



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



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW0000818399

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1524/2023 / 23
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-147/23-24 and 23.11.2023
(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	28.12.2023
(ङ)	Arising out of Order-In-Original No. 250/AC/DEMAND/22-23 dated 30.11.2022 passed by The The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Mansukhbhai Bhanubhai Sutariya 14, Nishant Bunglows Opp. Jay Sukh Tenament, Nikol Naroda Road Ahmedabad - 382350

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:-

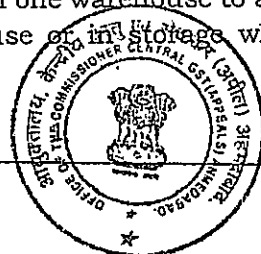
Revision application to Government of India:

(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 प्रकिया 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 बताया 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 अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रूपए 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।

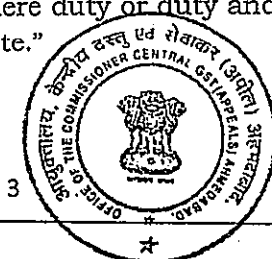
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Mansukhbhai Bhanubhai Sutariya, situated at 14, Nishant Bungalows, Opp. Jay Sukh Tenement, Nikol Naroda Road, Ahmedabad - 382350 (hereinafter referred to as "the appellant") against Order-in-Original No. 250/AC/DEMAND/22-23 dated 30.11.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST and C. Ex., Division-I, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AFXPS3084G. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 14,93,980/- during the FY 2015-16, which was reflected under the heads "Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant vide letter/mail dated 28.01.2021 & 11.03.2021, was called upon to submit copies of relevant documents for assessment for the above said period. However, the appellant had not responded to the letters issued by the department till the SCN issued.

2.1 Subsequently, the appellant was issued Show Cause Notice No. STC/AT-1-15-16/UNREG/2021-22/262 dated 23.04.2021 demanding Service Tax amounting to Rs. 2,16,628/- for the period FY 2015-16, 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) and Section 78 of the Finance Act, 1994.

2.2 PH in the case were also held on dated 16.11.2022, 22.11.2022 & 28.11.2022 but no one attended the same. Therefore, The Show Cause Notice was adjudicated by the authority on the ex-parte basis, wherein the demand of Service Tax amounting to Rs. 2,16,628/- 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 2015-16. Further (i) Penalty of Rs. 2,07,330/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

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



- The appellant submitted that the recipient person was on leave due to illness and also failed to inform to the appellant regarding OIO. Later, on being recovered, he informed to the appellant about concerned OIO. Due to this reason, there was delay of 10 days in filing the appeal. The applicant has requested to consider the cause of delay.
- The appellant is engaged in business of textile processing work on job work basis. They receive the fabric from principal manufacturers and sent back to the said manufacturer after processing and working the said textile product. During the F.Y. 2015-2016 to F.Y. 2017-2018 (till June-2017), they have provided job work services of textile processing and received payments from their customer/principal manufacturer which was accounted as Job-work Income in the books of accounts.
- The appellant submitted that providing Job-Work services of Textile Processing is covered under Entry (f) of Negative List i.e. Sec 66D of Finance Act, 1994, and also exempted vide Entry No. 30 of Notification No. 25/2012-ST dated 20-06-2012.
- Further, they submitted that only on the basis of data provided by the income tax department, Show Cause Notice was issued without further verification and the same is vague and cryptic as no legal case has been made against them based upon the nature of activity carried out. The Ld. Asst. Commissioner, Central Excise and CGST, Ahmedabad North has confirmed the demand of Service Tax of Rs. 2,16,628/- in the impugned order, by incorporating the case against the appellant which is not the part of the show cause notice. It is a settled principle of law that the adjudicating authority cannot travel beyond the scope of show cause notice, following which the order is liable to set aside. Reliance is placed on the following judgements:
 - i) The Bangalore bench of CESTAT in the case of Syndicate Bank Vs. Commissioner of Central Excise [2022] 137 taxmann.com 302 (Bangalore - CESTAT
 - ii) M/s. Jeevan Diesels & Electricals Limited V. Commissioner of Central Excise, Customs & Service Tax, Bengaluru- III* - 2017 (2) TMI 58 - KARNATAKA HIGH COURT.
 - iii) GODREJ INDUSTRIES LTD. VERSUS COMMISSIONER OF C. EX., MUMBAI, 2018 ACR 35 Supreme Court.
 - iv) Ashok Bhan and V.S. Sirpurkar, JJ. No.- 3630-3631 of 2002 with 3761-3762, 7638-7646 of 200 dated July 30th 2008
 - v) 2014 (8) TMI 579 - CESTAT NEW DELHI
 - vi) Other Citation: 2013 (30) S.T.R. 356 (Tri. - Del.)



- vii) CCE v. Millipore India (P.) Ltd. [2011] 16 taxmann.com 363/[2012] 34 STT 86(Kar.) (para 6.1)
- viii) Toyota Kirloskar Motor (P.) Ltd. v. CCE [CEA No. 47 of 2009, dated 28-3-201 1] (para 6.1)
- ix) CCE & C v. Schott Glass India (P.) Ltd. [2009] 21 STT 111 (Guj.) (para 7)
- x) Association of Leasing & Financial Service Co. v. Union of India [2010] 7 taxmann.com 740/29 STT 316 (SC) (para 7)
- xi) Sudhesh Sharma v. CCE [2010] 24 STT 149 (New Delhi - CESTAT) (para 7)
- xii) CCE v. Ashok Singh Academy [2009] 23 STT 181 (New Delhi - CESTAT) (para7)
- xiii) Consulting Engineering Service (India) (P.) Ltd. v. Asst. CIT [2017] 88 taxmann.com 762 (Delhi - Trib.) (Para 7).

The appellant submitted that the demand confirmed without proper verification is not legal as per law and prayed that the appeal may be accepted and the OIO may be set aside in light of the above.

4. Personal hearing in the case was held on 08.09.2023,18.09.2023 & 09.10.2023 but no one appears on behalf of the appellant.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 30.11.2022. The present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 06.02.2023, i.e. after a delay of 10 day from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that The appellant was not informed timely by the OIO recipient person and the person was on leave due to illness. When he returned, the process of filing appeal could get started against the impugned OIO and then after filed the present appeal on 06.02.2023 which was required to be filed on or before 29.01.2023.

6. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 10 days and take up the appeal for decision on merits.



7. 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.

8. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming 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 2015-16, but neither they got registered with the service tax department nor paid any service tax for the concerned period. The appellant also failed to file their submission before the adjudicating authority, Therefore, the adjudicating authority adjudicated the matter ex parte.

8.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. Further, PH were also held in the matter but the appellant failed to file their submission before the adjudicating authority. In absence of the documentary evidences the demand was confirmed by the adjudicating authority.

9. It is observed that the main contentions of the appellant in the appeal memorandum is that they were engaged in the textile processing work on job work basis. In support of their claim they have submitted sample bills of job work, sample delivery challan, ITR and 26AS for the F.Y. 2015-16. Opening and closing stock may also be seen in the ITR. As per submission, the income received by them from such job work is exempted from the service tax as per Sr. No. 30 of the Notification No. 25/2012-ST dated 20.06.2012. For ease of reference, I hereby produce the relevant text of the Notification No. 25/2012-ST dated 20.06.2012, as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th



March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

30. Carrying out an intermediate production process as job work in relation to -
(a) agriculture, printing or textile processing;

(b)

(c); or

(d) "

10. On scrutiny of the documents submitted viz. ITR for the FY 2015-16, sample bill, delivery challans, I find that the appellant engaged in Job work in relation to textile processing and the appellant is not required to pay any service tax on the income of Rs. 14,29,868/- received by them during the FY 2015-16 as per above notification. therefore the contention made by the appellant appears to be sustainable.


11. In view of the above discussion, I am of the considered view that the activity carried out by the appellant not liable to pay Service Tax during the FY 2015-16. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

12. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the appellant during the FY 2015-16, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

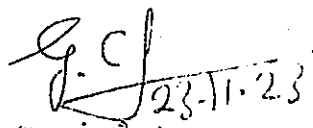
The appeal filed by the appellant stands disposed of in above terms.

Attested


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Mansukhbhai Bhanubhai Sutariya,


(ज्ञानचंद जैन)

आयुक्त (अपील्स)
Date : 23.11.23



Appellant

14, Nishant Bungalows, Opp. Jay Sukh Tenement,
Nikol Naroda Road, Ahmedabad - 382350

Respondent

The Assistant Commissioner,
CGST & C. Ex., Division-I,
Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division I, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file



