



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:- 20231264SW000000E23C

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2235/2023 / 9307
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-148/23-24 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	13.12.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/919/2022-23 dated 22.2.2023 passed by The The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Hari International Art Survey No. 7/27, Bhagwat Vidhyapith RoadNr. Mota Talav, Sola gam, Science City Ahmedabad - 380060

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-वी/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 Appellate 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 प्राविधिकरण के समक्ष 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. Shri Hari International Art, Survey No.7/27, Bhagat Vidhyapith Road, Nr, Mota Talav, Solagam, Science City, Ahmedabad-380060 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/919/2022-23 dated 22.02.2023, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service and were holding Service Tax Registered No.AAKCA5964ESD001.

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, it was noticed that the appellant in the ITR/Form-26AS has shown the service income more in comparison to the taxable value reflected in the ST-3 Return 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	Total Amount as per ITR/Form 26AS	Taxable Value as per ST-3 Return	Difference in Value	Service Tax payable
2014-15	2,12,65,157	1,33,63,441	79,01,716	9,76,652

2.1 A Show Cause Notices (SCN) bearing No. CGST/Div-VII/A'bad-North/TPD/294/2020-21 dated 27.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 9,76,652/- along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. The late fee under Section 70; imposition of penalties under Section 77 (1), Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

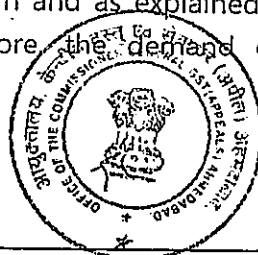
3. The said SCN was adjudicated vide the impugned order wherein the service tax demand of Rs. 9,76,652/- was confirmed alongwith interest. Late fees of Rs. 20,000/- was imposed under Section 70. Penalty of Rs. 10,000/- each under Section 77(1) & 77(2) and penalty of Rs. 9,76,652/- was also imposed under Section 78 of the Finance Act.

4. 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 are in the construction of Residential Complex. The entire demand was confirmed without granting natural justice and without investigating the matter hence the demand needs to be set-aside. Reliance is placed on the judgment reported in 2019 (24) GSTL 606 in the case of Kush Construction.



- The notice does not transpire as to which type of service had been provided by the Appellant which is liable to demand of service tax. Therefore, in absence of any specific allegation made in the notice for service, the said OIO deserves to be set aside. Reliance is also placed on judgment reported in 2022 (58) GSTL 324 in the case of Ganpati Mega Builders m Pvt Ltd & 2002(58) 245 in the case of Quest Engineers & Consultant (P) wherein Hon'ble Tribunal held that - "Form 26AS is not prescribed documents for ascertaining gross turnover of assessee. The case of the appellant is covered by above judgment of Hon'ble Tribunal and therefore, the said OIO requires to be dropped."
- In the judgment reported in 2017 (349) ELT 13 (Kar) wherein the HC held that there was no suppression or that there was no intention to evade duty. Therefore, mere alleged that there is suppression of facts is not enough to invoke longer period and 2017 (349) ELT 137 wherein the Hon'ble Tribunal held that - Revenue could not establish that the appellant had intention to evade duty- Extended period is not invocable. Therefore, in view of the above, notice is time barred.
- Mere taking shelter or resort of ITR data is not sufficient to arrive at evasion of service tax liability. Moreover, the question does not arise for deliberate suppression of facts as the service tax payment as per law is made/ paid on taxable value of service. Reliance placed on OIA AHM/EXCUS//001/APP/62/2023-24 dated 19.07.2023 issued in r/o M/s. Rajesh Dubal Yadav.
- Penalty would be imposable only if there was deliberate suppression or wrong statement. Where the breach is flowing from a bonafide belief and the offender has not acted against the manner prescribed by the statute, no penalty is called for, as held in the case of ID-LIFE TAPES (P) LTD. versus COLLECTOR OF CENTRAL EXCISE - 1990(46) E.L.T. 430 (TRIBUNAL).
- Penalty is proposed to be imposed under Section 77 in addition to Section 78 is not proper and legal in as much as the appellant is not liable to pay service tax as explained above and till issuance of above SCN, no letter or no notice is issued for any contravention of Provisions of Section or Rule of Finance Act, 1994. Therefore, the Penalty is proposed to be imposed is unwarranted.
- The interest is also not leivable. Reliance is placed on judgment reported in 2019 (27) GSTL 575 (Tri_Bang) in the case of Jossy Edwin Pinto.
- The adjudicating authority has imposed late fee under Rule 7C of STR,1994 for the return period April to September'2014 and it is concluded for the above that demand is for that particular period. The appellant has filed the return of disputed period in time and still the appellant has not received any letter proposing to impose late fee for the said period return. Therefore, the imposition of Late fee of Rs.20,000/- is improper and illegal. Further notice is issued for particular return period 2014-15 i.e. first half year return and as explained above and therefore, whole notice is time barred. Therefore, the demand of service tax is not sustainable.



- A copy of ST-3 return and challan for amount of Rs.2,73,903/- is submitted for which the appellant through oversight in July to Sept, 2014-15 has not shown value but has paid tax. In the annual VAT return the total turnover mentioned is Rs.2,73,24,107/- which includes service tax.

5. Personal hearing in the matter was held on 06.11.2023. Shri Naimesh K. Oza, Advocate appeared for personal hearing on behalf of the appellant. He reiterated the contents of the oral and written submissions made earlier and requested to allow their appeal.

6. 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 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. 9,76,652/- alongwith 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. 2014-15.

6.1 I have gone through the ITR>Returns, Form-26AS, Annual VAT Return, ST-3 returns, Sales Accounts, Export Sales Ledger, Retail Invoices. The appellant claim that they were rendering Works Contract services, Construction service and they claim that the differential income pertains to the sale of goods on which they have paid VAT. They also submitted VAT return wherein they have shown the value of Rs.2,73,24,107/- which is inclusive of service tax. On going through the invoices, I find that the appellant has been providing goods like Laminate Vener sheets, Wooden Carving Furniture, Frames & Wooden Carving Transforms, Temples, Murti, Furniture, etc which attracts VAT. I find that Section 65B(44) of the Finance act, 1994 includes a declared service but excludes such transfer, delivery or supply of goods which is deemed to be sale within the meaning of clause (29a) of Article 366 of the Constitution Relevant text is reproduced below.

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) *an activity which constitutes merely,—*
- (i) *a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
- (ii) *such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or*
- (iii) *a transaction in money or actionable claim;*
- (b) *a provision of service by an employee to the employer in the course of or in relation to his employment;*
- (c) *fees taken in any Court or tribunal established under any law for the time being in force.*

6.2 I find that the income reflected in Form 26AS received income of Rs. 2,12,65,157/- from various Companies, Real Estate Developer etc. Out of this income,

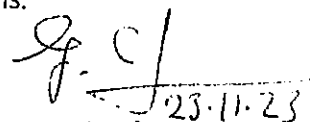


the income of Rs.1,33,63,441/- is reflected in ST-3 on which appropriate tax has been paid including the amount of Rs.2,73,903/- paid by the appellant subsequently vide challan. However, the remaining income is exempted as they have paid VAT. The appellant have submitted the invoices on which VAT has been made. Since VAT has been discharged, I find that they are not liable to discharge service tax on the differential income of Rs. 79,01,716/- as they have already discharged VAT.

6.3 When the demand does not sustain there is no question of demanding interest and imposing penalty.

7. In view of the above discussion, I set-aside the impugned order confirming the service tax demand of Rs.9,76,652/- alongwith interest and penalties and allow the appeal filed by the appellant.

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: 23.11.2023

Attested



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



By RPAD/SPEED POST

To,
M/s. Shri Hari International Art,
Survey No.7/27, Bhagat Vidhyapith Road,
Nr, Mota Talav, Solagam, Science City,
Ahmedabad-380060

- 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 (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.



