 showing total income of Rs. 9,07,640/-.
- That the appellant are maintaining regular books of accounts. As per the notice, there is a difference in appellant's income which is summarized as under:

Table-A

| Particulars | Sales of Service (Amount in Rs.) | Rent Income (Amount in Rs.) | Total (in Rs.) |
|---|-------------------------------------|--------------------------------|----------------|
| As per P & L Account and Return of Income | 7965636 | 108151 | 8073787 |
| As per Service Tax Return | 1501323 | 108151 | 1609474 |
| As per 26AS | | | |



| Particulars | Name of Recipients | Amount (in Rs.) | Amount (in Rs.) |
|---|---|-----------------|-----------------|
| Total Amount as per P & L Account | | | 7965636 |
| Less: Service Tax on Freight to be paid by receiver of services | Jyothy Labs Ltd. | 4994460 | 6244961 |
| | Jyothy consumer Products Marketing Ltd. | 1250501 | |
| Net Income | | | 1720675 |
| Less: No Service tax Payable on local freight being less than Rs. 750/- | Sahil Enterpirse | 87500 | 167400 |
| | Snehil | 79900 | |
| Amount liable for Service Tax | | | 1553275 |
| Amount on which service tax is paid | | | 1501323 |
| Difference | | | 51952 |

- In connection with above bills of 2 parties, the appellant have submitted that they had rendered services of freight. Service tax on freight charges was payable by service receiver. They rely on rule 2(1)(d)(i)(B) of service tax rules, 1994 read with Notification No. 30/2012-ST. They also rely on commentary at page no. C-256 of book 'Service Tax Law & Practice' by Rohini Aggarawal.
- As per the said notification, in case of freight service tax was to be paid by service receiver when service receiver is a factory / body corporate. The appellant have therefore not paid service tax on freight charges.

6. Personal Hearing in the case was held on 07.03.2024. Shri Bhadresh Shah, Chartered Accountant appeared for Personal Hearing on behalf of the appellant. He informed that vide email dated 28.02.24 they have sent 72 page additional submission along with evidences. He said that the client is transporter and the recipient being corporate



entity and be liable to pay Service tax under RCM. No liability on their client.

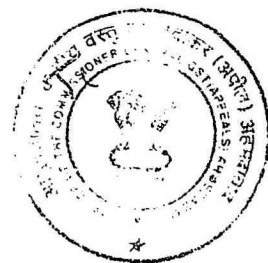
7. In their additional submission the Appellant have submitted following documents (A) copy of ST-3 for F.Y. 2015-16, (B) copy of Form 26AS certificate for F.Y. 2015-16, (C) Copy of Annual Bank Statement, (D) copy of Audit Report for the F.Y. 2015-16, (E) copy of Reconciliation statement, (F) copy of sample invoices.

8. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.9,21,644/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 along with interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

9. Upon reviewing the appellant's written submission during the filing of Appeal Memonadum, Oral submission and additional submission filed during the time of personal hearing, it is observed that the appellant are engaged in the business of clearing and forwarding service.

9.2 To qualify as a Goods Transport Agency (GTA) Service provider it is essential to issue a consignment note. The definition of GTA is presented below:

“goods transport agency” means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called; Thus, it can be seen that issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a Goods Transport Agency.



The appellant have not produced any consignment notes instead, they have produced sample invoice cum debit note. Whether the same can be considered as Consignment Note or not, need to be verified. In the service tax return they are declaring their service as Clearing and Forwarding Agent service and accepting their liability in Forward Charge Mechanism. While before this office they are claiming to be GTA and stating the recipient is liable to pay service tax. On the other hand the impugned order is passed ex-parte. So the adjudicating authority has not examined this aspect at all. Hence it is in the fitness of the thing that the matter is remanded back for fresh adjudication following the principles of natural justice.

10. In view of the above discussion and findings the order is set aside and the appeal is allowed by way of remand.

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.



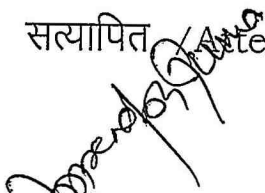
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: १४th March, 2024



सत्यापित / Attested:



(अनुराग कुमार)

अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s Kaydee Cargo,
Proprietor of Priyanka J. Shah,
41, Kaycrest, Near Parimal Garden,
C.G. Road, Ahmedabad-380006

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 VI, Ahmedabad South
- 4) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- ~~5) Guard File~~
- 6) PA file

