



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:- 20231264SW0000666CDC

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2234/2023 / 33
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-149/23-24 and 24.11.2023
(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. CGST/WT07/HG/334/2022-23 dated 17.8.2022 passed by The The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Vineet Kanji Maheshwari 21, Garden Homes Opp. Garden Residency 1 South Bopal, Ahmedabad - 380058

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 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 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 मांग 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. Shri Vineet Kanji Maheshwari, 21, Garden Homes, Opp Garden Residency 1, South Bopal, Ahmedabad- 380 058 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/334/2022-23 dated 17.08.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

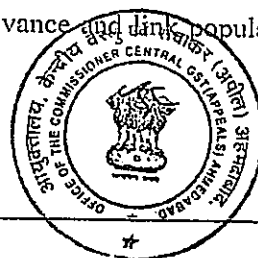
2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ASYPM6509J. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 23,77,328/- during the FY 2015-16, which was reflected under the heads "sales of services (Value from ITR)" filed with Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/Abad North/Div-VII/AR-III/TPD/UNREG-15-16/20-21 dated 27.09.2020 demanding Service Tax amounting to Rs. 3,44,713/- 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), Section 77(2) and Section 78 of the Finance Act, 1994.

2.2 As the appellant didn't attend the PH held on dated 01.08.2022, 03.08.2022 & 05.08.2022, 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. 3,44,713/- 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 FY 2016-17. Further (i) Penalty of Rs. 3,44,713/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

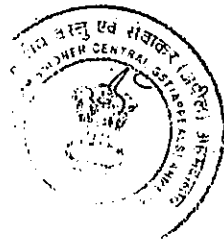
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- The appellant was engaged in the business of providing search engine optimization (SEO) service to clients outside India. SEO Services is the process used to optimize a website's technical configuration, content relevance and link popularity so its pages can



become easily findable, more relevant, and popular towards user search queries, and as a consequence, search engines rank them better.

- That they have provided Export Services outside India and has raised Invoices in Foreign Currency and has also received Payment in Foreign currency in its Paypal Bank Account which was converted to INR and Credited in Bank Account with Axis Bank Ltd.. During the F. year 15-16, the appellant has earned Revenue from Export Services amounting to Rs. 23,77,328/- with all the Conditions for Export of Services are satisfied and hence the appellant is not liable to Pay Service Tax on the said Export Services. The appellant has started the business in the FY 2015-16 and there was no business activity in F.Y. 2014-15.
- Further they submitted that they are proprietary concern and run the business in the name of M/s EMINENT INFOWAY". They didn't received any departmental correspondences due to change in address. The department decided the matter ex parte without considering the fact that no TDS is deducted as the entire receipts of them are from export of services. The same has been received in foreign currency remittances and in convertible foreign exchange in India.
- Further they submitted that the entire receipt is from Export of Services and the Criteria for Export of Services for the purpose of Rule 6A of the Service Tax Rules, 1994 are satisfied by the assessee for provision for Services outside the territory. The Rule 3 of Place of Provision of Services Rules 2012 is also satisfied and the payment has been received by the Appellant in Convertible Foreign Exchange. Hence the taxability of the charging Service Tax on Export Receipt does not apply.
- Further, appellant also made reference of Foreign Trade Policy 2021-2025. As per para 2.52 of FTP, remittance received through vostro account shall be considered as 'amount received in foreign currency only.
- Further Appellant made reference of the case of M/S BBC WORLD SERVICES INDIA PRIVATE LIMITED VERSUS CCE AND ST, DELHI - 2018 (2) TMI 369 - CESTAT NEW DELHI wherein it was held that FIRC's did not identify the nature and name of foreign convertible currency - It is manifestly clear that the amount credited to the account of the appellant in India is in consequence of a debit of pound sterling account maintained by participated bank in nostro mechanism in UK. The said debit of foreign exchange by the UK bank and consequent credit in Indian rupee in Indian bank as part of nostro transaction is reported to RBI and necessarily forms part of foreign exchange earning in India - the amount has not reached India from UK in Indian rupees - we find no merit in the findings by the lower authority to the effect that foreign exchange has not been received in convertible foreign currency for export of services by the appellant.



- Appellant submitted that on the basis of above amount received through vostro account shall be considered as amount received in foreign currency and hence the same shall be considered as export of service Turnover.
- The adjudicating authority has erred law and fact in considering the turnover of Rs. 23,77,328/- as taxable service, which is in fact export of service and the same is not chargeable to tax.
- The appellant have submitted the following documents:
 - a) P & L Account for the FY 2014-15
 - b) Account Statement & Paypal Transaction history & 26 AS for the FY 2015-16
 - c) Certificate of convertible currency.

4. Personal hearing in the case was held on 20.11.2023. Shri Tarak shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He submitted that their client is doing export of services namely web based development service to foreign based clients and payment received in convertible currency. He also submitted certificate of inward remittance from Citibank along with additional submissions.

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 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 FY 2015-16.

6. It is observed that the main contention of the appellant is that all the services provided by them are not taxable being export of the service. From the submission it is observed that during 2015-16, the appellant was engaged in the business of providing search engine optimization (SEO) service to its various overseas clients outside India and has received payment in convertible foreign exchange against the same. In support of their claim they have furnished "certificate of inward remittance from Citibank" & Account Statement & Paypal Transaction history.

6.1 As per the submission made by them the service is provided to their overseas clients who are situated outside India i.e. taxable territory and payment for such services has also been received by the provider of service in convertible foreign exchange. They have submitted FIRC for the same and it may be termed as export of service as per Rule 6A of the Service Tax Rules, 1994 which is reproduced as under:



Rule 6A Export of Services. -

- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -
- (a) The provider of service is located in the taxable territory,
- (b) The recipient of the service is located outside India,
- (c) The service is not a service specified in the section 66D of the Act,
- (d) The place of provision of the service is outside India,
- (e) The payment for such services has been received by the provider of service in convertible foreign exchange, and
- (f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

6.2 Further, vide Notification No. 28/2012 dated 20.06.2012, place of provision of service tax Rules, 2012 were introduced. As per rule 3 of the above rules provides that place of provision of a service shall be the location of the recipient of service, Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service. In the instant case the location of the service recipient is abroad i.e. out of taxable territory.

Rule 3 of place of Provision of Service Rules 2012 is reproduced herein under,

3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service, Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

7. In view of the above discussion, I find that the appellant has provided the services to its various overseas clients outside India i.e. taxable territory and payment for such services has also been received by the provider of service in convertible foreign exchange and it may be termed as export of service as per Rule 6A of the Service Tax Rules, 1994. Therefore, the same appears to be outside of the purview of service tax. 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.

8. 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.

9. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

10. 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.


G.C.J. 24.11.23
(ज्ञानचंद जैन)

आयुक्त (अपील्स)



Attested

Date :


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Shri Vineet Kanji Maheshwari
21, Garden Homes, Opp Garden Residency 1,
South Bopal, Ahmedabad- 380 058.

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
- 6) PA file

