



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:- 20240264SW000000F5B6

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3868/2023 / 1836
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-217/23-24 and 05.02.2024
(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	12.02.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/441/2022-23 dated 30.9.2022 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Ushaben Sabhajit Jaisvar H-902, Shyam Hills, Digvijay Nagar Road Near GST Crossing, New Ranip Ahmedabad - 382480

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 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 विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिवेट 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 सवृत 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 रूपये या उससे कम होतो रूपये 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.

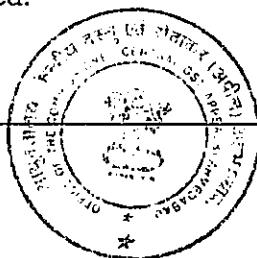
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

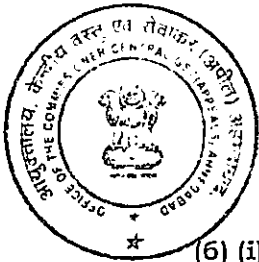
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Ushaben Sabhajit jaisvar,H-902, Shyam Hills, Digvijay Nagar Road, Near GST Crossing, New Ranip, Ahmedabad-382480 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/441/2022-23 dated 30.09.2022 (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 is engaged in the business activity of service provider holding PAN No. APFPJ0869E. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the figures are shown as "Sale of Service under sales/gross receipt from services" in their ITR filed with the Income Tax department as under:

Year	Total sale of service as per ITR	Service tax Rate	Service tax not paid
2015-16	10,67,452/-	14.5%	1,54,780/-

Accordingly, it appeared that the appellant has earned the substantial income from providing services but neither get registered with the service tax department and not paid the service tax. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letter issued by the department.

2.1 Subsequently, the appellant were issued a Show Cause Notice No. CGST/ A'bad North /Div-VII/AR-IV/TPD/Un-Reg-15-16/52/20-21 dated 17.12.2020 demanding Service Tax amounting to Rs 1,54,780/- for the period FY 2015-16, under provisions 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 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,54,780/- 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. 1,54,780/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(1)(a) & 77(1)(c) 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 on the following grounds:

- The appellant submitted that they are a small service provider engaged in plumbing work in under construction residential units as a works contractor. The taxable value of services provided by the Appellant is below threshold limit prescribed under Notification No. 33/2012-ST dated 20-06-2012. The service tax department vide its letter dated 25-07-2020 and summons dated 18-08-2020 asked to produce the certain documents .Due to Covid-19 pandemic, they late filed their reply vide letter dated 5-02-2021(copy is enclosed) to the department explaining that the Appellant is engaged in providing works contract services of plumbing and the turnover of the Appellant is less than threshold of Rupees ten lakhs. Without considering the same, the department issued SCN on dated 17-12-2020. Thereafter, the department provided three different dates of personal hearing vide single letter dated 12-09-2022 which is violation of natural justice.
- The Adjudicating authority without following the principal of natural justice i.e. by not providing sufficient opportunity of being heard, confirmed the demand vide impugned OIO which is liable to set aside on this ground.
- They are engaged in providing Works Contract Services and the value for the purpose of service tax is governed as per of service Rule 2A determination of value of service portion in execution of work contract of service tax (Determination of Value) Rules,2006. Despite of knowing the type of service provided by the appellant, adjudicating authority has calculated the tax erroneously by ignoring the fact that the appellant is eligible to get benefit of abatement @60% as per above Rule 2A. Being turnover within threshold limit, they were not required to get registered and file ST-3 with the service tax department.
- The appellant stated that recovery cannot be initiated merely on the basis of presumption by considering the revenue receipts reported in the income tax return as a taxable service of the Appellant. They placed reliance of the following case law:
 - (i) Sundaram Finance Ltd. v. ACIT (Supreme Court) [(2012) 10 SCC 430],
 - (ii) Kush Constructions Vs. CGST NACIN 2019 (24) GSTL 606 (Tri - All)
 - (iii) Amrish Rameshchandra Shah Vs UOI[2021-TIOL-583-HC-MUM-ST]
- The appellant submitted that the amount received by them should be considered as cum-tax. They placed reliance of the following case law:
 - (i) Bhagwati Security Services vs. Commissioner of C.Ex., Meerut-I [2006 (3) STR 762 (Tri.-Del.)]

- (ii) Panther Detective Services vs. Commissioner of C. Ex., Kanpur [2006 (4) STR 116 (Tri. - Del.)]
- (iii) Advantage Media - 2008 (10) STR 449 (T) Upheld by Supreme Court - 2009 (14) STR J49
- (iv) Bluechip Corporate - Order No. A/2687-2688/15/STB dated 12.8.2015.

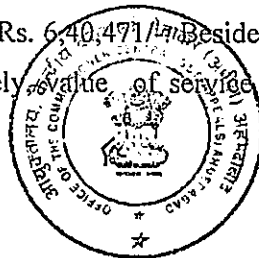
- The appellant submitted that they have suppressed nothing from the department and therefore the extended period can't be invoked in their case and the entire demand is time barred. They requested to set aside the impugned OIO and allow their appeal.

4. Personal hearing in the matter was held on dated 03.01.2024. Shri Gopal Krishna laddha, C.A. and Anjali Bhatia, C.A. appeared on behalf of the appellant. They stated that his client provided works contract service of plumbing in construction of residential units. The service turnover is below threshold. Hence the appellant is not liable for service tax. further, they requested for two days time to submit copy of ITR for previous F.Y. and bifurcation of sale of goods and services (copy of P& L statement). They reiterated the contents of the written submission.

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. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. The appellant failed to file their reply against the letter issued by the department. Therefore the impugned SCN was issued considering the value shown against "Sales of Services" value provided by the Income Tax Department. Further as no one attended the personal hearing, the adjudicating authority adjudicated the matter ex parte.

7. Now, as the written & verbal submission by the appellant has been made before me. As per submission filed by the appellant, the appellant was engaged in providing work contract service of plumbing work in construction of residential units and received consideration as Rs. 10,67,452/- for the same. While going through the P& L Statement and ITR for the F.Y. 2015-16, it is seen that a sizable amount Rs. 5,64,105/- is also shown against the material purchase cost. Further, in the P&L statement they have shown the income from Sale of goods as Rs. 4,26,981/- and from sale of service as Rs. 6,40,471/-. Besides this, where the value for goods and services are not charged separately, value of service portion may be ascertain




applying rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 and the benefit of 60% abatement of Rs. 6,40,471/- is available to the appellant and after considering same, the taxable value will become as Rs 4,26,981/-. I am considering the higher side of value Rs. 6,40,471/- as shown in P& L statement, for the service tax purpose but the same is within threshold limit as their total turnover during the preceding F.Y. was only Rs. 8,42,536/- which is evident from their ITR filed for the F.Y. 2014-15. Therefore, they are eligible for the threshold exemption limit as per Noti. NO 33/2012-ST dated 20.06.2012.

8. In view of the above discussion, I am of the considered view the income received against the service provided by the appellant is within threshold limit. Therefore no service tax liability is pending on appellant. 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, 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.

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


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.


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 05.02.24

Attested


(Manish Kumar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Ushaben Sabhajit jaisvar,
H-902, Shyam Hills, Digvijay Nagar Road,
Near GST Crossing, New Ranip,
Ahmedabad-382480



Appellant

The Assistant Commissioner,

Respondent

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

