



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000000A54

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1526/2023 / 6M1
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-172/23-24 and 26.12.2023
(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	04.01.2024
(ङ)	Arising out of Order-In-Original No. 220/AC/DEMAND/22-23 dated 25.11.2022 passed by The The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Hemant Chandrakant Patel 81, Patel Vas, Hansol Sardar Nagar Ahmedabad - 382475

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 के मामले 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.

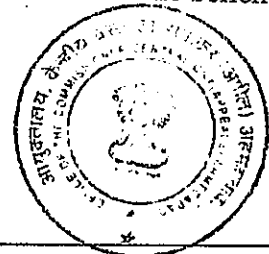
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 बताया अनुसार के अलावा की अपील, अपीलों 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 पढ़ी कार्यों 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 filed 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-रु 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)।

- (19) खंड (Section) 11D के तहत निर्धारित राशि;
- (20) लिया गलत सेनवैट क्रेडिट की राशि;
- (21) 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।

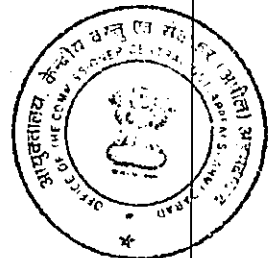
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (xix) amount determined under Section 11 D;
- (xx) amount of erroneous Cenvat Credit taken;
- (xxi) 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. Hemant Chandrakant Patel, situated at 81, Patel Vas, Hansol, Sardarnagar, Ahmedabad - 382475 (hereinafter referred to as "the appellant") against Order-in-Original No. 220/AC/DEMAND/22-23 dated 25.11.2022 (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. AQPPP6366H. 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. 13,50,500/- during the FY 2015-16, which was reflected under the heads "Total Sale of 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 24.11.2020, 27.01.2021 & 21.03.2021, 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 The appellant was issued Show Cause Notice No. AR-V/Hemant Chandrakant Patel/Un-Reg/2015-16 dated 09.06.2021 demanding Service Tax amounting to Rs. 1,95,823/- 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)& 77(2) and Section 78 of the Finance Act, 1994.

2.2 Subsequently, The Show Cause Notice was adjudicated by the authority on the ex-parte basis, wherein the demand of Service Tax amounting to Rs. 1,95,823/- 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. 1,95,823/- 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) (a) of the Finance Act, 1994; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) 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 they have earned the income from of providing intermediary service of GTPL cable connection amounting Rs. 7,73,500/- and from the sale of GTPL Set Up Boxes of Rs.4,74,750/-. While filing income tax return for the concerned period, the total income was shown against Sale of service. They have not got registered with the service tax department as their turnover of service portion was within threshold limit.
- The appellant submitted that they have filed their reply against the impugned SCN vide letter dated 24.07.2021 and the same was sent through speed post but the adjudicating authority has decided the matter without considering the same.
- Further, they submitted that only on the basis of data provided by the income tax department, the extended period can't be invoked and the active element of intent to evade duty by action or inaction needs to be present for invocation of the same. They have relied on the following case law:
 - i) M/s Cosmic Dye Chemical Vs Collector of Cen. Excise, Bombay[1995(75) E.L.T. 721(S.C.)
- 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 unclear as no allegation has been made against them in the SCN. The Ld. Asst. Commissioner, Central Excise and CGST, Ahmedabad North has confirmed the demand of Service Tax of Rs. 1,95,823/- in the impugned order merely presuming that taxable services have been provided. The "sale of service" mentioned in ITR for the concerned was considered but all other i.e. opening stock and closing stock were not considered by the adjudicating authority.
- The appellant further states that the impugned SCN has been issued by the authority merely on the basis of ITR which is not legal as per law. They made reference of the CBIC instructions dated 01.04.2021 and 23.04.2021 issued vide F.NO 137/472020-ST in this regard.
- Further the appellant stated that adjudicating authority has not provided the SSI exemption of Rs. 10 Lakhs available to them as per Notification No 33/2012-ST dated 20.06.2012 and passed the order confirming demand without proper verification which 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 11.12.2023. Shri Punit Jhamtani, C.A., appeared on behalf of the appellant for personal hearing. He reiterated the written submissions made in appeal memorandum. He also submitted that his client was GTPL service operator and service turnover was Rs. 7,73,500/- and sale of goods portion was Rs. 4,74,750/- during the F. Y. 2015-16. He also requested three days time for additional submission/documents and the same was received on dated 14.12.2023.

5. 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.

6. I find that in the personal hearing, the representative of the appellant has declared the value of sale of services as Rs. 7,73,500/- and sale of goods Rs. 4,74,750/-. While in the P & L (Income & expenditure) statement, the sale of goods is shown as Rs. 5,77,000/-. Hence there are contradictory figures and nothing can be established with certainty. Hence I will go by what is declared in statutory returns.

7. I find that in the ITR for the Assessment Year 2015-16(F.Y.2014-15), the sale of services is declared as 9,85,450/- which is below the threshold limit. In the ITR for the assessment year 2016-17(F.Y. 2015-16), the sale of service is declared as 13,50,500/-. Hence the appellant is eligible for benefit of threshold limit as per Notification No 33/2012-ST dated 20.06.2012. Hence the service tax is liable only on the taxable value of Rs. 3,50,500/- (13,50,500-10,00,000) . Consequently, the appellant is also liable for interest under section 75 and penalties under section 77(1) (a), 77(1)(c) and 78 of the Finance Act,1994.

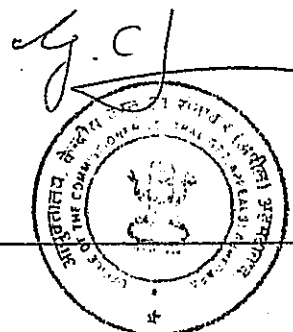
8. Accordingly I pass following order in appeal;

8.1 I uphold service tax to the extent payable on the taxable value of Rs. 3,50,500/- only;

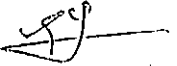
8.2 Interest as applicable, under section 75 of the Finance Act,1994 is also recoverable on the service tax amount as per para 8.1;

8.3 I uphold the penalties under section 77(1) (a) & 77(1)(c) and

8.4 I uphold the penalty under section 78 of the Finance Act,1994, equal to the service tax upheld in para 8.1 above.




11. 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.

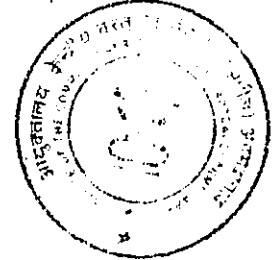

(जगनचंद जैन)

आयुक्त (अपील्स)

Date : 26/12/23

Attested


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad



Appellant.

By RPAD / SPEED POST

To,
Hemant Chandrakant Patel,
situated at 81, Patel Vas,
Hansol, Sardarnagar,
Ahmedabad - 382475

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

