



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- टेलिफैक्स 07926305136



DIN: 20230964SW0000414964

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2236/2023-APPEAL /6301
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-108 /2023-24
दिनांक Date : 22-09-2023 जारी करने की तारीख Date of Issue 22.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/303/SHYAMAL/AM/2022-23
दिनांक: 24.11.2022 , issued by The Assistant Commissioner, CGST Division-VI,
Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
Shyamal Pareshbhai Munshi, H-302, Suncity, Bopal, Ahmedabad - 380058,

2. Respondent
The Assistant Commissioner, CGST Division-VI, Ahmedabad North, 7th Floor,
B.D. Patel House, Naranpura, Ahmedabad-380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति 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 :

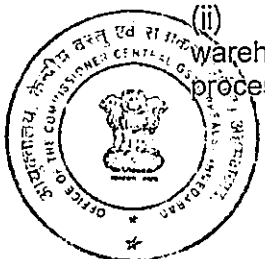
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 प्रकिया 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(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 दो सगय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हैं।

(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 दिनोंक से तीन गारा के भीतर मूल-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 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.

(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.

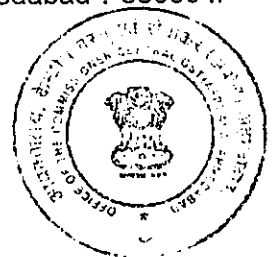
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal,

(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, Giridhar 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(Appel) 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 अनुसूची-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 (सिस्टेट), 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.

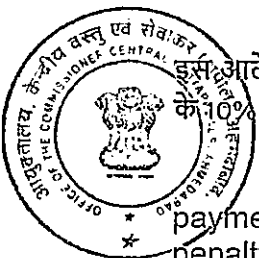
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

Shri Shyamal Pareshbhai Munshi, H-302, Suncity, Bopal, Ahmedabad -380058 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/303/Shyamal/AM/2022-23 dated 24.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the department.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 it was noticed that the appellant had earned substantial income however they neither obtained Service Tax Registration nor paid service tax on such income. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2015-16 and explain the reasons for non-payment of tax and provide the certified documentary evidences for the same. The appellant neither provided the documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the service tax was calculated on the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, on which no tax was paid. Details of taxable income and tax liability if furnished below:-

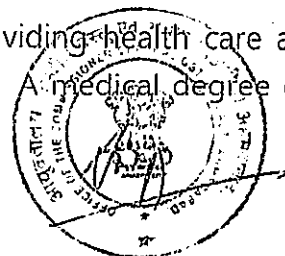
F.Y.	Sales /Gross Receipts from service (ITR)	S.Tax payable
2015-16	5,18,318	72,315

2.1 A Show Cause Notices (SCN) bearing No. GST-06/04-950/O&A/Shyamal/2020-21 dated 24.03.2021 was issued to the appellant proposing recovery of service tax of Rs.72,315/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994 respectively. Imposition of penalties under Section 76, Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the total service tax demand of Rs.72,315/- was confirmed alongwith interest. Penalty of Rs.20,000/- was imposed under Section 70, penalty of Rs.1,000/- was imposed under Section 77 and penalty of Rs.72,315/- was also imposed under Section 78 of the Finance Act.

4. 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 a surgeon and engaged in providing health care and medical services to various patients for the F.Y. 2015-16. A medical degree certificate is submitted in this regard.



- The income as per Income Tax Return for the F.Y.2015-16 comes to Rs.15,18,318/- out of which income of Rs.9,27,318/- pertains to Health care Services hence exempted vide Notification No,25/2012-ST dated 20.06.2012 and income of Rs.5,91,000/- pertains to Entertainment services and is taxable but no tax is required to be paid in terms of Notification No.33/2012-ST dated 20.06.2012.
- As per the P&L account in the F.Y. 2014-15 & F.Y. 2015-16, the income was below the threshold limit. Hence, the appellant is not liable to obtain registration or file the returns.
- They placed reliance in the case of Sir Ganga Ram Hospital and M/s. Fortis Healthcare (India) Ltd.
- As there was no suppression of facts penalty under Section 78 is not imposable. When there is no demand of duty, penalty cannot be imposed. Intent to evade tax needs to be established to impose penalty. They placed reliance on following
 - Coolade Bevarages Ltd- 2004 (1720 ELT 451 (All.))
 - Tamil Nadu Housing Board-1994 (74) ELT 9 (SC)
 - DCW Ltd- 1996 (88) ELT 31 Mad.
- The order of the adjudicating authority is incorrect, erroneous and therefore, it deserves to be set aside.

5. Personal hearing in the matter was held on 25.08.2023. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal. He submitted that the appellant is a Doctor providing Medical services which are exempt from service tax under mega exemption notification. He also submitted Qualification certificate of the appellant, Form 26AS and Financial Statements. He requested to set-aside the impugned order.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.72,315/- confirmed alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2015-16.

6.1 On going through the Profit & Loss Account, it is observed that the appellant have shown following income.



TABLE-A

Direct Income	Amount
Consultancy Income	9,27,318
Interest Income	3,005

Program Income	5,91,000
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In their ITR-Return as well as in their Form-26AS filed for the F.Y. 2015-16, they have reflected the income of Rs.15,18,318/- towards Sale of Services. As per their Profit & Loss Account, Rs.9,27,318/- pertains to health care service and Rs.5,91,000/- pertains to entertainment income. The appellant have claimed that the income of Rs.9,27,318/- pertaining to health care services was rendered as a authorized medical practitioner hence are exempted in terms of Notification No.25/2012-ST dated 20.6.2012.

6.2 Further, on going through the certificate issued by Gujarat University, it is observed that the appellant is a registered Doctor having additional medical qualification as M.D. (Surgery). In terms of Entry No-2 of Notification No.25/2012-ST, "*Health care services by a clinical establishment, an authorised medical practitioner or para-medics;*" are exempted from the levy of service tax. The term 'authorised medical practitioner' is defined in clause (d) of Para-2, which is reproduced below:-

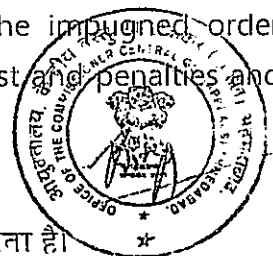
d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

In terms of above notification, I find that the income of Rs. 9,27,318/- is not taxable as it pertains to the health care services provided by the appellant as a registered medical practitioner hence are squarely covered under Entry no.2 of the above notification.

6.3 However, I find that the income of Rs.5,91,000/- is taxable as the same pertains to entertainment /program income. But, it is noticed that in the previous F.Y. 2014-15, the total Direct income of the appellant was Rs.13,15,705/- out of which taxable income was Rs.7,68,774/- which I find is below the threshold limit of Rupees Ten Lakh. The Notification No.33/2012-ST dated 20.06.2012, provides exemption to 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. Thus, I find that the appellant shall be eligible for exemption in the F.Y. 2015-16 as their taxable income in the previous year is less than the threshold limit. I, therefore, find that the demand of Rs.72,315/- shall not sustain on merits. When the demand is not sustainable on merits, the question of charging interest or imposing penalties in the case does not arise.

7. In light of above discussion and findings, I find that the service tax demand of Rs.72,315/- is not sustainable on merits. I, therefore, set-aside the impugned order confirming the service tax demand of Rs.72,315/- alongwith interest and penalties and allow the appeal filed by the appellant.

8. 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.

(शिव प्रताप सिंह)
आयुक्त(अपील)

Date: 19.09.2023

Attested

Rekha Nair

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

By RPAD / SPEED POST

To,
Shri Shyamal Pareshbhai Munshi,
H-302, Suncity, Bopal,
Ahmedabad -380058

Appellant

The Assistant Commissioner,
CGST, Division-VI,
Ahmedabad North
Ahmedabad

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.

