

19 MAR 2024

आवक रजिस्टर क्रमांक

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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:- 20240264SW0000222F85

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3858/2023 / 2302
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-228/23-24 and 12.02.2024
(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	13.02.2024
(ङ)	Arising out of Order-In-Original No. 523/AC/DEMAND/22-23 dated 14.2.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Jayntilal Saburdas Panchal A-303, Lamivilla Greens Near Haridarshan Cross Road Nava Naroda, Ahmedabad - 382330

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 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 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 संपोषित 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 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. Jayantil Saburdas panchal,A-303,Lamivilla Greens, Near Haridarshan Cross Road, Nava naroda, Ahmedabad – 382330 (hereinafter referred to as “the appellant”) against Order-in-Original No. 523/AC/Demand/22-23 dated 15.02.2023 (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. ACPPP8926F. 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. 1,17,62,202/- during the FY 2015-16, which was reflected under the heads “Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. Details of the same are as under:

F.Y	Value as per ITR in Rs.	Service tax not paid in Rs.
2015-16	1,17,62,202/-	17,05,520/-
Total	1,17,62,202/-	17,05,520/-

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 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 Subsequently, the appellant was issued Show Cause Notice No. STC/AR-I-15-16/Unreg./2021-22/206 dated 23.04.2021 demanding Service Tax amounting to Rs. 17,05,520/- 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 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned OIO wherein the adjudicating authority confirmed the demand of Service Tax only amounting to Rs.17,05,520/- 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 2016-17. Further (i) Penalty of Rs. 17,05,520/- was also 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)(a) 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 the appellant M/s Jayantilal Saburdas Panchal having temporary STC No. ACP8027KSE001 was engaged in the activity of work contract service with respect of construction of Administrative Building of Gujarat State Electricity Corporation Limited (GSECL), Kadana during the F.Y. 2014-15 to 2015-16. The said work contract service was provided through an authorized agent Mr. Kaushik C Suthar who was registered under service tax and he has duly discharged service tax liabilities towards work contract service provided to GSECL. As they were not registered under service tax and it was one of the conditions laid down by GSECL in tender to appoint the contractor for construction of its Administrative Building. Therefore they opted Mr. Kaushik C Suthar as a agent. Mr. Kaushik C Suthar, an Individual who was service tax registered contractor and known to the appellant. since the appellant was not much familiar with service tax provisions and there was too short time to apply for the tender of GSECL, they approached Kaushik C Suthar and requested him to apply for the tender of GSECL on behalf of your them.

Kaushik C Suthar agreed upon and had applied for the contract as per tender's terms and conditions. As soon as tender was awarded to Kaushik C Suthar, as mutually decided all construction work was carried out by the appellant as per terms and condition of order for construction of new administrative building at kadana hydro power station. As per agreement between appellant and Kaushik C Suthar, all responsibilities with respect to complete the work were upon the appellant only and Kaushik C Suthar had to work as an agent of the appellant by putting RA bills to the GSECL periodically and as soon as payment received from GSECL, same had to be transferred to the appellant as per appellant's requirement.

- The appellant further submitted that it was agreed between appellant and his agent that service tax liabilities with respect of said RA Bills would also to be discharged by Kaushik C Suthar i.e. agent within time permitted under service tax provision. And therefore all service tax liabilities on all such RA bills had been discharged by Kaushik C Suthar. It was further agreed that in consideration of his service, Kaushik C Suthar will deduct his commission @ 5% of amount received from GSECL. Therefore, Kaushik C Suthar had deducted 5% commission from payment received against RA bills submitted. Thus, whatever RA bills they had given to Kaushik C Suthar with respect of the construction of new administrative building at kadana hydro power station, same amount of RA Bills were claimed by Kaushik C Suthar with GSECL. There was no value addition made by Kaushik C Suthar at time of submitting RA Bills with GSECL.



- The adjudicating authority has wrongly confirmed service tax demand and imposed penalty on them.
- The Adjudicating authority failed to consider the fact that Kaushik C Suthar was agent of the appellant and he had just put claim of the appellant through RA Bills with GSECL and he had never undertaken the project in his principal capacity. The Adjudicating authority failed to consider the fact that Kaushik C Suthar is agent of your appellant and had acted on behalf of the appellant. Further, there was no value addition made by him while issuing RA Bills to GSECL and had issued same amount of RA bills which were issued by the appellant. The service tax liabilities had already been discharged on all such RA Bills by the agent on behalf of the appellant.
 - The adjudicating authority also failed to consider the fact that service tax liabilities on total value of work contract had duly been discharged, and therefore service tax demand on the same amount would lead to the double taxation which is not permissible under the law. The adjudicating authority wrongly invoked the extended period of limitation even there was no deliberation on part of appellant which amount to suppression of fact with intent to evade payment of service tax since all service tax liabilities were already been discharged by Kaushik C Suthar. They requested to set aside the impugned OIO and allow their appeal.
4. Personal hearing in the case was held on 05.02.2024. Shri Nirav Patel, C.A. appeared for the personal hearing on behalf of the appellant. He stated that his client has already discharged the ST liability through its agent. If he is asked again to pay then it will be double taxation. He requested to allow their appeal. He made additional submission at the time of PH.
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. The demand pertains to the period FY 2015-16.
6. I find that in the SCN in question, the demand has been raised on the basis of the Income Tax Returns filed by the appellant as the appellant failed to reply of the departmental letters in time. Further they filed their reply against the SCN before the adjudicating authority, Therefore, the adjudicating authority adjudicated the matter *ex-parte* basis.



7. Now, as per the submission filed before me, It is observed that the appellant M/s Jayantilal Saburdas Panchal claimed that he was not having ST registration. He was also not well aware of the service tax provisions and there was too short time to apply for the tender of GSECL. Therefore, he approached Mr. Kaushik C Suthar , an Individual who was service tax registered contractor and requested him to apply for the tender of GSECL on behalf of appellant. Hence, the appellant was engaged in the activity of work contract service with respect of construction of Administrative Building of Gujarat State Electricity Corporation Limited(GSECL), Kadana during the F.Y. 2015-16. He raised the RA Bill and the same were produced by the agent Mr. Kaushik C Suthar to GSECL for reimbursement. Mr. Kaushik C Suthar who was registered under service tax received amount from GSECL and discharged the service tax liability on the same.

From the Ledger/Statement maintained by Mr. Kaushik C Suthar for the F.Y.2015-16, it is seen that they have given amount Rs. 1,17,62,202/- against the total 10 RA Bills to the appellant. Being the service recipient GSECL, a body corporate, the 50% liability of service tax comes upon service recipient and the rest 50% comes upon the service recipient as per Noti. No 30/2012-ST dated 20.06.2012. Hence, the service provider was liable to pay service tax only on the 50% i.e. Rs. 58,81,101/-of the total receipt. Being the work contract service of original work, they are also eligible for 60% abatement as per Rule 2A of service tax (determination of value) rules 2006.Hence, they were liable to pay service tax on the net taxable value of Rs. 23,52,440/- against all 10 RA Bills.


The appellant has claimed that the service tax payment challan/payment particular which shows that they have paid applicable service tax against all 10 RA Bills vide individual challan and the total service tax Rs. 3,21,237/- has been paid by them.

The appellant has also submitted a copy of Principal –agent agreement in which it is mentioned that the service tax liability will be discharged by the Agent i.e. Mr. Kaushik C Suthar on the Receipt from GSECL. However, I do not find any date on the agreement.The appellant has also made reference of the case law of Zaheer Khan B. Khan V. Commissioner of Service tax, Mumbai and case law of Ms. Katrina R. Turcotte V. Commissioner of Service tax, Mumbai wherein CESTAT, Mumbai Bench held that the definition of assessee includes agent, therefore, where service tax liability of service provider has been discharged by the agent, service can not be demanded again from service provider. While going through the above it appears that the appellant is not liable to pay service tax as his agent has already discharged the service tax liability. However, the claim of the appellant needs verification. Therefore, the matter needs to be remanded back for fresh adjudication as the order was passed ex parte.



8. In view of the above , the appeal is allowed by way of remand.
9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
The appeal filed by the appelland stands disposed of in above terms.

Attested


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

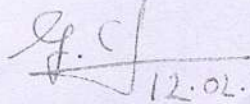
To,
M/s. Jayantilal Saburdas panchal,
A-303,Lamivilla Greens,
Near Haridarshan Cross Road,
Nava naroda, Ahmedabad – 382330

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




12.02.24
(जानचंद जैन)

आयुक्त (अपील्स)
Date : 12.02.24



Appellant

Respondent