



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN: 20231064SW000000B082

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2249 /2023-APPEAL / 7356
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-117/2023-24
दिनांक Date : 17-10-2023 जारी करने की तारीख Date of Issue 20.10.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/HG/900/2022-23 दिनांक:17.2.2023 ,
issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s.Paresh Prahladbhai Patel,14, Laxminagar Society,Near Krushnanagar
Society,Nava Wadaj, Ahmedabad - 380013

2. Respondent

The Assistant Commissioner, CGST Division-VII, Ahmedabad North,4th Floor,
Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 हानि कारखाने 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।

(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.



(क) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

(B) 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।

(c) 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.

(1) 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 भीतर गूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सवृत 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

(क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) 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 Appellate 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (रिस्ट्रेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

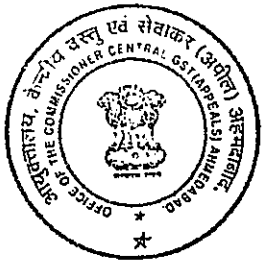
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

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. Paresh Prahladbhai Patel, 14, Laxminagar Society, Near Krushna Nagar Society, Nava Wadaj, Ahmedabad-380013 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT-7/HG/900/2022-23 dated 17.02.2023, (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service without obtaining registration.

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, it was noticed that the appellant in the ITR/Form-26 AS has shown income from sale of service on which service tax was not discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

Table-A

<i>F.Y.</i>	<i>Higher Value as per ITR/</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	36,83,008	14.5%	5,34,036

2.1 A Show Cause Notice (SCN) No. CGST/A'bad North/Div-VII/AR-III/TPD/Unreg 15-16/2020-21/167 dated 24.12.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.5,34,036/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a) & 77(1)(c), 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.5,34,036/- was confirmed alongwith interest. Penalty of Rs.10,000/- each under Section 77(1)(a), 77(1)(c) and Section 77(2) was imposed. Penalty of Rs. 5,34,036/- was also imposed under Section 78 of the F.A., 1994.

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

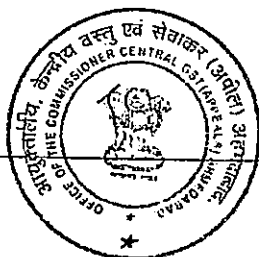
- The appellant is engaged in the business of providing sub-contract services of work contracts for the period mentioned in the OIO. Appellant has received consideration from following parties during the year:

Sr.No.	Name of main contractor	TAN	Amount
1	Bhavjibhai Haribhai Patel	AHMB06950G	50,100/-
2	Pramukh Projects	AHMP10367A	1,70,778/-
3	Shahpoorji Pallomji and Company Private Limited	AHMS17670C	1,89,963/-
4	Vandemataran Projects Private	AHM06553E	3,38,757/-



	Limited		
5	Yashnand Engineers and - Contractors	AHMY00066D	29,33,400/-
		TOTAL	36,82,998/-
	Excluding the services supplied to Yashnand Engineers & Contractors		7,49,598/-

- In terms of Entry 12(c) of the Notification No. 25/2012-ST dated 20.06.2012, the services provided to government for educational or clinical establishment is exempt from the service tax. Further Entry 29(h) of the said notification also exempts the sub-contractor's services provided to main contractor where services of main contractor are exempt. Appellant has provided sub-contract services to Yash Nand Engineers and Contractors in relation to construction of 'Model Ayurvedic College' at Kolawada Ta Dist. Gandhinagar. Copy of work order has been submitted. Services provided by the Yash Nand Engineers and Contractors are exempted as being rendered to Government and in relation to construction of educational establishment (Acceptance letter from government is also submitted). As services of main contractor are exempted vide entry 29(h) of mega exemption notification, services of appellant as a sub-contractor also becomes exempted.
- Excluding the receipt of above consideration as depicted under the table above the taxable amount shall come to Rs. 7,49,598/- which is well covered under the threshold limit of Rs. 10 lakhs as provided under the Section 93 and accordingly appellant is not liable for taking registration and paying service tax under the Finance Act.
- Interest is not payable and penalty should also not to be imposable when the demand of service tax is unsustainable.
4. Personal hearing in the case was held on 06.10.2023. Shri Aman Rathi, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum and requested to allow the appeal.
5. I have carefully gone through the facts of the case, grounds of appeal 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 F.Y 2015-16.
6. The adjudicating authority decided the case ex-parte as the appellant neither appeared for personal hearing nor filed any defence reply. The appellant however before the appellate authority have submitted a contract entered with Main Contractor M/s. Yand Nand Engineers and Contractors. They claim that the construction of 'Model Ayurvedic College at Kolawada, Gandhinagar', is exempted vide Entry No. 12(c) of the Notification No. 25/2012-ST dated 20.06.2012. As the above construction work was sub contracted to them by the main contractor, the same shall be exempted in terms of Entry No. 29(h) of mega exemption notification.



6.1 I have gone through the Contract dated 01.02.2015, entered with M/s. Yand Nand Engineers and Contractors. The contract is a labour work contract for Flooring Work (Fixing of vitrified tiles as per site details). They also submitted invoices raised to the main contractor, wherein they have raised bills for tiles as well as labour charges for fitting.

6.2 In terms of Clause (54) of Section 65B, the term Works Contract is defined as;

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

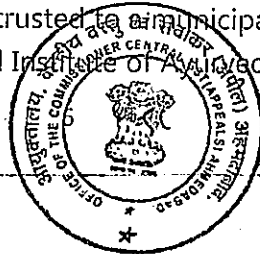
The works contract includes transfer of property in goods in the execution of such contract on which sales tax /VAT is paid. The appellant have rendered civil work/construction work alongwith material, hence would be covered under Works Contract service.

7. Further, I find that the construction carried at 'Model Ayurvedic College at Kolawada, Gandhinagar' was for Construction of Boys Hostel, P.G. Hostel Guest House and Training Research Centre Hostel and Girls Hostel at Auyurvedic Medical College Campus Kolawada-Phase-II. In terms of Entry No.12 (c) of the Notification No. 25/2012-ST dated 20.06.2012, the services provided to the government, local authority or a governmental authority by way of construction of a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment is exempted. Relevant extract of the notification is re-produced below:-

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

7.1 Further, "governmental authority" is defined in clause (s) of Para-2, as a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under Article 243W of the Constitution. I find that the State Model Institute of Ayurveda Sciences, Gandhinagar is an




institute run by the Directorate, Indian System of Medicine and Homoeopathy and is functioning under the Ministry of Health & Family Welfare, Government of Gujarat. Thus, I find that the services rendered by the main contractor were to a governmental authority hence exempted. When the services of the main contractor are exempted, similar services rendered by the sub-contractor to the main contractor shall also be exempted in terms of clause (h) of the above notification. In view of above, I find that the construction services rendered by the appellant to M/s. Yand Nand Engineers and Contractors shall be exempted. Accordingly, I find that the appellant the amount of Rs.29,33,400/- needs to be deducted from the gross taxable income of Rs. 36,83,008/-. After deduction the taxable income shall be Rs.7,49,608/- only. I, therefore, find that the appellant is liable to discharge the tax liability on the income of Rs.7,49,608/-.

8. Another contention made by the appellant is that since the remaining taxable income of Rs.7,49,608/- is less than Rs.10 lacs they are eligible for the threshold limit exemption. I find that Notification No.33/2012-ST dated 20.06.2012, exempts the taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under Section 66B of the said Finance Act. Further, this exemption shall apply where the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year. The appellant have submitted the ITR filed for the F.Y. 2014-15, wherein the gross receipts from sale of service is shown as Rs.5,97,600/-, which I find is below the threshold limit. Therefore, the appellant shall be eligible for above threshold limit exemption in the subsequent F.Y. 2015-16. In the F.Y. 2015-16, also the aggregate value of taxable services rendered by the appellant is Rs.7,49,608/- which is also below the threshold limit hence the appellant shall be eligible for exemption and therefore shall not be required to pay service tax on such value.

9. In light of above discussion, I find that the demand of Rs.5,34,036/- is not sustainable. When the demand does not sustain, question of interest and penalties also does not arise.

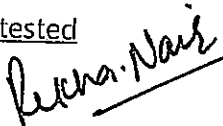
10. Accordingly, I set-aside the impugned order and allow the appeal of the appellant.

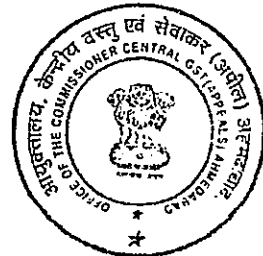
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(जी. री. जैन)
आयुक्त (अपीलिया)

Date: 17.10.2023

Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Paresh Prahladbhai Patel,
14-Laxminagar Society,
Near Krushna Nagar Society, Nava Wadaj,
Ahmedabad-380013

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 Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.

