



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 NO.: 20231164SW0000888AB0

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2229/2023 / 8368
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-138/23-24 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. CGST/WT07/HG/751/2022-23 dated 29.12.2022 passed by The The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Zesty Treat Restaurant and Banquet Hall, Shop No. 101, 1st Floor, Arya Arcade Complex, Above Axis Bank, Anand Party Plot New Ranip, Ahmedabad - 382470

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, 4<sup>th</sup> 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 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 भीतर मूल-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 होती 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 Assistant 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**

M/s. Zesty Treat Restaurant and Banquet Hall, Shop No. 101, 1st Floor, Arya Arcade Complex, Above Axis Bank, Anand Party Plot, New Ranip, Ahmedabad – 382470 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/HG/751/2022-23 dated 29.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, CGST Division-VII, Ahmedabad North (hereinafter referred to as “the adjudicating authority”). The appellant were holding Service Tax Registration No. AABFZ1898GSD001.

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 in value of service amounting to Rs. 1,59,294/- was noticed between the gross value of service declared in ITR and the gross value of service shown in Service Tax return filed by the appellant for the F.Y 2014-15, on which no tax was paid. Letters were, therefore, issued to the appellant to provide details of the services provided during said period and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the differential income was considered as a taxable value.

**Table-A**

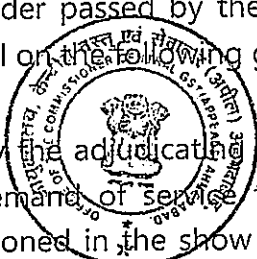
<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Gross Value of services as per STR</i>	<i>Difference</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2014-15	43,81,284/-	42,21,990/-	1,59,294/-	12.36%	19,689/-

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/DIV-VII/A'bad North/TPD/359/ZESTY/20-21 dated 24.09.2020 demanding Service Tax amounting to Rs. 19,689/- for the period FY 2014-15, under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed 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 FY 2015-16 to FY 2017-18 (up to Jun-17).

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. 19,689/- was confirmed along with interest under Section 75; Penalty of Rs. 19,689/- was imposed on the appellant under Section 78 of the Finance Act, 1994; Penalty of Rs. 100/- each was imposed under Section 77(1)(c) & 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:

- There has been an apparent mistake by the adjudicating authority in passing the impugned order by confirming the demand of service tax of Rs. 19,689/-; the difference amount that has been mentioned in the show cause notice is nothing



AC

but the service tax amount paid on the Gross Value of Services provided of Rs. 42,21,990/-.

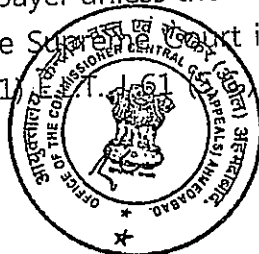
- The sales mentioned in Income Tax Return of Rs. 43,81,284/- is inclusive of service tax. If the service tax amount of Rs. 1,59,294/- is excluded from the said sales, the resultant figure is exactly the same as shown in Service Tax Returns for the FY 2014-15. There is no difference as alleged in show cause notice.
- ST-3 for the FY 2014-15 along with detailed monthly breakup of sales is submitted along with appeal memorandum.
- Interest charged under Section 75 had been wrongly charged and Penalty of Rs.19,689/- under Section 78 & under Section 77(1)(c) & Section 77(2) of the Finance Act, 1994 were wrongly imposed.

4. Personal hearing in the case was held on 11.10.2023. Shri Deep D. Shah, Advocate appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum. He also requested to allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum 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 service tax demand of Rs. 19,689/- 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. It is observed that the appellant is registered as Mandap Keeper and Restaurant service provider. Their main contention is that the sales of Rs. 43,81,284/- mentioned in Income Tax Return is inclusive of service tax. If the service tax amount of Rs. 1,59,294/- is excluded from the said sales, the resultant figure is exactly the same as shown in Service Tax Returns for the FY 2014-15. Hence, there would be no difference as alleged in show cause notice.

6.1 I have gone through the STR returns submitted by the appellant. I find that the appellant has paid service tax of Rs. 1,40,451/- for the period (April to Sept) and Rs. 19,458 during (Oct to March) which bring to the total of Rs. 1,59,809/-. In the ITR they have shown Rs. 43,81,284/- as income from 'sale of services' and in the STR-3 the taxable income reflected was Rs. 42,21,990/-. The difference of these two figures comes to Rs. 1,59,294/-, which is similar to the tax amount reflected in the ST-3. I, therefore, agree with the contention of the appellant that the value reflected in the ITR is inclusive of service tax as it is the service tax amount which is arriving as differential value. The appellant has already discharged the tax liability on the taxable income and differential amount is actually the tax amount discharged by the appellant. I find that the Department cannot demand tax on the tax as this will lead to double taxation. The statute would not cast a burden twice over for payment of tax on the tax payer unless the language of this statute is so compellingly certain to that effect. Hon'ble Supreme Court in UNION OF INDIA Versus TATA IRON AND STEEL CO. LTD.- 1977 (1) has held that there

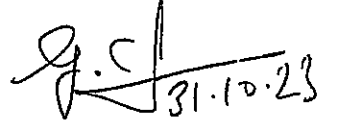


cannot be double taxation on the same article. Applying the analogy on said judgment, I find that the impugned demand is not sustainable on merits.

7. When the demand is not legally sustainable, the question of charging interest or imposing penalties in the case also does not arise.

8. In view of above, I set-aside the impugned order and allow the appeal filed by the appellant.

9. 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: 10.2023

Attested



(रेखा नायर)  
अधीक्षक(अपील्स)  
सी. जी. एस. टी, अहमदाबाद



By RPAD / SPEED POST

To,  
M/s. Zesty Treat Restaurant and Banquet Hall,  
Shop No. 101, 1st Floor, Arya Arcade Complex,  
Above Axis Bank, Anand Party Plot,  
New Ranip, Ahmedabad - 382470

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

