

27 FEB 2024

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आवक रजिस्टर क्रमांक



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
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240264SW000000E722

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4014/2023 / 17200
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-223/23-24 and 07.02.2024
(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. CGST/WT07/HG/859/2022-23 dated 13.2.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	J. P. Foods G-1, Navkar Apartment Near Udgam School, Thaltej Ahmedabad - 380054

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 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 रूपये 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 संपोषित 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 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

M/s. J. P. Foods, G-1, Navkar Apartment, Near Udgam School, Thaltej, Ahmedabad- 380054(hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/859/2022-23 dated 13.02.2023 (in short '*impugned order*'), passed by the Deputy Commissioner, Central GST, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant was rendering taxable service and were holding Service Tax Registration No. AAHFJ9468LSD001.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, substantial difference was noticed in the value declared as Sales / Gross Receiptsin their ITR viz-a-viz the gross value shown in the ST-3 Return. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability Rs.99,185/- was, therefore quantified on the differential value of Rs.6,84,036/-.

Table-A

F.Y.	Sale of service as per ITR	Value in STR	Higher Value difference	Service tax rate	Service tax payable
2015-16	51,50,311/-	44,56,275/-	6,84,036/-	15%	99,185/-

2.1 A Show Cause Notice (SCN) No. CGST/AR-II/Div-VII/A'bad-North/TPD-Regd/53/2020-21 dated 23.10.2020 was issued to the appellant proposing recovery of service tax amount of Rs.99,185/- not paid on the value of income received during the F.Y. 2015-16, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994 was proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.99,185/- was confirmed alongwith interest. Penalty of Rs. 500/- each was imposed under Section 77(1) & Section 77(2). Penalty of Rs.99,185/- was also imposed under Section 78.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The appellant is engaged in providing Restaurant Service, takeaway, packed lunch etc. from its restaurant situated at SEASON 9"103,104, Shivalik Yash, Pallav Cross Roads, 132ft Ring RoadNaranpura, Ahmedabad, Ahmedabad, Gujarat, 380013. However, the notices were issued to office address i.e. G-1, Navkar Appartment, Nr Udgam School,Thaltej, Ahmedabad-380054. But we have already changed our officeaddress to 103,104, Shivalik Yash, Pallav Cross Roads, 132ft RingRoad Naranpura, Ahmedabad, Ahmedabad, Gujarat, 380013 i.e. place of restaurant from



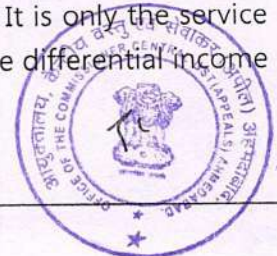
the date we registered under GST. Therefore, were unaware of such notices hence no reply could be filed.

- The difference of turnover of Rs. 6,84,036/- was nothingbut value of sale of food sold through takeaway facility provided by theappellant. And it has already clarified by Circular no. 334/3/2011-TRU dated28/02/2011 that the Service Tax levy was intended to be confined tothe value of services contained in the composite contract and was notto cover either the meal portion of the composite contract ormere sale of food by way of pickup or home delivery. The Adjudicating authority however failed to consider this fact and erred in law by exercising extended periodof limitation since there was no deliberation on part of appellantwhich amount to suppression of fact with intent to evade payment ofservice tax.
- The adjudicating authority also erred in law by imposing penalty u/s78 of Finance Act, 1994 since there was no suppression of fact withintent to evade payment of service tax.

4. Personal hearing in the appeal matter was held on 16.01.2024. Shri Nirav Patel, Chartered Accountant appeared on behalf of the appellant for personal hearing. He reiterated the grounds of appeal and stated that the differential value of service is pertaining to sale of food parcels / take aways which is not covered in restaurant services.

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 **Rs.99,185/-** 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 **F.Y 2015-16**.

6. The appellant has claimed that the above demand is arising due to differential income earned from the sale of food parcels/ take aways which is not a taxable service. They also submitted ITR, Balance Sheet for the F.Y. 2015-16. In the Trading Account, it is observed that the appellant has shown the income of Rs. 51,50,312/- as sale account out of which Rs. 43,06,536/- is shown as sales cash/credit card and Rs.8,43,776/- is shown as Sales Parcel, Takeaway & Delivery. It is observed that the said income is also reflected in their ITR. As the appellant has already discharged the tax liability on the income of Rs. 44,66,275/- demand was raised on the differential income. I find that out of total income of Rs. 51,50,312/- shown in sales account, Rs. 43,06,536/- is shown as sales cash/credit card and Rs.8,43,776/- is shown as Sales Parcel, Takeaway & Delivery. The appellant has submitted the invoices to substantiate their claim that the differential income of Rs. 6,84,036/- was in respect of the sale of food parcels/ take aways. I have gone through these invoices and find that they charged only for food and no service element was involved. Hence, I find that on the income of Rs. 6,84,036/- there is no tax liability as it pertains to sale of food. As the levy of service tax is on the service, it shall not include the food sold/served in a restaurant or home delivered. It is only the service element which is charged and not the amount billed for food. As the differential income



is from sale of food, the appellant shall not be liable to discharge any service tax on such income.

7. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of **Rs. 99,185/-** alongwith interest and penalties.

8. अपीलकर्ता 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.

J.C.
07.02.24
(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 07.2.2024

Attested

Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. J.P. Foods,
G-1, Navkar Apartment,
Near Udgam School, Thaltej,
Ahmedabad- 380054

Appellant

The Deputy Commissioner
CGST, Division-VII,
Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Ahmedabad (Appeals) for uploading the OIA
4. Guard File.

