



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in

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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231164SW000000C17E

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| (क) | फाइल संख्या / File No. | GAPPL/COM/STP/2246/2023-APPEAL / 8267 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-002-APP-125/2023-24 and 26.10.2023 |
| (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. CGST/WT07/HG/750/2022-23 dated 29.12.2022 passed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s. Posh Urban The Restaurant, 1 st Floor, Dev Business Hub, Nr. Engineer College, New C.G. Road, Chandkheda, Ahmedabad - 382424 |

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:-

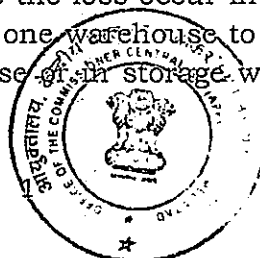
Revision application to Government of India:

(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 प्रक्रिया 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 in 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 हों।

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 रुपये 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.

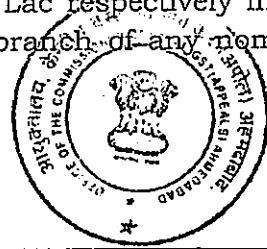
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 वताए 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।

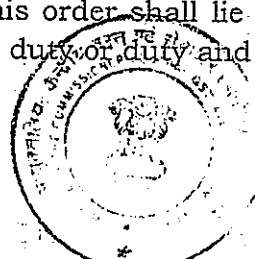
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The present appeal has been filed by M/s. Posh Urban the Restaurant, 1st Floor, Dev Business Hub, Near Engineer College, New C. G Road, Chandkheda, Ahmedabad-382424 (hereinafter referred to as "the appellant") against Order-in-Original No: CGST/WT07/HG/750/2022-23 dated 29.12.2022 (*hereinafter referred to as "the impugned order"*) passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad North (*hereinafter referred to as "the adjudicating authority"*). The appellant were holding Service Tax Registration No. AAMFP3037ESD001 for providing Mandap Keeper and Restaurant Services.

2. Facts of the case in brief are that on scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, difference of Rs. 2,76,282/- was noticed in the value of service provided in the ITR vis-à-vis the gross value of service shown in Service Tax return filed by the appellant for the FY 2014-15. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax on such differential income 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</i> | <i>Gross Value of services as per STR</i> | <i>Difference</i> | <i>Service tax rate</i> | <i>Service Tax liability</i> |
|-------------|-------------------------|---|-------------------|-------------------------|------------------------------|
| 2014-15 | 57,27,615/- | 54,51,333/- | 2,76,282/- | 12.36% | 34,148/- |

2.1 A Show Cause Notice No. CGST/Div-VII/A'bad North/TPD/364/POSH/20-21 dated 24.09.2020 was issued proposing Service Tax demand amounting to Rs.34,148/- for the period F.Y 2014-15 under provisions of Section 73 of the Finance Act, 1994; recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period F.Y 2015-16 to F.Y 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated, ex-parte, wherein the demand of Service Tax amounting to Rs. 34,148/- was confirmed along with interest; penalty of Rs. 34,148/- was imposed on the appellant under Section 78; penalty of Rs. 500/- each was imposed under Section 77(1)(c) and Section 77(2) of the Finance Act, 1994.

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

- The sale of service amount mentioned in Income Tax Return for the F.Y 2014-15 was Rs. 57,27,615/- and inclusive of Service Tax amount of Rs. 2,09,280/- paid during the F.Y 2015-16. Excluding the service tax amount the resultant figure will be Rs. 55,18,335/-. The taxable value shown in Service Tax Returns for the F.Y 2014-15 was Rs. 54,51,333/-. The actual net difference between ITR sale of services and STR taxable value was only Rs. 67,002/- and not Rs. 2,76,282/- as



shown and determined in the impugned order. The net service tax payable by them is Rs. 3,313/- after taking benefit of abatement of 60% as per the provisions of service tax. They submitted ITR, STR, Balance Sheet, Profit & Loss Account and detailed monthly breakup of sales for the F.Y 2014-15 along with appeal memorandum to substantiate their above claim.

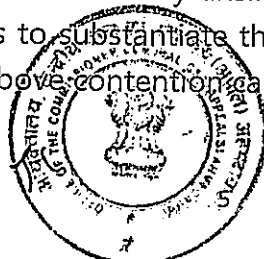
- They have not received any notice for personal hearing and hence, the impugned order passed by the adjudicating authority was in violation of natural justice.

4. Personal hearing in the case was held on 12.10.2023. Shri Deep Shah, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted that the income as per ITR was inclusive of service tax. If the tax amount is deducted, the differential value between the ITR & STR would be only Rs. 6,70,02/-. This income was realized in the month of June 2014. He submitted that the SCN has been issued on 24.09.2020, which is beyond the five year extended period for the F.Y. 2014-15. In view of this he requested to set-aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during personal hearing and the 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 2014-15.

6. The main contention of the appellant is that the sale of services amounting to Rs. 57,27,615/- mentioned in Income Tax Return filed for the F.Y 2014-15 was inclusive of Service Tax amounting to Rs. 2,09,280/- paid during the F.Y 2015-16. Taking into account the said tax amount, the actual net difference between ITR sale of services amount and STR taxable value was only Rs. 67,002/- and not Rs. 2,76,282/- as shown and determined in the impugned order. Therefore, the net service tax payable shall be Rs. 3,313/- after taking benefit of abatement of 60% as per the provisions of service tax.

7. I have gone through the ITR, ST-3 Returns submitted by the appellant, however, they failed to submit the balance sheet. They also submitted a reconciliation statement. In the reconciliation statement they have shown the P& L sale of Rs.57,27,615/- and in the ITR the sale of service was shown as Rs. 57,27,615/-. They claim that this amount is inclusive of taxes. So, after deducting the Service Tax amounting to Rs. 2,09,280/- paid during the F.Y 2015-16, the net tax liability shall be only Rs. 67,002/- and not Rs. 2,76,282/-. However, in support of their claim they have not submitted any documentary evidences. Since the entire demand has been raised on the differential amount of taxable income shown in the ST-3 and the income shown in the ITR, their above argument does not appear to be justifiable. Further, the tax paid during F.Y. 2015-16 cannot be considered for the tax liability arising for the F.Y. 2014-15. Since they could not produce the documents to substantiate that the ITR figures are inclusive of Service tax amount, I find that the above contention cannot be entertained.



7.1 Further in respect of the abatement, the appellant have not put forth any argument as to under which notification they are claiming exemption. Nor did they submit any documentary evidence in support of their above claim.

8. Another contention raised by the appellant is that the disputed income was realized in the month of June 2014 whereas the SCN has been issued on 24.09.2020, hence the demand is time barred. I find that the demand has been raised for the F.Y. 2014-15. The ST-3 return for the period (April to September) was filed on 21.10.2014 so considering this date the SCN for said period should have been issued on or before 20th October, 2019 and the ST-3 return for (October, 2014 to March, 2015) was filed on 14.04.2015, so the notice for said period was to be issued by 13th April, 2020, whereas the notice was issued on 24.09.2020. Thus, I find that the demand for said period is time barred.

8.1 Similarly, the ST-3 Return covering period (October, 2014 to March, 2015) was filed on 14.04.2015 and the SCN was issued on 24.09.2020. However, in terms of Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government had extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the period from 20th March, 2020 to 29th September, 2020, the same shall stand extended to 31st March, 2021. So considering this extension, I find that the SCN issued on 24.09.2020 is well within time as was issued before the expiry of extended period granted. Hence, the demand (October, 2014 to March, 2015) is well within limitation.

8.2 In view of the above, I find that the liable to pay service tax shall arise only on the differential income received during October, 2014 to March, 2015. As per the reconciliation statement provided by the appellant, they have shown income of Rs.27,68,257/- in P&L account and Rs. 26,74,795/- in their ST-3 return. Accordingly, the differential income in comparison to the ST-3 return data shall be Rs. 93,462/-. Thus, the tax liability shall be Rs.11,552/- instead of Rs.34,148/-.

9. Accordingly, I uphold the service tax demand of **Rs.11,552/-** only for the period October, 2014 to March, 2015. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.

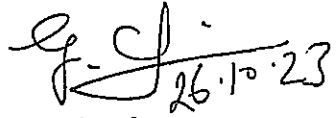
10. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. I find that the appellant was rendering a taxable service but they suppressed the value of taxable service and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. They also failed to submit the documents to prove that the non-payment of tax was related to non-taxable services. Thus they contravene the provisions of Section 67, 68 & 70 of the F.A. 1994. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined. In light of Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)]. I therefore uphold the penalty equal to the tax upheld in para-9 supra.



11. As regards the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. The appellant were rendering the taxable service, however, they failed to properly access the tax liability and also failed to submit the information/documents as called for, all such acts make them liable to a penalty. I uphold the penalty to Rs.500/- imposed under Section 77(1) of the Finance Act, 1994. Further, I find that penalty under Section 77(2) read with Section 70 of Finance Act, 1994 being civil in nature the same is liable to be imposed when the appellant has failed to furnish the correct information in ST-3 return. I uphold the penalty of Rs.500/- under Section 77(2).

12. In view of the above discussion, I uphold the impugned order confirming the service tax demand of Rs.11,552/- alongwith interest and penalties.

13. 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: 26.10.2023

Attested



(रेखा-नायक)

अधीक्षक(अपील्स)

सी. जी. एस. टी, अहमदाबाद



By RPAD / SPEED POST

To,

M/s. Posh Urban the Restaurant,
1st Floor, Dev Business Hub,
Near Engineer College, New CG Road,
Chandkheda, Ahmedabad - 382424

Appellant

The Assistant 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 (HQ System), CGST, Ahmedabad North (for uploading the OIA)
- 4) Guard File

