



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:- 20240364SW00008181E3

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3876/2023 / 2194
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-256/23-24 and 29.02.2024
(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	04.03.2024
(ङ)	Arising out of Order-In-Original No. 140/ADC/MR/2022-23 dated 23.2.2023 passed by The Additional Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Pitrukrupa Wooden Works 17, Jaydeep Complex Near Galaxy Cinema, Narodaing 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 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 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 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)।

- (19) खंड (Section) 11D के तहत निर्धारित राशि;
- (20) लिया गलत सेनवैट क्रेडिट की राशि;
- (21) 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:

- (xix) amount determined under Section 11 D;
- (xx) amount of erroneous Cenvat Credit taken;
- (xxi) 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. Pitrukrupa Wooden Works,17, Jaideep Complex, Near Galaxy Cinema, Naroda, Ahmedabad-382330 (hereinafter referred to as “the appellant”) against Order-in-Original No. 140/ADC/MR/2022-23 dated 23.02.2023 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Central GST, 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. ABCPC8996J without obtaining service tax registration. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the period FY 2015-16 & 2016-17, it was noticed that the appellant has earned income from service providing and neither shown in ST-3 nor paid the service tax. The income was Shown as “Sale of Service” in their ITR filed with the Income Tax department as under:

Table-1

Year	Total sale of service as per ITR	Service tax Not paid(in Rs.)
2015-16	3,29,81,914/-	47,82,378/-
2016-17	3,95,15,030/-	59,27,255/-
Total	7,24,96,944/-	1,07,09,632/-

Accordingly, it appeared that the appellant had earned the substantial income providing the service during the above period but not paid the service tax on the same. 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. STC/15-147/OA/2021-22 dated 23.04.2021 demanding Service Tax amounting to Rs 47,82,378/- for the FY 2015-16 and Rs.59,27,255/- for F.Y. 2016-17 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) 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. 33,47,664/- for the F.Y. 2015-16 and Rs. 41,49,078/- for the F.Y. 2016-17 total Rs. 74,96,742/- 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 F.Y. 2015-16 & 2016-17. Further, (i) Penalty of Rs. 74,96,742/- was imposed on the appellant under Section 78 of the Finance Act,



1994 and (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 on the following grounds:

- The appellant submitted that they were providing furniture and furnishing service along with material to the Government or Local Authority and the same is exempted as per entry no 12 of mega exemption Notification No. 25/2012-ST dated 20th June 2012. The impugned order is passed without considering the fact by the adjudicating authority. They requested to allow their appeal.

4. Personal hearing in the matter was held on dated 09.01.2024. Shri Ajit Patel, C.A., appeared on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal. Further, the appellant made additional written submission vide letter dated 02.02.2024 wherein the appellant has submitted as under:

(i) The service provided and specified in the OIO falls under the Sr. No. 12 &13 of Notification No. 25/2012-Service Tax dated 20.06.2012. They performed the activity of furniture and wooden work which is covered under fitting out service of above Noti.. They have provided services to the Government and Local Government Authority only during the Financial Year mentioned in the notice. My total work is with government department.

(ii) The government departments have issued every tender after verification of all government registration. In their case, tender processing officer never ask for service tax, because there is no liability of service tax in case any civil and other work contract service given to government department. Hence, they are entitled under Sr. No. 12 &13 of Notification No. 25/2012-Service Tax dated 20.06.2012.

(iii) The Adjudication Authority had only given them 30% abatement, considering our work contract under repair and maintenance Whereas they have done only original work. They have not done any repair of old furniture. Hence, they are eligible for 60% abatement under rule 2A (i) (A) .

(iv) They have not charged service tax separately, Hence, they are eligible for cum-duty/tax benefit in view of Finance Act.

They requested to consider their submission and allow the appeal.

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 F.Y. 2015-16 & 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period F.Y. 2015-16 & 2016-17 based on the Income Tax Returns filed by the appellant. The appellant didn't responded to 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 the appellant filed their submission and the considering the same partially, the adjudicating authority adjudicated the matter and confirmed the part demand after giving the benefit of 2A of Service Tax (Determination of value) Rules, 2006.

7 Now, as the written & verbal submission by the appellant has been made before me. While going through the submission/work orders furnished by the appellant, it is seen the appellant was providing furniture and furnishing service along with material to various Government Authorities and received consideration as Rs. 7,24,96,944/-for the same during the relevant period. The activity performed by them falls in the category of works contract service and valuation of the same is for the purpose of service tax is governed as per Rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 which is as under:

RULE [2A. *Determination of value of service portion in the execution of a works contract. - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :*

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]

[(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

Explanation 1.- For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;



(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

In view of the above their activity providing furniture and furnishing service along with the material is covered under the definition of the "original work" and valuation of the same is required to be done in terms of Rule 2A(ii) (A) of Service Tax (Determination of value) Rules, 2006 and the service tax is liable to be paid only on the 40% of the receipt. As the adjudicating authority has considered the activity as "maintenance and repair" and granted 30% abatement only, They are eligible for abatement of another 30% on the gross receipt i.e. total 60% abatement.

Further, as per submission it can be seen that they have not charged any service tax from its customers, therefore the receipt may be considered as inclusive service tax and the duty cum benefit may also be extended to them.

Further, as contended by the appellant, the activity performed by the are exempted as per entry no 12 & 13 of the Noti. No. 25-2012- dated 20.06.2012. For the reference both the entries are re-produced as under:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other

business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the

Explanation 1 to clause 44 of section 65 B of the said Act;

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant



predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

a structure meant for funeral, burial or cremation of deceased;

From the above it can be seen that the appellant is doing furniture/wooden work which is covered under "Fitting Out" work. Hence the appellant is eligible for exemption. However exemption is available only in case of works contract service are provided to government, Local authority or a government authority. I found that following cases do not fit in the category where such services are provided to government, Local authority or a government authority:

Table-2

2016-17		
Sr. No.	Service recipient	Amount of Service in Rs.
1	Life Insurance Corp. Of India	10,76,770/-
2	Patel Builders	1,00,000/-
Total		11,76,770/-

Except 02 cases mentioned above, in all other cases the appellant has provided the service to the government, Local authority or a government authority and therefore the benefit of the Noti. No. 25-2012- dated 20.06.2012 is available to them.

8. As per above table, the net taxable value for the appellant comes as Rs 11,76,770/- on which 60% abatement is also available to them as per Rule 2A(ii) (A) of Service Tax (Determination of value) Rules, 2006. Therefore, abated value comes as Rs. 4,70,708/- on which the service tax liability comes as Rs. 70,606/-. The same is recoverable from them along with interest and penalty.

9. Accordingly, I pass the following order:

9.1 I uphold service tax to the extent of Rs. 70,606/- only;

9.2 Interest as applicable, under section 75 of the Finance Act, 1994 is also recoverable on the service tax amount as per para 9.1;

9.3 I uphold the penalties under section 77(1) and

9.4 I uphold the penalty under section 78 of the Finance Act, 1994, equal to the service tax upheld in para 9.1 above.

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.

G.C.J.
29.02.24
(ज्ञानचंद जैन)



Attested

आयुक्त (अपील्स) -
Date :


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



By RPAD / SPEED POST

To,
M/s. Pitrukrupa Wooden Works,
17, Jaideep Complex, Near Galaxy Cinema,
Naroda, Ahmedabad-382330

Appellant

The Additional Commissioner,
CGST & C. Ex.
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST & C. Ex. , Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file

