



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231164SW000000FE9E

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2238/2023-APPEAL 18228
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-127/2023-24 and 27.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	17.11.2023
(ङ)	Arising out of Order-In-Original No. 243/AC/Demand/2022-23 dated 30.11.2022 passed by the Assistant Commissioner, CGST, Division-I, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Sheela Meghraj Dodwani, C/o. Amar Corporation, 1141, Soni Kancha, Dhanasuthar. Ni Pole, Relief Road, Ahmedabad - 380001

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:-

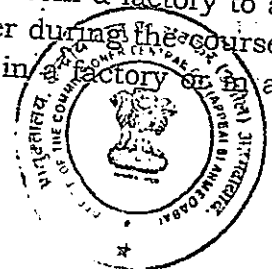
Revision application to Government of India:

(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 प्रकिया 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 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 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.

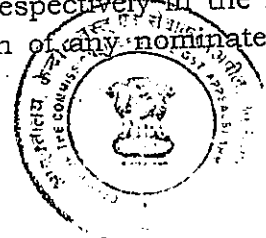
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd floor, 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 और 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।

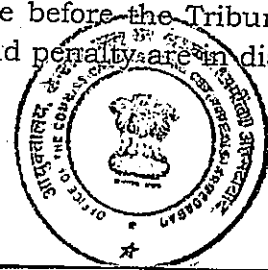
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Sheela Meghraj Dodwani, C/o Amar Corporation, 1141, Soni Khancha, Dhanasuthar Ni Pole, Relief Road, Ahmedabad -380001 (hereinafter referred to as "*the appellant*") have filed the present appeal against Order-in-Original No. 243/AC/DEMAND/2022-23 dated 30.11.2022 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad North (hereinafter referred to as "*the adjudicating authority*"). The appellant are holding PAN No. AEMPD2401C.

2. Briefly stated, the facts of the case are that on the basis of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant during the F.Y 2015-16 had reflected an income of Rs.16,37,520/- under the heads ("Sales / Gross Receipts from Services" in the ITR) filed before the Income Tax department on which no service tax was 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>Value as per ITR/P & L Account</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	16,37,520/-	14.5%	2,37,441/-

2.1 A Show Cause Notice No. STC/AR-1-15-16/UNREG/21-22/250 dated 23.04.2021 was issued proposing Service Tax demand amounting to Rs.2,37,441/- for the period F.Y 2015-16, under proviso to Section 73(1) of the Finance Act, 1994. Recovery of interest under Section 75 of the Finance Act, 1994 and imposition of penalties under Section 77(1) (a) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the Service Tax demand amounting to Rs. 2,37,441/- was confirmed along with Interest. Penalty of Rs. 2,37,441/- under Section 78 and Penalty of Rs. 10,000/- under Section 77(1)(a) of the Finance Act, 1994 was also imposed.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- They claim that during F.Y 2015-16, they had earned the income from sale of goods and not from sale of services but inadvertently was mentioned in the sale of services. A copy of Balance Sheet, P&L account, ITR, Form-26AS are submitted as evidence. Therefore, demand of Rs.2,37,441/- alongwith interest is not sustainable and liable to be quashed as no taxable service was provided by the Appellant.



➤ Imposition of penalty under Section 77(1) (a) and Section 78 as relevant provisions of Finance Act, 1994 are not applicable as the demand itself is void *ab initio*.

4. Personal hearing was held on 19.09.2023. Shri D.K. Sukhadia, Advocate appeared before the then appellate authority and handed over additional written submission alongwith the supporting documents. He reiterated the contents thereof and submitted that the appellant did not render any service and only carried out sale of goods for which VAT return was also filed. However, erroneously the income from sale of goods was wrongly shown in the ITR as income from sale of services. Though reply to SCN was submitted, the adjudicating authority did not consider the same and decided the matter ex-parte, confirming the demand. He therefore requested to set-aside the demand and allow the appeal.

4.1 Due to change in the appellate authority, fresh personal hearing was granted on 12.10.2023. Shri D.K. Sukhadia, Advocate, appeared before on behalf of the appellant and reiterated the submissions made before the then appellate authority and requested to set-aside the demand and allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, submissions made during earlier hearing 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. 2,37,441/- 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. It is observed that the entire demand has been raised on the basis of third party data. The income of Rs. 16,37,520/- earned by the appellant in the F.Y. 2015-16 and reflected under the head 'sale of service' in their ITR has been considered as a taxable income. The appellant, however, claim that during said period they were not engaged in any sale of services and that the income disputed is earned from sale of goods, which is not taxable income. The appellant submitted Balance Sheet, Profit & Loss Account, ITR, Form-26AS etc in support of their claim.

6.1 I have gone through the above documents submitted by the appellant and it is observed that the appellant in their Profit & Loss account have shown Sales income of Rs. 16,37,520/-. Bifurcation of said income is as under:-

Income Bifurcation	
Sales Account	Amount
Add.Tax 205%(Sales)	35,598.24
R. of (Sales)	1.19
Sales 15%	14,23,929.40
VAT 12.5% (Sales)	1,77,991.17
Total	16,37,520/-



6.2 I find that the above income is from sale of goods. However, this income figure was inadvertently reflected under sale of services in the ITR filed for said period. Now to examine whether said activity is taxable or not? It is observed that the term 'service' is defined under clause (44) as;

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) *an activity which constitutes merely,—*
- (i) *a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) *such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or*
 - (iii) *a transaction in money or actionable claim;*
- (b) *a provision of service by an employee to the employer in the course of or in relation to his employment;*
- (c) *fees taken in any Court or tribunal established under any law for the time being in force.*

6.3 Under Section 66B of the Finance Act, service tax shall be levied on the value of all services, other than those services specified in the negative list. Therefore, for levy of service tax an activity needs to qualify as a service first. The term 'service' is defined under Section 65B (44) which specifically exclude an activity of mere transfer of title in goods by way of sale. The activity of trading which is merely buying and selling of the goods is not a service. Moreover, levy of Sales Tax /VAT is on transactions in the nature of transfer of right to use the goods. So where VAT is levied, the question of service tax levy on the same does not arise. Further, negative list denotes the list of services on which no service tax is payable under Section 66B of the Finance Act, 1994. As per clause (e) of Section 66D, trading of goods is a service specified under the negative list. Accordingly, on the activity of trading of goods, no service tax is payable. Hence, I find that the disputed income cannot be treated as a taxable income as was earned from trading activity i.e. sale of goods on which appropriate VAT was paid.

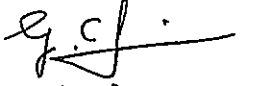
7. In view of the foregoing, I find that the appellant is not liable to pay service tax amounting to Rs. 2,37,441/- on the above disputed income.

8. When the demand does not sustain, question of interest and penalties also does not arise. Accordingly, I find that the impugned order confirming the service tax demand of Rs. 2,37,441/- alongwith interest and penalties is not sustainable on merits.



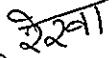
9. In view of the above discussion, I set-aside the impugned order and allow the appeal of the appellant.

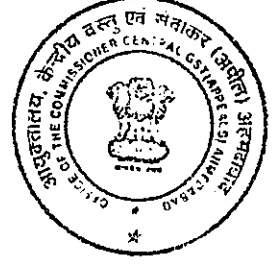
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(ज्ञानचंद जैन)
आयुक्त (अपील्स).

Date: 27.10.2023

Attested


(रेखा नायर)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Sheela Meghraj Dodwani,
C/o Amar Corporation,
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Relief Road,
Ahmedabad -380001

- Appellant

The Assistant Commissioner,
Central GST, Division I,
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.

