



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
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240564SW000000E0EC

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4901/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-13/2024-25 and 26.04.2024
(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	03.05.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem-251/SUGAN/AC/DAP/2022-23 dated 27.01.2023 passed by The Assistant Commissioner, CGST, DIV-VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Sugan Express Private Limited, A/601, Shahibaug Green, Opp Dolphin Health Club, B/H Bombay Garage, Shahibaug, Ahmedabad-380004

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:

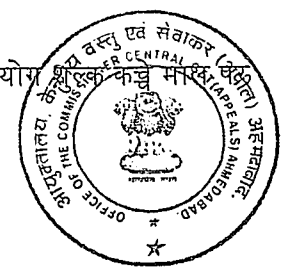
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 के लिए 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 रूपये 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 2ndfloor, 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 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।

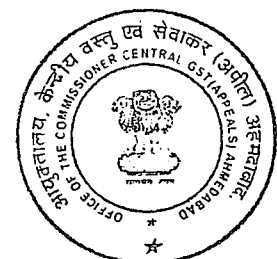
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Sugan Express Private Limited, A/601, Shahibaug Green, Opp. Dolphin Club, B/h Bombay Garage, Shahibaug, Ahmedabad-380004 (hereinafter referred to as the “*appellant*”) against Order-in-Original No. CGST-VI/Dem-251/Sugan/AC/DAP/2022-23 dated 27.01.2023 (hereinafter referred to as “*the impugned order*”) passed by the Assistant Commissioner Division-VI, Central GST, Ahmedabad South (hereinafter referred to as “*the adjudicating authority*”).

2. Briefly stated, the facts of the case are that the appellant is registered as a service provider with Service Tax Registration No. AFCS7398JST001. Despite earning substantial service income during the F.Y. 2015-16, the appellant did not furnish the necessary details. Consequently, the department calculated their service tax liability to be Rs 13,11,334/- based on information obtained from the Income Tax Department.

2.1 Subsequently, the appellant were issued Show Cause Notice bearing File No. V/WS06/O&A/SCN-322/2020-21 dated 26.12.2020 wherein:

- a) Demand and recover an amount of Rs. 13,11,334/- during the F.Y. 2015-16 under proviso to Sub Section (1) of Section 73 of the Act read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020) promulgated on 30.03.2020 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)(c), Section 77(2) and Section 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. 13,11,334/- was

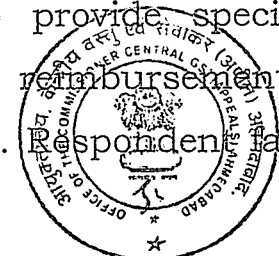


confirmed under section 73(1) of the Act by invoking extended period along with interest under section 75 of the Act.

- b) Penalty amounting to Rs. 10,000/- was imposed under section 77(1)(c) of the Act.
- c) Penalty amounting to Rs. 13,11,334/- 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:-

- Ld. Respondent grievously erred in law as well as facts while passing the impugned Order confirming the demand of Service Tax of Rs. 13,11,334/- on the differential value taken from the Income Tax Department. Ld. Respondent failed to appreciate that Service Tax cannot be demanded on the basis of numbers appearing in the Income Tax Return.
- Ld. Respondent failed to appreciate that the demand cannot be made u/s 73(1) of the Act without conducting proper examination of underlying facts and conducting appropriate inquiry. Ld. Respondent failed to appreciate that revenue had not discharged its onus contemplated in section 73 of the Act. Ld. Respondent was not justified in adjudicating the Notice issued on the strength of incorrect and misleading facts inasmuch as the Notice claimed to have issued the Letter to the Appellant.
- Ld. Respondent failed to appreciate that the value of receipted charges were to be excluded from the value of taxable services in terms of section 67.
- Ld. Respondent was not justified in finding in the impugned Order that the Appellant had failed to provide specified documents and thus failed to prove the reimbursement of expenses in the capacity of pure agent. Ld. Respondent failed



to appreciate that all the records were available with the Preventive wing of the Department and which fact was brought to the notice of Id. Respondent during the course of adjudication. Ld. Respondent ought to have inquired with the respective section of the Department.

- Ld. Respondent travelled beyond his scope and jurisdiction while passing the impugned Order on the aspects of valuation which were not in dispute in the Notice. Ld. Respondent ought to have found that the Appellant was required to show causes as to differences in value of taxable services which burden the Appellant had appropriately and sufficiently shifted on to the revenue in his submission whereas the veracity of the said clarifications and submissions made by the Appellant with respect to the aspects of pure agency and deduction as per provisions of Service Tax (Determination of Value) Rules, 2006 cannot be challenged during the course of the proceeding initiated by the Notice.
- Ld. Respondent failed to appreciate that the Appellant was never been served with a notice to reject the value of taxable services determined by the Appellant under self- assessment and thus the value determined by the Appellant cannot be questions by way of the Notice failed to invoke provisions of Service Tax (Determination of Value) Rules, 2006.
- Ld. Respondent ought to have dropped the Notice on a premise that a comprehensive investigation was already conducted and concluded by the Preventive section of the department and therefore there was no proper jurisdiction to re-assess or re-open the case which was already closed by the Preventive section.
- Ld. Respondent failed to appreciate that the Notice was barred by limitation of normal period in terms of section 73(1) of the Act and extended period was not invocable.



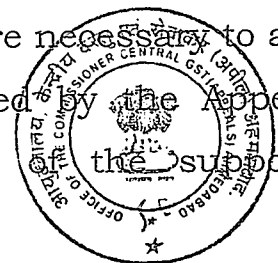
4. Personal hearing in the case was held on 09.04.2024. Shri Rahul Patel, Chartered Accountant appeared for PH on behalf of the appellant. He stated that the preventive section already conducted the inquiry and not issued any SCN. This exercise was a duplication of sort. He reiterated the contents of the written submission and requested to allow their appeal.

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 Year 2015-16.

6. The present matter pertains to an appeal challenging the order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 13,11,334/- on the differential value as per the data received from Income Tax Department. The appellant submitted that they were engaged into the business of postal management and providing services of dispatching of correspondence on behalf of the clients.

7. The appellant asserts that the value of receipted charges should have been excluded from the value of taxable service in terms of Section 67 of the Act. They claimed that the adjudicating authority wrongly concluded that the Appellant failed to provide documents to prove reimbursement of expenses for postal stamp in the capacity of Pure agent. The appellant claimed the difference was due to reimbursement of postal expenses, which they argue shouldn't be considered as income from taxable services.

8. Considering the arguments presented by the appellant, it's evident that further examination and inquiry are necessary to arrive at a just and fair decision. The issues raised by the Appellant require detailed consideration and analysis of the supporting

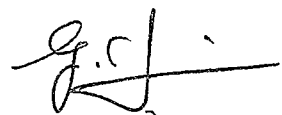


documents. Therefore, it is hereby ordered to remand back the case for fresh adjudication to the adjudicating authority. The adjudicating authority is directed to conduct a thorough examination, consider all relevant documents, and provide reasoned findings on each contention raised by the Appellant.

9. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

10. 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.

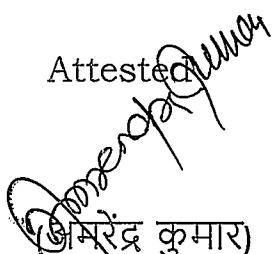


ज्ञानचंद जैन

आयुक्त (अपील्स)

Date : 26.04.2024

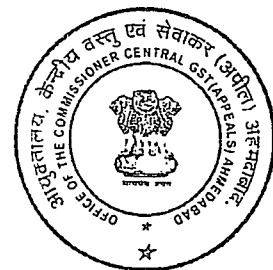
Attested



(अनंद कुमार)
अधीक्षक (अपील्स)

सी. जी. एस. टी, अहमदाबाद

BY RPAD/ SPEED POST



To

M/s. Sugan Express Private Limited,

A/601, Shahibaug Green,

Opp. Dolphin Club,

B/h Bombay Garage, Shahibaug, Ahmedabad-380004

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division VI, Ahmedabad South
4. The Superintendent (Appeals) Ahmedabad (for uploading the OIA).
5. Guard File.
6. P.A. File.