



सत्यमेव जयते

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

By SPEED POST

DIN NO.: 20231164SW0000666B3F

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/694/2023 / 8409
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-139/23-24 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. 57/JC/LD/2022-23 dated 04.11.2022 passed by The Joint Commissioner, Central GST, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Parasar Virendra Chhotelal, 60, Ambedkarnagar Society, Railway Station Road, Chandlodiya, Ahmedabad-382481

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।



(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)।

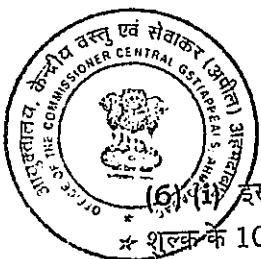
- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

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) 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. Parasar Virendra Chhotelal, 60, Ambedkarnagar Society, Railway Station Road, Chandlodiya, Ahmedabad -382481 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 57/JC/LD/2022-23 dated 04.11.2022, (in short '*impugned order*') passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and holding PAN No. AHKPP7856Q.

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 to F.Y. 2016-17, it was noticed that the appellant had earned substantial income by way of providing taxable services. However, they neither obtained Service Tax registration nor paid the applicable service tax. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15 to F.Y. 2016-17. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 63,64,049/- was therefore quantified.

Table-A

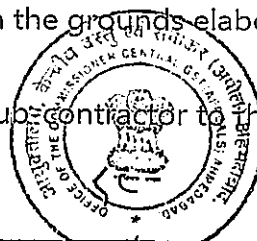
<i>F.Y.</i>	<i>Sales Value as per ITR</i>	<i>Rate of S.Tax</i>	<i>S.Tax payable</i>
2014-15	1,59,33,860	12.36%	19,69,426
2015-16	1,40,83,200	14.5%	20,42,064
2016-17	1,56,83,723	15%	23,52,559
		TOTAL	63,64,049/-

2.1 A Show Cause Notice (SCN) No. STC/15-62/OA/2020 dated 29.09.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.63,64,049/- not paid on the value of income received during the F.Y. 2014-15 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1) and 77(2) and under 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.39,30,805/- was confirmed alongwith interest on the taxable services provided during the F.Y. 2014-15 to F.Y. 2016-17. Penalty of Rs. 10,000/- under Section 77(1); penalty of Rs. 10,000/- under Section 77(2) and penalty of Rs. Rs.39,30,805/- was also imposed under Section 78. However, the service tax demand of Rs.24,33,244/- was dropped.

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

- The appellant is in the business of being a sub-contractor to the developer cum



contractor, who are the main contractors to the builders. The appellant carries the work of colour as a sub-contractor. The impugned order is passed without considering the submissions and the evidences placed on record by the appellant and accordingly the impugned order deserves to be quashed and set aside.

- The information regarding the taxable services is obtained from the income tax returns filed by the appellant, hence, the disclosure made before one wing of Central Government amounts to disclosure before the whole central government. The respondent is part of the central government. Accordingly the disclosure made before the income tax authorities by way of income tax returns amount to disclosure made even before the respondent. Accordingly the respondent erred in holding that there was a suppression of material fact. If there was intent to evade payment of tax on the part of the appellant, the appellant would have not disclosed such services even before the income tax authorities. Thus, the extended period of limitation is not invocable. Appellant could have raised the invoices and collected service tax. However, not collecting the tax from the customer does not prove the intent to evade tax as the appellant is not benefitted and was only required to collect tax from their customer. They placed reliance on following case laws;
 - Mega Trends Advertising Ltd- 2020 (38) GSTL 57
 - Kamal Lalwani- 2017 (49) STR 552
 - Zee Media Corporation Ltd- 2018 (18) GSTL 32 (All)
 - Reliance Infratel Ltd- 2016 (42) STR 452
 - Compark E. Services Pvt Ltd- 2019 (24) GSTL 634
- The work carried out by the appellant (colour work) for various contractors/ developers being in nature of works contract, it is not subject to Service Tax. Alternatively, the appellant is covered by reverse charge mechanism. The appellant relies on Section 65B (22), 65B(44), 65B1), 65B54), 66B of Finance Act, 1994, Notification No. 25 of 2012 dated 20/12/2012 and Notification No. 30/2012 dated 20/06/2012.
- The levy of interest under Section 75 is also not justifiable.
- Penalty of Rs. 39,30,805/- imposed under Section 78(1) is also not sustainable as the ultimate burden of tax intended to be imposed upon by the respondent would have been upon the customer hence would not have been benefitted by suppression or wilful mis-statement of facts.
- Penalty of Rs. 10,000/- imposed under Section 77(1) and under Section 77(2) is also not justifiable as there is no malafide on the part of the appellant.

4. Personal hearing in the case was held on 10.10.2023. Shri Jaimin Gandhi, Advocate appeared on behalf of the appellant for personal hearing and reiterated the submissions made in appeal memorandum and requested to set-aside the impugned order. He also requested for two weeks time to male additional submissions.



4.1 The appellant made additional submissions wherein they claimed that in respect of services valued to Rs.14,48,550/- their liability shall be 50% and 50% liability shall be on the service recipients being body corporate. They also submitted invoices issued in this regard as evidence

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, compilation of case laws and documents submitted on 29.09.2023. 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 and F.Y 2016-17.

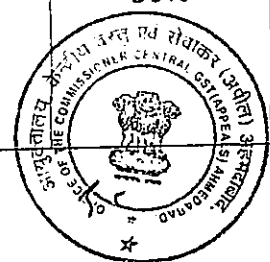
6. It is observed that the entire demand has been raised on the basis of third party data. The income of Rs. 1,59,33,860/- Rs.1,40,83,200/- & Rs.1,56,83,723/- earned in the F.Y. 2014-15, 2015-16 & 2016-17 were reflected by the appellant under the head 'sale of service' in their ITR. The department has considered the said income as taxable income. The appellant, however, have claimed that during said period they have carried out works contract service (colour work) for various contractors hence are exempted from service tax liability. Alternatively they claim that under RCM they are not liable to pay any taxes.

6.1 I have gone through the Balance Sheet, Profit and Loss Account, ITR and Invoices of the appellant. I find that the adjudicating authority in the impugned order has already considered their plea and held that the appellant is providing services alongwith material. Hence the same is classifiable as 'Works Contract'. He at para-29 of the impugned order granted the deduction of the cost of materials involved (Rs.54,42,488/-, Rs.48,43,651/- & Rs. 32,46,961/- for the F.Y. 2014-15, 2015-16 & 2016-17 respectively). Hence, I find that the same cannot be granted when the adjudicating authority has already been granted to them.

6.2 The appellant have also claimed that they have rendered the said services to the body corporate and therefore in terms of the Notification No. 30/2023, they are liability to pay only 50% of the tax. The relevant text of Notification No. 30/2012-S.T., dated 20-6-2012, is reproduced below:

TABLE B

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%



(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

6.3 I find that this benefit was also granted by the adjudicating authority at Para-32. So, claiming the same benefit again before the appellate authority is not justifiable. Accordingly, I find that the total tax liability of Rs.39,30,805/- arrived by the adjudicating authority shall sustain on merits.

7. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable in the para-6.5 supra.

8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) 611 (S.C.)], concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but did not obtain registration and neither filed the statutory returns. This act thereby led to suppression of the value of taxable service and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined.

9. 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 and were liable to pay service tax, however, they failed to self-assess their tax liability. As such they failed to obtain registration and thereby failed to file ST-3 Return. I, therefore, find that all such acts make them liable to a penalty. As regards the imposition of penalty under Section 77(2) is concerned, I find that the same is also imposable as the appellant were rendering the taxable service but failed to correctly assess their tax liability thereby filed incorrect ST-3 Return.

10. In view of the above discussion, I uphold the impugned order confirming the service tax demand of Rs.39,30,805/- alongwith interest and penalties.

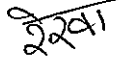
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.



G.C.F.
(ज्ञानचंद जैल)
आयुक्त (अपील्स)

Date: 10.2023

Attested



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

By RPAD/SPEED POST

To,

M/s. Parasar Virendra Chhotelal,
60, Ambedkarnagar Society,
Railway Station Road, Chandlodiya,
Ahmedabad -382481

- **Appellant**

The Joint Commissioner,
CGST, 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, Division-VII, CGST, Ahmedabad North.
- ✓ 4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
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5. Guard File.

