



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:- 20240164SW000000E827

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4037/2023 / 163
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-182/23-24 and 10.01.2024
(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	17.01.2024
(ङ)	Arising out of Order-In-Original No. 103/DC/D/VM/22-23 dated 12.2.2023 passed by The The Deputy Commissioner, CGST, Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Sapan Tusharbhai Shah S-69, KP Villa, Gokuldharm Near Eklavya School, Sanand Ahmedabad - 382210

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:-

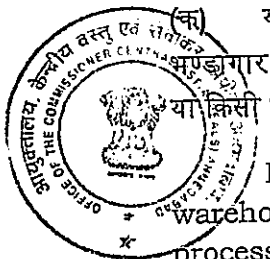
Revision application to Government of India:

(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.



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 होती 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.

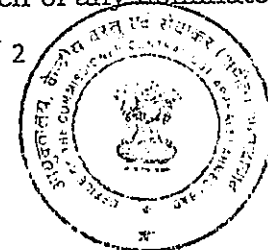
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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 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. Sapan Tusharbhair Shah, S-69, KP, Villa Gokuldham, Sarkhej Sanathal Road, Nr. Aklavya School Ahmedabad-382210, (hereinafter referred to as "the appellant") against Order-in-Original No. 103/DC/D/VM/22-23 dated 13.02.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division III, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

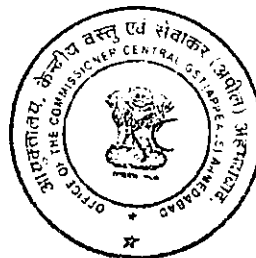
2. Briefly stated, the facts of the case are that the appellant are holding STC No AOIPS5666NSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2016-17, it was noticed that the appellant had earned an income of Rs. 22,13,637/- during the above period but shown only Rs. 5,34,250/- in their ST-3 return. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but short paid the service tax. 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. III/SCN/AC/SAPANTSHAH/146/21-22 dated 20.10.2021 demanding Service Tax amounting to Rs. 2,51,908/- for the period FY 2016-17, under proviso to 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 (i) under Section 77(1) & 77(2) and (ii) Section 78 of the Finance Act, 1994.

2.2 Subsequently, the Show Cause Notice was adjudicated vide the impugned order and the demand of Service Tax amounting only of Rs. 2,51,908/- 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. 2,51,908/- 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. 10,000/- 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 submitted that they are a proprietorship firm engaged in the business of providing Information Technology Software Services bearing STC No AOIPS5666NSD001 w.e.f. 06.12.2016 and they have discharged their service tax liability against the same.

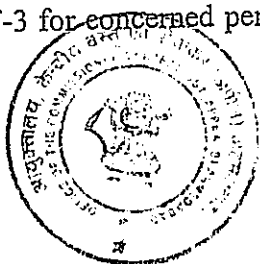


- In the financial year 2015-16 they have received income only from Salary which may be seen from Income tax return acknowledgement and Form-26AS. Further, started filling Service tax return after getting registration number for the period Oct - 16 to Mar - 17. after availing the benefit of SSI Exemption up to Rs. 10 Lacs.
- Further they stated that they have discharged all the service tax liabilities arising on or after getting service tax registration number. The appellant submitted that the adjudicating authority has erred in law by issuing an order demanding service tax on the basis of data provided by the Income Tax department and not considering the facts. The appellant requested to drop the proceeding.

4. Personal hearing in the case was held on 04.01.2024. Shri Viral Hasmukhbhai Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He stated that due to some mistake, against their PAN No AOIPS5666N, three STC were bearing Nos. AOIPS5666NSD001, AOIPS5666NSD002 & AOIPS5666NSD003 were generated. On comparison to ITR/26AS for the F.Y. 2016-17, the S. Tax was found to be short paid, so three SCNs were issued against the single person for the F.Y. 2016-17. Service tax demand will be only upon AOIPS5666NSD001. The other 2 STC Nos. are of no consequence as no service was provided against the same. They were not even aware of the above 2 registrations. On being enquired from service tax office, they came to know about both above Service tax registrations. Their main and substantial registration is AOIPS5666NSD001. During the April to June-16, the income was from salary which can be ascertained from Form 26AS. They have taken STC on dated 06.12.2016 and the ST-3 was filed from Oct-16 to Mar-17 and the service tax was also paid. Further he stated that the differential income liable to service tax pertains to period July to Sept-17 and they have paid the tax along with interest. Reconciliation statement and challans were also furnished. During the F.Y. 2015-16, his client was salaried employee and was not liable to service tax and eligible for threshold exemption for F.Y. 2016-17. He requested to allow all their appeals. He also committed to furnish the ITR for the period in question and previous period and the same were received on dated 07.01.2024.

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 2016-17.

6. It is observed that the main contention of the appellant is that they have taken STC No AOIPS5666NSD001 on dated 06.12.2016 and they have discharged their service tax liability against the same and filed their ST-3 for concerned period. The adjudicating authority wrongly



confirmed the demanding of service tax service tax on the basis of data provided by the Income Tax department and not considering the facts.

6.1 Now, as per submission before me, it appears that the appellant has earned the total income Rs. 22,13,637/-(shown in ITR for F.Y. 2016-17) out of which only Rs. 21,13,772 was received against the taxable service provided by them during the F.Y. 2016-17 and the rest was received as salary. The same is verified from the P& L Account and Ledgers furnished by the appellant. Therefore, only the amount Rs. 21,13,772/- received against the taxable service provided is subject to service tax. They already have shown the taxable Income Rs. 8,66,480/- in their ST-3 filed for the second half of the F.Y. 2016-17 and paid the applicable service tax. Copy of the ST-3 for second half of the F.Y. 2016-17 and S tax paid challans are furnished by them in support of their claim.

Further, The benefit of the SSI exemption appears to be available to them as the income during the preceding F.Y.2015-16 was Rs. 14,42,063/-from salary and Rs. 13,736/- from other sources. After deducting the threshold amount i.e. Rs. 10 Lakhs from the total taxable amount Rs. 21,13,772/-,the net taxable income comes as 11,13,772/- for the F.Y. 2016-17.

As the appellant has already paid the service tax on taxable value Rs. 8,66,480/-, the net taxable value comes as Rs.2,47,292/-. From the above, it appears that the appellant was providing taxable service, filed ST-3 for concerned period but short paid the service tax and same is recoverable along with applicable interest and penalty. Hence, I am of the considered view that the appellant is liable to pay service tax on the taxable amount of Rs. 2,47,292/-. Consequently, the appellant is also liable for interest under section 75 and penalties under section 77(1), 77(2) and 78 of the Finance Act,1994.

7. Accordingly I pass following order in appeal;

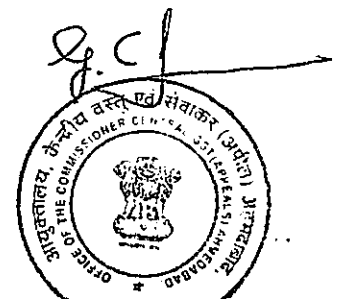
7.1 I uphold service tax to the extent payable on the taxable value of Rs. 2,47,292/- only;

7.2 Interest as applicable, under section 75 of the Finance Act,1994 is also recoverable on the service tax amount as per para 7.1;

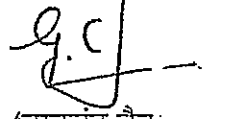
7.3 I uphold the penalties under section 77(1) & 77(2) and

7.4 I uphold the penalty under section78 of the Finance Act,1994, equal to the service tax upheld in para 7.1 above.

8. 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.



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 10.01.2024

Attested

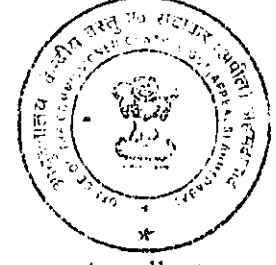


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Sapan Tusharbhair Shah,
S-69,KP, Villa Gokuldharm,
Sarkhej Sanathal Road,
Nr. Aklavya School,
Ahmedabad-382210.

The Deputy Commissioner,
CGST, Division-III,
Ahmedabad North



Appellant

Respondent

Copy to :

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



