



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:- 20240164SW000051035A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3849/2023 / 1126
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-186/23-24 and 16.01.2024
(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. CGST/WT07/HG/902/2022-23 dated 17.2.2023 passed by The The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Layout Inc 20, Sattar Taluka Apartment Navjivan Press Road, Near Income Tax Ahmedabad - 380014

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:-

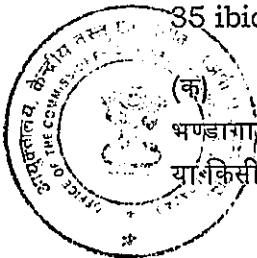
**Revision application to Government of India:**

(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, 4<sup>th</sup> 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup>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/- upto 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 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)।

- (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।

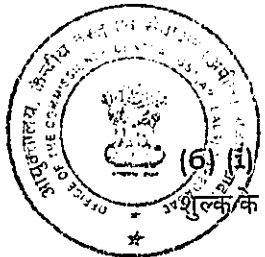
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Layout Inc., Situated at 20, Sattar Taluka Apartment, Navjivan Press Road, Near Income Tax, Ahmedabad-380014 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/902/2022-23 dated 17.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are engaged in providing taxable services holding Service Tax registration no. AAWPP0530EST001. 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 has shown less taxable income in their ST-3 returns as compared to service related income shown in ITR for the concerned period and paid less service tax upon the same. Details of the same are as under:

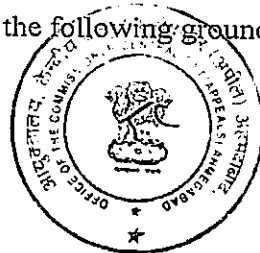
F.Y	Total sales of service as per ST-3	Total Gross value Provided(ITR)	Total value for TDS	Higher Value	S. Tax Short Paid
2015-16	7,45,318/-	10,94,472/-	0	3,51,154/-	50,917/-

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/AR-III/Div-VII/A'bad-North/TPD-Regd/118/20-21 dated 23.10.2020 demanding Service Tax amounting to Rs. 50,917/- for the F.Y. 2015-16, 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)(c), Section 77(2) and (ii) Section 78 of the Finance Act, 1994.

2.2 Subsequently, the Show Cause Notice was adjudicated vide the impugned order wherein, the demand of Service Tax amount of Rs. 50,917/- 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 F.Y. 2015-16. Further (i) Penalty of Rs. 50,917/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 500/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994;(iii)Penalty of Rs. 500/- 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 engaged in providing services of Advertising holding Service Tax Registration No. AAWPP0530ESTO01 under the category of Advertising Agency. For the payment of service tax they are maintaining records on Cash basis. When the income is received and service tax is paid on the same. In their P& L statement the amount is shown inclusive service tax. The impugned order passed by the Adjudicating Authority is without jurisdiction and without any authority of law. Therefore, it deserves to be quashed and set aside.
- The Adjudicating Authority has erred in upholding the demand without proving that the differential amount is towards services, without classifying category of services, though the actual amount is received towards past services invoices or service performed by the Appellant in previous year.
- That the Adjudicating Authority has erred in raising demand simply on the basis of arithmetical calculation. The SCN is issued without considering the accounting method of the appellant, identifying particular activity and presuming that the differential value of ST-3 and ITR is taxable which is serious transgression of the process of law. The revenue can raise the demand only on the basis of such difference. They relied on the case law of M/s Kush Construction Vs CGST NACIN 201-(24) G.S.T.L. 606(Tri.All).
- The appellant submitted that the demand was raised without considering the fact that they are following cash basis of accounting for service tax purpose where the point of taxation is receipt of services whereas for income tax purpose point of taxation is Bill raised or services provided i.e. accrual basis. This different accounting policy followed by notice is basic cause for difference in value shown in Income tax return and ST 3. The details are as under:

Sr. No.	Particular	Amount in Rs.
1	Sales amount as per income tax return	10,96,472/-
	Less	
2	Amount of Service tax included in sales	1,24,650/-
3	Bills raised in current year but amount not received in current period	2,36,354/-
	Add	
4	Amount received for Bills raised in Previous year 2014-15	9,850/-
	Amount as per service tax return	7,45,318/-

- They stated that the Adjudicating Authority has erred in confirming the demand by invoking the proviso to Section 73 in the absence of mens rea and the evidence that there was any intention to evade tax by fraud, misstatements, suppression etc. In the present



case, the period involved is April 2015 to March 2016 and the show cause notice was issue on 23.10.2020, hence, it is time barred.

- The extended period can be invoked only in the case where the Appellant has suppressed the material facts with an intention to evade the duty. As they have nothing suppressed in instant case invocation of an extended period and confirming duty for the extended period is unjust, unfair, and perverse. They placed reliance on the following case laws:
  - i) Sarabhai M. Chemicals Vs. Commissioner of Central Excise, Vadodara(2005) 2SCC 168=2005(179) E.L.T. 3(S.C.);
  - ii) Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut-(2005) 7 SCC 749+2005(188) E.L.T. 149(S.C.);
  - iii) Pushpam Pharmaceutical Co. V. Collector of Central Excise, Bombay[1995 Suppl.(3) SCC 462].
  - iv) Collector of Central Excise v. H.M.M. Ltd.- 1995 Suppl.(3) SCC 322=1995(76) .L.T. 497 (S.C.);
  - v) Collector of Central Excise, Coimbatore-(2003) 3 SCC 410=2003(152) E.L.T. 39(S.C.)

The appellant requested to allow the appeal.

4. Personal hearing in the case was held on 03.01.2024. Shri Brijesh Prajapati, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the written submission and requested to give some time for submitting copies of ITR and ST-3 returns and the same were received on 08.01.2024.

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 2015-16.

7. From the submission, it is found that they have included the service tax portion Rs. 1,24,650/- in their taxable amount Rs. 9,71,822/- and shown the total amount Rs 10,96,472/- as their turnover during the F.Y. 2015-16. The same may be verified from their invoices and service tax summary furnished by them. AS per submission they were following cash basis accounting for service tax purpose whereas for income tax purpose, the point of taxation is bill raised or service provided i.e. accrual basis. Further as claimed by the appellant, Bill of Rs. 2,36,354/- has been raised during the concerned period and the same was shown in the ITR but the amount was not actually received during the period. Therefore they have not shown in their ST-3 for the relevant period. The same is verified from the account statement for the F.Y 2015-



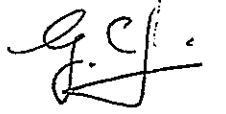
16 submitted by the appellant. Hence, the contention made by the appellant appear to be sustainable.

8. In view of the above discussion, I am in the considered view that the appellant has correctly calculated their service tax liability and paid the same. 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.

9. In view of above, the impugned order is set aside and the appeal is allowed.

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.




(ज्ञानचंद जैन)

आयुक्त (अपील)

Date : 16.01.24

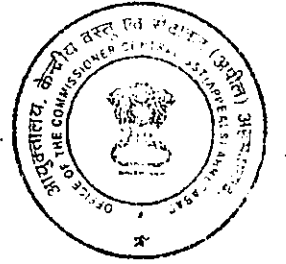
Attested

  
Manish Kumar  
Superintendent(Appeals),  
CGST, Ahmedabad

By RPAD / SPEED POST

To,  
M/s. Layout Inc., Situated,  
20, Sattar Taluka Apartment,  
Navjivan Press Road, Near Income Tax,  
Ahmedabad-380014.

The Assistant Commissioner,  
CGST, Division-VII,  
Ahmedabad North



Appellant

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



