

	::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	
	द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in	

DIN20221264SX000000FF1B

अपील / फाइल संख्या / Appeal / File No. V2/04/BVR/2022	मूल आदेश सं / O.I.O. No. BHV-EXCUS-000-JC-LD-002- 2021-22	दिनांक / Date 26-11-2021
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अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-124-2022

आदेश का दिनांक /

Date of Order:
26.12.2022

जारी करने की तारीख /

Date of issue: 28.12.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/ Joint/ Deputy/ Assistant Commissioner, Central Excise/ ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता/ प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Shallesh Kumar Govindram Kachhela, C-13 Municipal Shopping Centre, Ganga Jaliya Talav, Bhavnagar

इस आदेश (अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बंधित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ को, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को जानी चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

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.5000/-, Rs.10,000/- where amount of duty demand/ interest/ penalty/ refund is upto 5 Lac., 5 Lac to 10,00,000/- and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

B). अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 8 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सूचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधे पर या बाद में पारित किए गए हैं। /
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 - का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दंग से किया जाना चाहिये। इस तथ्य के हवाते हुए भी को लिखा पदों कार्य से बचने के लिए यथास्थित अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाते हैं। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

उच्च अपीलीय प्राधिकारी को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



Shri Ashishkumar S. Kachhela on behalf of M/s Shaileshkumar Govindram Kachhela, C-13 Municipal Shopping Centre, Ganga Jaliya Talav, Bhavnagar has filed Appeal No. V2/4/BVR/2022 (*hereinafter referred to as "Appellant"*) against Order-in-Original No. BHV-EXCUS-000-JC-LD-002-2021-22 dated 26.11.2021 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central CGST, Bhavnagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Income Tax Department shared data/details i.e. Income Tax returns/ Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, regarding income of various persons (income tax assesseees) who declared in their Income Tax Returns for the Financial Year 2014-15 to have earned income by providing services classified under various Service Sections. It appeared that the Appellant had not obtained Service Tax Registration under the Finance Act, 1994 as amended (*hereinafter referred to as "the Act"*). The jurisdictional range Superintendent issued a letter dated 16.07.2020 to the Appellant calling for information/documents viz. copies of I.T. Returns, Form 26AS, Balance sheet (including P&L Account) Vat/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15. No reply/ response was received from the Appellant to the Registered AD letter/email dated 16.07.2020.

3. Hence in absence of the information/documents, jurisdictional range Superintendent determined service tax payable by the Appellant on the basis of data/details provided by the Income Tax Department available on record and a Show Cause Notice dated 26.08.2020 was issued to the Appellant calling to show cause as to why Service Tax amount of Rs. 51,45,454/- should not be demanded and recovered from them under Section 73(1) of the Service Tax Act, 1994 (*hereinafter referred to as "the Act"*) along with interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), Section 78, Section 77(2) and Section 77(1)(c) of the Act.

4. The above Show Cause Notice was adjudicated by the Adjudicating Authority vide impugned order by confirming the Service Tax demand of Rs.2,58,020/- under Section 73(1) of the Act along with interest under Section 75 *ibid* and Service Tax demand of Rs.48,87,433/- out of the total demand of Rs.51,45,454/- was dropped being income from sale of goods. Penalties of



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Rs. 5,000/-, Rs. 2,58,020/-, Rs. 5,000/- & Rs. 5,000/- were imposed on the Appellant under Section 77(1)(a), Section 78, Section 77(2), and Section 77(1)(c), respectively of the Act.

5. Being aggrieved with the impugned order, the Appellant has preferred the present appeal on various grounds, *inter alia*, as under:-

(i) The Appellant company is no more in existence after sad demise of its proprietor M/s. Shaileshkumar Govindram Kachhela. The facts of the sad demise of proprietor of the Appellant was brought to the notice of the judicating authority and a copy of death certificate was submitted to him.

(ii) That the impugned order is liable to be set aside since the show cause notice was issued on 26.08.2020 for period 01.04.2014 to 31.03.2015 which is time-barred.

(iii) They have only trading business of mobile and mobile accessories and they had never cater any mobile repairing services. The amount of Rs. 20,87,545/- stated in impugned order to be income from service is actually the amount received by them against the schemes floated by the mobile companies. Under the schemes the companies decided for sale of mobiles at cheaper rates and accordingly, the retailers received the balance amounts from the companies, otherwise, the same was to be received from the customers. Thus, the said amount received was against goods received from the mobile companies. The details received from the Income Tax department were only the trading amount and not value of service as can be verified from Form 26AS where no amount was deducted in any service under Section 194C, 194H, 194I and 194J. It could also be verified from their VAT/Sales Tax Returns Form-205.

(iv) The department has only assumed that the incentive or trade discount was received in lieu of any other business auxiliary service whereas the fact is that the various schemes were maintained by the Mobile companies as per market segments and their sales target which is not under the control of the Appellant. They had not provided any services to any one and they had only trading business of mobile phones and accessories. The credit note issued by M/s. Prime Services is the amount of trade discount that was decided by the Mobile company which was supposed to be collected by the Appellant from customer and due to scheme the same was received from the company.



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(v) The Appellant was a proprietorship firm and proprietor Shri Shaileshkumar Govindram Kachhela expired by covid-19 on 06.05.2021 and this fact was submitted to the department on 28.10.2021 by Shri Ashish Shaileshkumar Kachhela son of the Appellant who also submitted that the shop belongs to the Appellant was sold to meet with the treatment cost of Covid-19. That since the demand under extended period which is not tenable, the penalties also not survive and are liable to be set aside. They rely on the Hon'ble Madras High Court judgment in the case of Regional Testing Laboratory Vs. CESTAT, Chennai reported at 2021 (55) GSTL 514 (Mad.)

6. Personal Hearing in the matter was granted to the Appellant on 18.10.2022, 03.11.2022, 29.11.2022 and 29.12.2022. However, no one turned up for hearing and hence I proceed to decide the case on merits based on records available in the Appeal memorandum.

7. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and oral submissions made by the Appellant. The issue to be decided in the present case is whether the impugned order confirming demand of Rs. 2,58,020/- and imposing penalties of Rs. 2,73,020/- on the Appellant is correct, legal and proper or not.

8. On perusal of records, it is observed that based on data/details received from Income Tax Department, Show Cause Notice was issued to the Appellant for demanding Service Tax of Rs. 51,45,454/- for the services provided by the Appellant. The adjudicating authority confirmed demand of Rs. 2,58,020/- and imposed various penalties under Section 77 & 78 of the Act. The Adjudicating authority dropped the demand of Rs. 48,87,433/- out of total demand of Rs. 51,45,454/- as the same was received by the Appellant from sale of goods i.e. Trading of goods and not from any type of services which is under Negative list of services as per sub-clause (e) of Section 66D of the Act.

8.1 The Appellant has, *inter alia*, contended that proceedings against dead person cannot continue under the law in view of the settled position of law and hence the order under consideration is liable to be set aside.

9. I have gone through the memorandum of appeal and documents submitted thereunder. In the said documents, a copy of death certificate of Shri Shaileshkumar Govindram Kachhela has been submitted by the Appellant which is issued by the Department of Health and family welfare, Government of Gujarat.



Shri

9.1 As recorded in the impugned order, the Appellant was a proprietary concern and Shri Shaileshkumar Govindram Kachhela is the proprietor of the firm. I find that there is no machinery provisions for proceedings against dead proprietor of a proprietorship firm in the Act or Rules made thereunder and this situation is not similar to a case where a company is dissolved. I am, therefore, of the opinion that when proprietor of a proprietorship firm expires, it is not permissible to continue with recovery proceedings. I rely on the judgement passed by the Hon'ble Supreme Court in the case of Shabina Abraham reported as 2015 (322) ELT 372 (S.C.), wherein it has been held that,

"25. A reading of the ratio of the majority decision contained in Murarilal's case (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows :-

"It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock, etc., and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit."

26. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).

27. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11A read with the definition of "assessee" earlier in this judgment.

28. Learned counsel for the revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person" as under :-

"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central



engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, *Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore*, AIR 1967 SC 135 at pages 140, 141 para 18 : (1966) Suppl. SCR 419 at 429 A-B, C.A. *Abraham v. The Income-Tax Officer, Kottayam & Another*, AIR 1961 SC 609 at 612 para 6 : (1961) 2 SCR 765 at page 771, *The State of Tamil Nadu v. M.K. Kandaswami & Others*, AIR 1975 SC 1871 (para 26) : (1975) 4 SCC 745 (para 26), *Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others*, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different - it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion."

(Emphasis supplied)

9.2 I also find that in a similar case, the Hon'ble CESTAT, Chandigarh in the case of *M. K. Enterprises* reported as 2016 (45) S.T.R. 141 (Tri. - Chan.), has held as detailed below:

"6. Further, I find that the issue has already been settled in the Hon'ble Apex Court in the case of *Shabina Abraham* (supra) which has been followed by this Tribunal in the case of *Sagar Engineering Works and Bharti Mulchand Cheeda* (supra) wherein this Tribunal has observed as under :

6. We find that the learned Commissioner was aware of the fact while passing the impugned order that the proprietor of *M/s. Canan Domestic Appliances* had already expired (on 12-11-2003 whereas the impugned order was passed on 29-9-2006. In fact this case was remanded by the Tribunal vide its order dated 15-2-2005 setting aside the order of the Commissioner of Central Excise and remanding the matter for de novo adjudication. Even at that time the proprietor was no more, but in spite of this, the learned Commissioner passed the impugned order against the dead person who was the sole proprietor of *M/s. Canan and Domestic Appliances*, which is against the settled position of law as held by various decisions of the Tribunal cited above. We are of the considered opinion that once the factum of death of the sole proprietor has come to the knowledge of the learned commissioner, the learned commissioner should have dropped the proceedings rather than passing the impugned order, but he chose to pass the impugned order against the dead person, which is not sustainable in law.

7. Therefore, I hold that no proceedings are sustainable against the appellant in the light of the above judicial pronouncement. In these circumstances, the appeal filed by the appellant is disposed of with consequential relief, if any."

(Emphasis supplied)

10. By respectfully following the above said case laws, I hold that proceedings against the Appellant stand abated on account of death of late *Shri Shaileshkumar Govindram Kachhela*. Accordingly, I allow the appeal of the Appellant and set aside the impugned order so far as it relates to the proceedings against the Appellant.



Am

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the Appellant stand disposed off in above terms.

सत्यापित / Attested

[Signature]

Superintendent
Central GST (Appeals)
Rajkot

By RPAD

[Signature]
28-12-2022

(शिव प्रताप सिंह)/(Shiv Pratap Singh),
आयुक्त (अपील)/Commissioner (Appeals)

<p>To, Shri Ashishkumar S. Kachhela on behalf of M/s Shaileshkumar Govindram Kachhela, C-13 Municipal Shopping Centre, Ganga Jalya Talav, Bhavnagar</p>	<p>सेवा में, मेसर्स शैलेशकुमार गोविंदराम काछेला, C- १३, म्यूनिसिपल शॉपिंग सेंटर, गंगा जलिया तालाब, भावनगर।</p>
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर, भावनगर आयुक्तालय, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

