



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 : 20230764SW000000E3E6

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3217/2023 13909 - 13
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-65/2023-24
दिनांक Date : 21-07-2023 जारी करने की तारीख Date of Issue 25.07.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-235/AC-KSZ/2022-23 दिनांक: 06.01.2023 passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Gujarat Tourism Opportunity Limited
602-604, 6th Floor, Skyline,
Near Shalin Complex, Sector-11,
Gandhinagar - 382011

कोई व्यक्ति 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 :

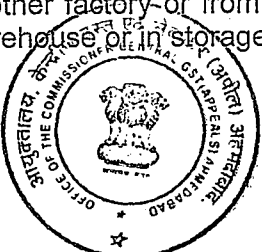
Revision application to Government of India:

(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.



- 2) 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।
- 3) 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.

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

- 4) 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।

- 5) 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.

- 6) 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.

- 7) 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।

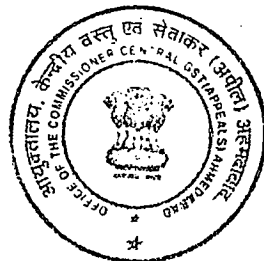
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- 8) 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 2ndमाला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद-380004
- 9) 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 शुल्क अधिनियम 1970 यथासंशोधित 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 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.

68ण 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:

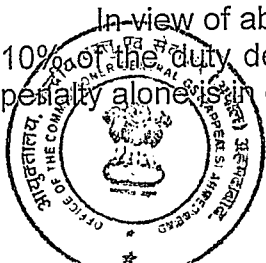
(lxx) amount determined under Section 11 D;

(lxxi) amount of erroneous Cenvat Credit taken;

(lxxii) 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. Gujarat Tourism Opportunity Limited, 602-504, 6th Floor, Skyline, Near Shalin Complex, Sector-11, Gandhinagar - 382011 (hereinafter referred to as "the appellant") against Order-in-Original No. WS07/O&A/OIO-235/AC-KSZ/2022-23 dated 06.01.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

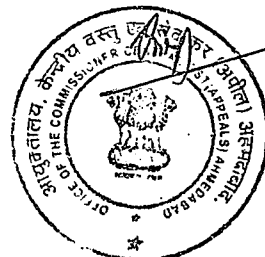
2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AADCG0728MSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 21,77,192/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS07/O&A/SCN-518/2020-21/REG/2020 dated 28.12.2020 demanding Service Tax amounting to Rs. 3,15,707/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.

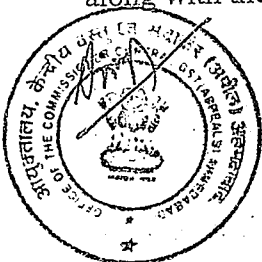
2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,15,707/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further, Penalty of Rs. 3,15,707/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal. The appellant in their appeal memorandum and their additional written submission dated 05.07.2023, inter alia, submitted as under:

- The appellant are engaged in providing services under category of Management or business consultant service and holding service tax registration No. AADCG0728MSD001 and have filed regularly all the service tax returns and have made timely payment of Service Tax.



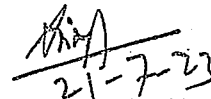
- During the audit of the financial records of the appellant by the audit office for the period October-2013 to June-2017. A revenue para for Rs. 4,02,484/- on account of short payment of service tax during the period from FY 2014-15 to FY 2016-17 has been raised in the FAR dated 25.04.2019. The said para was due to reconciliation between the income as per the books of accounts and the income as per the service tax returns.
- Subsequently, the department have issued a Show Cause Notice dated 12.06.2019 for demand of Service Tax of Rs. 4,02,484/-.
- On launching of legacy dispute resolution scheme namely Sabka Vishwas Scheme-2019 by the government, the appellant have applied for the said matter in the scheme of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of Litigation wherein Show Cause Notice involving duty pending.
- The appellant filed electronically a declaration under the said scheme of SVLDRS on the portal on 16.12.2019 for the demand towards Service Tax amounting to Rs. 4,02,484/-.
- At the end of the scheme, the Designated Committee in Form SVLDRS 4 issued to the appellant with Discharge Certificate for full and final settlement of tax dues on 13.01.2020.
- Thus, the appellant had discharged the required dues in accordance with SVLDRS and no recovery of Service Tax shall be made in respect of Show Cause Notice No. 60/2019-20 dated 12.06.2019.
- The department again on receipt of the data from income tax department, served a show cause notice demanding service tax of Rs. 3,15,707/- for the FY 2015-16 on the reconciliation difference. The appellant could not respond the same as their office was shifted from Ahmbedabad to Gandhinagar. They have never received the physical notices issued by the department.
- On non-receipt of any reply to the show cause notice and various notices issued by the department, the adjudicating authority has passed the impugned order, ex-parte and confirmed the demand of Rs. 3,15,707/- for the FY 2015-16.
- The appellant submitted that the demand for the said financial year, which was included in the SVS Scheme already paid / settled by the appellant under SVS Scheme. Therefore, they are not liable to pay service tax on the same issue once again.
- The appellant submitted SVLDRS-1, 3 and 4 and SCN No. 60/2019-20 dated 12.06.2019 along with their submission.



7.3 In view of the above, I am of the considered view that when the audit of the financial records of the appellant has already been conducted for the period under dispute i.e. FY 2015-16 and show cause notice for the FY 2014-15 to FY 2016-17 issued on the basis of the Final Audit Report has been settled by the appellant in SVLDRS Scheme, as enumerated above, the present show cause notice dated 28.12.2020 is not legally sustainable and is deemed to be concluded. The impugned order confirming the demand of service tax on the basis of present show cause notice dated 28.12.2020 is also required to be set aside. Since the demand of service tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.


8. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

9. 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.


(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 21-7-23

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



Appellant

By RPAD / SPEED POST

To,
M/s. Gujarat Tourism Opportunity Limited,
602-604, 6th Floor, Skyline,
Near Shalin Complex, Sector-11,
Gandhinagar - 382011

Respondent

The Assistant Commissioner,
CGST, Division-VII,
Ahmedabad South

Copy to :

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

