

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate  
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सत्यमेव जयते



आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240164SW0000753843

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3854/2023 / 1131
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-188/23-24 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. GST-06/D-VI/O&A/568/ARTYLLECT/AM/2022-23 dated 3.2.2023 passed by The The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Artyllect Consulting 26, Maruti Nandan Society Opp. Dena Bank, 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:-

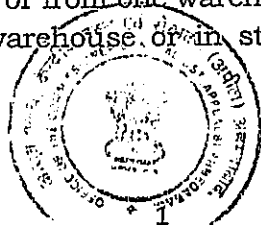
**Revision application to Government of India:**

(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, 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 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 या माल के निर्यात के लिए उत्पादन शुल्क कटौत माल पर उत्पादन शुल्क के रिबेट 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 होतो 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.

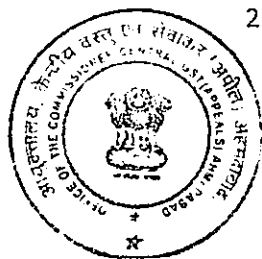
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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/- , 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 और 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)।

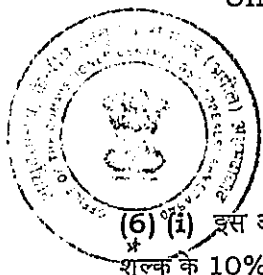
- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

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. Artyllect Consulting, 26, Maruti Nandan Society, Opp. Dena Bank, Bopal, Ahmedabad-380058, (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O & A/568/Artyllect/AM/2022-23 dated 03.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, 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. AUKPP1782A. 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. 19,68,162/- during the above period, 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-06/04-1466/Artyllect/2021-22 dated 18.10.2021 demanding Service Tax amounting to Rs. 2,95,224/- 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(2) and (ii) Section 78 of the Finance Act, 1994; (iii) late fee under the provisions of Section 70 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. . 2,95,224/- 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 FY 2016-17. Further (i) Penalty of Rs. 2,95,224/- 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(2) of the Finance Act, 1994; and (iii) Late Fee of Rs. 40,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of Service tax Rules.

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:

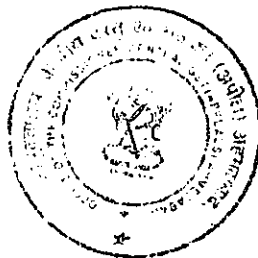
- The appellant received the Impugned OIA on dated 07.02.2023 and the appeal was required to be filed on or before 07.04.2023. However, due to the examination of the



authorized representative there is a delay in filing appeal of 04 days. The applicant has requested to consider the cause of delay.

- The appellant submitted that they were engaged in business of providing Software programming Service in the name of M/s Artlylect consulting. Since they were engaged in providing only export of service,, service tax registration was not obtained as per Rule 4 of service tax rule since in such case no service tax was payable.
- They stated that reply of the show cause notice has been given on 25th January 2023 wherein the appellant has categorically mentioned that service provided by him falls in export of service and payment received in foreign currency only, Its just because of network issue at bank's end, bank is unable to generate FIRC and hence appellant is unable to produce the same. Further, Appellant has also produced statement given by bank on its own letter head for the issue as mentioned supra. The adjudicating authority has not considered the same and issued the impugned Order.
- The appellant submitted that the Service provided are duly qualified as Export of service only. As per Rule 6A of service tax rules, to consider as service as Export of service, following conditions must be fulfilled.
  - a) The service is not specified in the negative list of the service tax act.
  - b) The assessee must be located in Taxable territory that is India.
  - c) The recipient of service is located outside India.
  - d) The payment of service has been received by the provider in convertible foreign exchange.
  - e) The place of provision of the services is outside India.
  - f) The provider of service and recipient of service are not merely establishments of a distinct person

As Condition no A & B are already fulfilled also mentioned in OIO, regarding condition (c), They submitted that Recipient of service M/s Artlylect Inc is located at 7919 Phaeton Drive, Oakland, California, CA ,United States and established under the law of United States i.e. outside of India.
- Regarding the condition "d" the Appellant submitted that they have received amount from his customer in foreign currency only. To prove that amount has been received in foreign currency, appellant need to produce FIRC (Foreign inward remittance certificate) from bank in whose account, such foreign current has been received. Appellant were holding bank account in Oriental Bank of commerce, Gurukul branch. During the period under discussion, there is amalgamation of OBC bank with PNB bank and system integration was being carried out in the bank server. Due to this system integration, bank would not been able to generate FIRC for the foreign inward remittance received by



appellant for which bank has provided a certificate/letter dated 31.01.2023.They requested to consider evidence against condition as per clause (d).

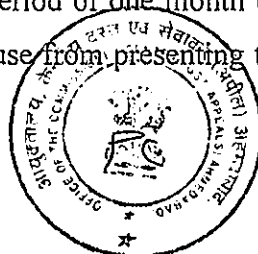
- Regarding the condition “e” the Appellant submitted that the place of provision of the service should be outside India. The same will be determined in accordance with the place of provision of service Rules 3 to 14 of the Place of provision Rules. As per Rule-3, the Place of provision of service is the location of service recipient. In the instant case, the location of service recipient is outside India i.e. United States and place of supply is also outside India.
- Regarding the condition “f” the Appellant submitted that in their case the service receiver is different entity altogether and it's neither any branch nor agency nor representational office of service provider. It is separate legal entity established under foreign law and not related to the service provider.

Since all the required conditions are fulfilled they are not liable to for service tax , to get service tax registration and to file service tax returns. Further they submitted that there is no other income other than export of service. They requested to consider their submission and allow their appeal.

4. Personal hearing in the case was held on 11.01.2024. Shri Hiren Pathak, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the written submission and further submitted that their client is doing export of services to foreign based clients. The bank couldn't give the FIRC due to technical reason otherwise the payment is received in foreign currency only.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 30.02.2023 and delivered on dated 07.02.2023 to appellant. The present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 11.04.2023. i.e. after a delay of 04 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the examination of the authorized representative were going on , thereby is a delay of 04 days in filing appeal which was required to be filed on or before 07.04.2023.

6. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two



months. Considering the cause of delay given in application as genuine, I condone the delay of 14 days and take up the appeal for decision on merits.

7. 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 FY 2016-17.

8. It is observed that the main contention of the appellant they are engaged in the business of providing Software programming service and getting remittance from the convertible foreign currency and the same are not taxable being export of the service. They have furnished a bank letter issued by the PNB on dated 31.01.2023 containing the transaction details of F.Y. 2016-17 of Rs. 19,28,082/- wherein they have declared the receipt as "Foreign Remittances" and also mentioned the FRC's couldn't be generated due to system integration. The activity performed by them 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. –**

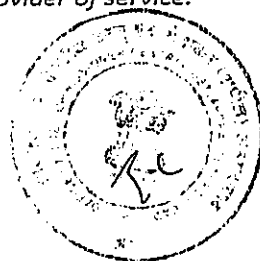
*(1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -*

- (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.*

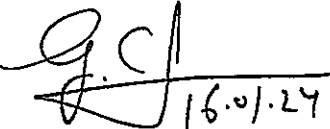


7. In view of the above discussion, I find that the appellant has provided the software programming services to its overseas client outside India i.e. taxable territory and payment for such services has also been received by the provider of service in foreign remittances and it may be termed as export 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, the impugned order is set aside and the appeal is allowed.

9. 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.


  
16.01.24

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 16.01.24

Attested

  
Manish Kumar  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

To,  
M/s. Saurabh Dhariwal,  
N-31/A-1-53,Orchid Greenfield,  
Applewood, SP ring Road,  
South Bopal Extension,  
Ahmedabad-380058.

The Assistant Commissioner,  
CGST, Division-VI,  
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 VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)
- 5) Guard File
- 6) PA file



Appellant

Respondent

