



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:- 20231164SW000000C570

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1554/2023 / 8398
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-135/23-24 and 31.10.2023
(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. 284/AC/DEMAND/2022-23 dated 16.12.2022 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Anil Hotchand Tahilramani HUF, B 1001, River Valley One, Near Ranmukteshwar Temple Hansol, Ahmedabad - 382475

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 :-

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 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, अपीलों 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 अपीलो 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. Anil Hotchand Tahilramani HUF, B-1001, River Valley One, Near Ranmukteshwar Temple, Hansol, Ahmedabad-382475 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 284/AC/Demand/2022-23 dated 16.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service without obtaining Service Tax Registration.

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. 2015-16, it was noticed that the appellant in the ITR/Form-26AS has shown the service income 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

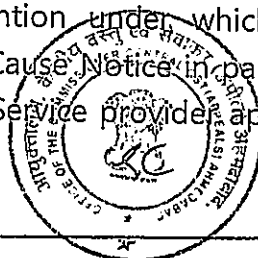
F.Y.	Sale of service as per ITR/Form 26AS	Service tax rate	Service tax payable
2015-16	14,52,145	14.5%	2,10,561

2.1 A Show Cause Notice (SCN) No. AR-II/ANIL/Un-Reg/2015-16 dated 09.06.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.2,10,561/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,10,561/- was confirmed along with interest. Penalty of Rs.2,10,561/- under Section 78 and penalty of Rs.10,000/- each was also imposed under Section 77(1) & Section 77(2) of the F.A., 1994.

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

- The Show Cause Notice does not mention under which entry the activity undertaken by appellant falls. The Show Cause Notice in para-4 simply says that activities carried out by the appellant as Service provider appears to be covered



under the definition of service. It is settled law that SCN cannot be issued based on more assumptions and presumptions - Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC). The appellant would rely upon following decisions;

- o Shubham Electricals v. CCE 2015 (40) S.T.R. 1034 (Tri. - Del)
 - o Deltax Enterprises v. CCE 2018 (10) G.S.T.L. 392 (Tri. - Del.)
- It is a settled law that data of Form 26AS cannot be used for determining Service Tax liability unless there is any evidence to show that it was due to a taxable service. The appellant rely upon the decision of Kush Constructions v. CGST NACIN 2019 (24) G.S.T.L. 606 (Tri. - All.) wherein also Hon'ble CESTAT. The SCN issued without categorically identifying the nature of taxable service involved may not be valid on the aforesaid grounds.
- There is no corroboration of the charges leveled against the Noticee. Since, the documents sought for by the Department were not traceable being old hence could not submit the same. These records alone shall not be the only evidence to allege non-payment of service tax. The department failed to adduce any cogent evidence to corroborate the allegations. Thus, the allegation of non-payment of service tax owing to intention to evade payment thereof is nothing but an assumption & presumption. Therefore, the Show Cause Notice deserves to be set aside.
- The appellant was under the bonafide belief that the activity carried out is not covered under service tax net, they were not required to maintain the statutory records since they have not crossed the exemption limit, thus, by no stretch of imagination it can be assumed that the appellant has deliberately not paid the Service Tax.
- Demand barred by limitation. The demand is primarily based on IT returns and Form 26AS, the Information of provision of service is well within the knowledge of the Department. As IT returns and information therein forms part of the Government records, alleging suppression is not proper.
- It is a settled law that where the issue involved in any case is of interpretation, the same being technical in nature, mens rea to evade payment of service tax cannot be alleged. Thus, the Show Cause Notice issued invoking extended period of limitation is not sustainable and being barred by limitation.
- Without prejudice to the aforesaid, penalty cannot be imposed in cases wherein the duty demand itself is not sustainable. Reliance is placed on the following judgments, wherein the Hon'ble Apex Court and the Hon'ble Allahabad High a Court have held that once it is found that no duty is imposable, then the question of imposing penalty does not arise-
- i) CCE V. H.M.M. Ltd. - 1995 (76) ELT 497 (SC)
 - ii) Coolade Beverages Ltd. V. CCE, Meerut - 2004 (172) ELT 451 (All.)
 - iii) H. Guru Investment (North India) Pvt. Ltd. V. CEGAT - 1998 (104) ELT 8 (SC)

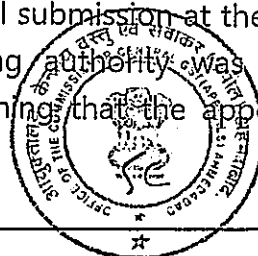


- Without prejudice to the above, it is to submit that Hon'ble Tribunal in case of Coastal Energy Pvt. Ltd. vs. Commissioner of Cus., C Ex. & S. Tax, Guntur reported in 2014 (310) ELT (97) (Tri-Bang.) while setting aside penalty held since the issue is of classification and is technical in nature, mens rea to evade payment of duty does not exist and thus making the imposition of penalty unsustainable. Also Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159) has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was provided that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with a knowledge that he was required to act otherwise, penalty might be imposed.
- The impugned OIO fails to survive on merits before law also to the extent of SCN issued on assumption & presumption, without any further enquiry in the case. Hence the impugned Show Cause notice & impugned OIO liable to be set aside. When demand fails, there cannot be any question of interest or penalty. Accordingly, the impugned OIO also to the extent of leviability of Service tax is liable to be set aside for being not legal and proper.

4. Personal hearing in the matter was held on 16.10.2023. Shri Harshadbhai G. Patel, Advocate appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum and in written submissions along with the relied upon case laws. He submitted that the appellant provided service of procurement of orders for textile companies and earned commission income. He also stated that the show cause notice was issued and the demand was confirmed merely on the basis of income tax return data without any further investigation, which is not permissible under the law as held in so many cases by the Hon'ble Tribunal and various High Courts. He further submitted that the SCN was issued beyond the period of limitation period. Therefore, 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, written submissions dated 11.09.2023 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.2,10,561/- along with 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. 2015-16.

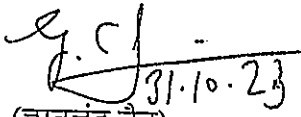
6. I find that the appellant did not file any defense reply/submission or appeared for personal hearing before the adjudicating authority. The OIO was passed ex-parte. Now the appellant is submitting written and oral submission at the time of the personal hearing before me. However, the adjudicating authority was not aware of these submission. Hence it is in the fitness of the thing that the appellant should get the



opportunity of presenting his case before adjudicating authority. Hence the matter needs to be remand back.

7. In view of the above, impugned order is set aside and matter is remanded back for fresh adjudication.

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.

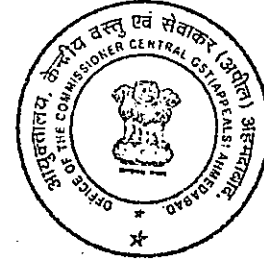

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 31.10.2023

Attested



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



By RPAD/SPEED POST

To,
M/s. Anil Hotchand Tahilramani HUF,
B-1001, River Valley One,
Near Ranmukteshwar Temple,
Hansol, Ahmedabad-382475

Appellant

The Assistant Commissioner
CGST, 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.

