



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231171ML0000444B8F

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2451/2023 / 19196
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-128/23-24 and 30.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	20.11.2023
(ङ)	Arising out of Order-In-Original No. 59/DC/D/VM/22-23 dated 31.01.2023 passed by The Deputy Commissioner, CGST Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mihir Kishorbhai Chandrana, 135, Manipur AMTS Bus Stand, Bopal Sanand Road -380058

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 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 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 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 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.

(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. Mihir Kishorbhai Chandrana, situated at 135, Manipur AMTS bus stand, Bopal sanand road-380058 (hereinafter referred to as "the appellant") against Order-in-Original No. 59/DC/D/VM/22-23 dated 31.01.2023 passed by The Deputy Commissioner, CGST Division-III, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding Service tax Registration No ATIPC8961HSD001(Now also reg. in GST). On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) and ST-3 for the FY 2016-17, it was noticed that the appellant has shown less amount of "Gross Value of Services provided" in the ST-3 against the amount shown as "Total Amount paid/Credited Under 194C, 194H, 1941, 194]" and "Sales of Service" in their ITR filed with the Income Tax Department, as under:-

Year	Total Amount paid/Credited Under 194C, 194H, 1941, 194	Sales of Services shown in ITR	Value of Services provided as per Service Tax Returns
2016-17	Rs. 1,28,16,604/-	Rs.1,95,06,284/-	Rs.1,66,51,534/-

The appellant were called upon explanation in this regard vide letter dated 06.09.2021 along with the supporting documents viz. balance sheet, P & L Account, Income Tax Returns, Form 26AS and ST-3 for the concerned period. However, the appellant neither submitted any documents nor responded in satisfactory manner.

2.1 Subsequently, the appellant was issued Show Cause Notice No. III/SCN/MIHIR/119/21-22 dated 20.10.2021 demanding Service Tax amounting to Rs. 4,28,213/- for the period FY 2016-7 under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 and imposition of penalties under Section 77(1), 77(2) and Section 78 of the Finance Act, 1994. However, the appellant neither attended the personal hearing nor responded to the department.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,28,213/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2016-17. Further (i) Penalty of Rs. 4,28,213/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 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 appellant deny all the allegations and averments made by the impugned OIO and submitted that the adjudicating authority has taken decision without considering the factual details. They have denied that they contravened any provisions of section 65,66,68,70 & 73(a) of the Financial Act,1994. The appellant submitted that they are engaged in business of the Event Management and was holding STC No ATIPC8961HSD001.Calculation sheet of demanding the service tax during the F.Y. 2016-17 is work out as under:

F.Y.	Total Amount paid/Credited Under 194C, 194H, 194I, 194J	Sales of Services shown in ITR	Value of Services provided as per Service Tax Returns	Difference between 3 & 4	15 % of the amount shown in column "5"
1	2	3	4	5	6
2016-17	Rs. 1,28,16,604/-	Rs.1,95,06,284/-	Rs.1,66,51,534/-	28,54,750/-	4,28,213/-

- The appellant submitted that they have gone through service tax audit, conducted by the departmental audit section covering period from april-2015 to June 2017 and FAR no CE/S-84 dated 21.08.2020 has been issued in this regard. In the course of audit, no such demand has been raised/observed by the audit officers for the F.Y. 2016-17. Therefore, the demand raised on the basis of the reconciliation of income shown in ITR with the books of account without considering the facts is not legally sustainable. Being audited, the extended period can't be invoked and no penalty should be imposed.
- The appellant denies all the demand confirmed vide impugned OIO and submitted that the OIO is against the facts, equity and law and the same may be quashed and set-aside.

4. Personal hearing in the case was held on 13.10.2023. Shri Vipul Khandar, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal. He requested to allow their appeal and set aside the impugned order.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 31.01.2023. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal 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 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 FY 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services" provided by the Income Tax Department, no other reason or justification is seen from the SCN for raising the demand against the appellant. As the appellant has shown their income from "Sales of Services" in their ITR filed for the F.Y 2016-17, is more than they shown in their ST-3 returns for the concerned period i.e. 2016-17, the demand has been raised on the differential value.

7. In the present case, I find that various letters were issued to the appellant seeking details regarding above difference and explanation, but they neither attended the personal hearing nor filed explanation. Therefore, the SCN has been decided ex-parte basis.

8. It is observed that the main contentions of the appellant in the appeal memorandum is that they have gone through service tax audit by the departmental audit section covering period from April-2015 to June 2017 and Final Audit Report No CE/S-84 dated 21.08.2020 has been issued in this regard. In the course of audit, no such demand has been raised/observed by the audit officers for the F.Y. 2016-17(the same is covered in impugned OIO). Therefore, the demand raised on the basis of the reconciliation of income shown in ITR with the books of account without considering the facts is not legally sustainable. Being audited, the extended period can't be invoked and no penalty should be imposed. Considering the above contention of the Appellant, I have the considered view that the invocation of extended period is not legal and hence the impugned demand and recovery of service tax along with interest and penalty is not sustainable.

9. From their submission it appears that they are engaged in providing the Event Management service and the income received by the appellant is from taxable service. During the F.Y. 2016-17, they have shown less income in their ST-3 returns in comparison to income shown in ITR and failed to justify the difference and furnish the documentary evidences in support of their claim before the adjudicating authority. Therefore, the adjudicating authority has decided the SCN ex-parte. The appellant has submitted that they have gone through the service tax audit for the period Apr-2015 to June-2017 and FAR No CE/S-84 dated 21.08.2020 has been issued and no such demand for the F.Y. 2016-17 has been raised, therefore, the data received from the Income Tax department cannot form the sole ground for raising the demand of service tax.

9.1 I find in pertinent to refer to instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:



"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

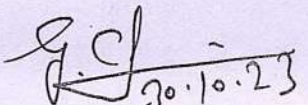
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

9.2 However, in the instant case, I find that no such exercise could have been done in absence of the submission of the relevant records by the appellant, before the adjudicating authority and the SCN has been issued only on the basis of the data received from the Income Tax department. The appellant failed to submit the copies 26AS from, P& L Account, Income Ledgers for the concerned period i.e. F.Y 2016-17. As the appellant failed to furnish the documentary in support of their contention before adjudicating authority and before me also, In absence of the proper documentary evidences/records it can't be correctly decide whether service tax is applicable or not on the differential amount. Therefore, I find it proper to remand back the impugned order to the adjudicating authority to re-examine and decide it afresh, following the principle of natural justice the issued.

10. Accordingly, I find it proper to remand back the impugned order to the adjudicating authority to re-examine and decide it afresh. Further, it is also imperative that the 'appellant' will produce all the documentary evidences, to the satisfaction of the adjudicating authority required for the verification in the case.

11. In view of above, I remand back the impugned order to the adjudicating authority to re-examine the issue and decide it afresh. The 'appellant' is also directed to submit all the relevant documentary evidences, to the satisfaction of the adjudicating authority required for the verification of the facts.

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

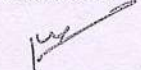


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date :30.10.2023

Attested



Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Mihir Kishorbhai Chandrana,
situated at 135, Manipur AMTS bus stand,
Bopal sanand road-380058

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 Deputy Commissioner, CGST, Division III Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file

