



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: 20230964SW000061326D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1541/2023-APPEAL /6306
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-109/2023-24
दिनांक Date : 22-09-2023 जारी करने की तारीख Date of Issue 25.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/HG/663/2022-23 दिनांक:30.11.2022 ,
issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Atulya Infracon Private Limited, B707, Titanium Square, B/h Sarveshwar Tower,
Opp. BMW Show Room, Thaltej, Ahmedabad - 380051

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 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 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 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.

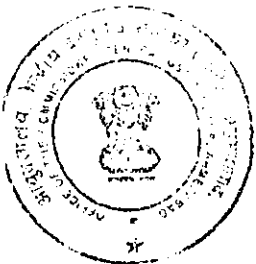
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपील 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 filed 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 (रिस्टेट), 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.

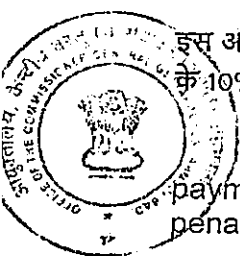
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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. Atulya Infracon Pvt Ltd, B707, Titanium Square, B/h Sarveshwar Tower, Opp. BMW Show Room, Thaltej, Ahmedabad-380051 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/663/2022-23 dated 30.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service and were holding Service Tax Registered No.AAKCA5964ESD001.

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. 2014-15, it was noticed that the appellant in the ITR/Form-26AS has shown the service income more in comparison to the taxable value reflected in the ST-3 Return 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 the 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

Sr.No.	Description Amount (Rs.)	Amount (Rs.)
1	Value as per P & L A/c (ITR)	15949272
2	Abatement If any	9569563
3	Net value	6379709
4	Value declared In ST-3 returns	13323832
5	Abatement claimed (less)	7994298
6	Net Taxable value	5329534
7	Differential value	1050175
8	Service Tax payable (12.36% including Cess)	1,29,802/-

2.1 A Show Cause Notice (SCN) No. CGST/AR-V/DIV-VII/A'bad-North/TPD/340/2020-2021 dated 27.09.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.1,29,802/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 78 of the Finance Act, 1994 was also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.1,29,802/- was confirmed alongwith interest. Penalty of Rs.1,29,802/- under Section 78 of the F.A., 1994 was also imposed.

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 a Dealer engaged in the business of Works Contract Service. Total turnover during the period was Rs.1,33,23,832, out of which dealer has claimed abatement value amounting to Rs.79,94,298. Hence, the taxable value of services shall be Rs.53,29,534 on which service tax amounting to Rs.6,58,730 has been paid



during the year under consideration after deducting abatement at the rate of 40% from gross amount received. However, the adjudicating authority has considered the taxable value of Rs.63,79,709/- after deducting the abatement value @ 60% from the gross amount of ts.1,59,49,272/- received.

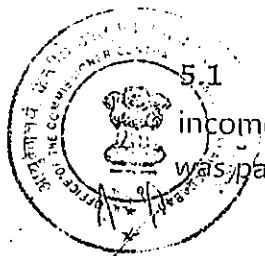
- While passing the order, learned adjudicating authority has not followed judicial pronouncement and has completely failed to give any cogent findings for such addition. He should have provided opportunity to appellant to explain his reasons for addition in gross amount received. Such action is against the principle of natural justice. The adjudicating authority has passed the order without taking into consideration full facts of the case and without giving the appellant due opportunity of being heard.
- They claim that that the turnover in ITR is shown as Rs.1,59,49,272/- against the ST-3 Return Turnover of Rs.1,33,23,832/- which has led to difference of Rs.26,25,440/-. Out of the differential income of Rs.26,25,440/-, the amount of Rs.2,08,695/- is taxable under Central Sales Tax Act, 1957 and the turnover of Rs.1,57,40,576/- was taxable under Finance Act, 1994. They claim that at the time of finalization of books of account under the provisions of the Companies Act, 2013 they have followed the accrual basis accounting and based on which they have filed income tax return for the assessment year 2014-15, as a result the receipt received in the F.Y. 2015-16 was booked in F.Y. 2014-15 and reflected in the ITR. Hence the difference is noticed. As, the service receipts were actually received in 2015-16 and the tax was paid in that financial year, as reflected in the ST-3 Return, demanding the tax on such amount is not legally sustainable.

4. Personal hearing in the matter was held on 28.08.2023. Shri Parth Solani, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum. He submitted that the appellant was providing works contract services. The appellant had booked the income during the F.Y. 2014-15 on the provisional basis, but since the service was rendered in the next year, and payment is also received in the same year, the tax was paid in the next year. All the supporting documents in this regard are attached. Since the liability is already discharged he requested to set aside the impugned order.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, additional submissions as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.1,29,802/- alongwith interest and penalties, confirmed 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. 2014-15.

5.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT and on the differential income on which no service tax was paid by the appellant. They did not file any reply to the SCN nor did they appear for



personal hearing before the adjudicating authority, therefore the case was decided ex-parte. However, the appellant before the Appellate Authority has submitted the copy of Balance Sheet Ledgers and ST-3 Returns. On going through the documents, I find that the appellant has shown Rs.2,08,695/- as their OSG sales on which they have paid Sales Tax and reflected Rs.19,28,495/- as Works Contract Income. Thus, the total income as per Balance Sheet comes to Rs.1,59,49,271/- which was reflected in the ITR. However, they claim that out of this income, amount of Rs.15,70,232/- was shown on provisional basis in their ITR filed for the F.Y. 2014-15 though the actual amount received was in the F.Y. 2015-16. The actual amount received was Rs.21,32,400/- therefore the provisional income of Rs.15,70,232/- shown in the ITR was reversed /debited in the month of August of the F.Y. 2015-16. They however claim that service tax has been discharged on the actual receipts/income of Rs.21,32,400/- received and the same has been reflected in their ST-3 filed for the F.Y. 2015-16. I have gone through the ST-3 return and I find the above claim of the appellant to be correct as the said amount has been reflected in the ST-3 return and tax liability has been discharged on the said amount. Thus, considering the sum total of Rs.2,08,695/- (OSG) plus Rs.15,70,232/- (provisional Income) differential comes to Rs. 17,78,928/- which, I find is more than the differential income noticed in the SCN. Thus, I find that the justification given by the appellant is convincing and acceptable.

TABLE-B

Sr.No.	Description Amount (Rs.)	Amount (Rs.)
1	OSG Sales	208696
2	Works Contract Income	15740576
3	Value as per P & L A/c (ITR)	15949271
4	Provisional Income reflect in ITR	1570232
5	Differential Income (OSG + Provisional Income)	1778928
6	Differential value as per SCN	1050175

5.2 I find that on the OSG sales, the appellant is not required to discharge any service tax as it pertains to sale of goods and with regard to the provisional income, I find that the same was reflected in the ITR in accrual basis accounting i.e. the revenue or income has been recorded when they are earned rather than when they are collected. However, since the actual receipt was more than the income shown in provisional basis, I, therefore, find that they are not liable to pay any tax on the differential income since on actual receipt of Rs.21,32,400/- the appellant has already discharged the tax in the subsequent year i.e. in F.Y. 2015-16, which is more than the differential income arrived in the notice.

5.3 I, therefore, find that the demand of Rs.1,29,802/- on the differential income is not sustainable on merits. When the demand is not sustainable on merits, the question of charging interest or imposing penalties in the case does not arise.

6. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of Rs.1,29,802/- along with interest and penalties and allow the appeal filed by the appellant.



7. 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: 11.9.2023

Attested

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

By RPAD / SPEED POST

To,
M/s. Atulya Infracon Pvt Ltd,
B-707, Titanium Square, B/h Sarveshwar Tower,
Opp. BMW Show Room, Thaltej,
Ahmedabad-380051

Appellant

The Assistant Commissioner,
CGST, Division-VII,
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.

