
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सप्तवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : **V2/28/GNR/2019-20/142797014283**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-63-19-20**

दिनांक Date : **27/02/2020** जारी करने की तारीख Date of Issue: **16/03/2020**

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **14/AC/ST/MEH/18-19**
 दिनांक : **30/03/2019** से सृजित

Arising out of Order-in-Original: **14/AC/ST/MEH/18-19**, Date: **30/03/2019** Issued by:
 Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate,
 Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Yash Corporation

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(ii) 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।

(b) 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।
(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध 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।

(d) 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.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-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 मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोवी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क 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 दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र ईए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या उससे कम है वहाँ रुपये 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या 50 लाख तक हो तो रुपये 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 50 लाख या उससे ज्यादा है वहाँ रुपये 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35F के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, 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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

M/s. Yash Corporation, 2/B, Balkrishna Shopping Centre, Opp. S.T.Workshop, Mehsana-384002 (hereinafter referred to as the "appellant") has filed the present appeal against the Order-in-Original No.14/AC/ST/Meh/18-19 dated 30.03.2019 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner of CGST, Mehsana Division, Gandhinagar Commissionerate, Ahmedabad (hereinafter referred to as the "adjudicating authority").

2(i). The facts of the case, in brief, are that the appellant is engaged in providing services of installation of electrical/light equipments like high mast lighting pole, laying cables etc. against work orders received from their various clients and is holding service tax registration under the category of "Maintenance or Repair Service". However, it appeared to the Department that the activities carried out by the appellant were falling under the category of "Works Contract Service". Accordingly, a Show Cause Notice (here-in-after referred to as "SCN") dated 19.10.2012 was issued by the erstwhile Commissioner of Central Excise, Ahmedabad-III for the period 2007-08 to 2011-12 demanding inter-alia service tax amounting to Rs.56,20,552/-.

2(ii). For the subsequent period, the appellant was requested to provide the details vide letter dated 15.04.2014, 30.05.2014, 16.06.2014, 27.06.2014, 22.07.2014, 10.09.2014, 20.01.2015, 09.04.2015, 17.10.2017 and 22.02.2018. However, the appellant provided the details for the period from 2012-13 to 2016-17 only on 06.03.2018 vide their letter dated 05.03.2018. On the basis of information provided by the appellant on 06.03.2018, SCN dated 28.03.2018 was issued by the Assistant Commissioner of CGST, Mehsana Division, Gandhinagar Comm'rate, Ahmedabad.

2(iii). The adjudicating authority vide the impugned order (i) confirmed the demand of Service Tax to the tune of Rs.32,05,501/- (including Cess) for the period 2012-13 to 2016-17 under Section 73(2) alongwith interest under Section 75 of the Finance Act, 1994 for providing 'Works Contract Service' (ii) imposed penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994 and (iii) imposed penalty of Rs.32,05,501/- under Section 78 of the Finance Act, 1994 with an option that if appellant pays the amount of service tax, interest and penalty (imposed under Section 77), appellant would be entitled to pay only 25% of the penalty imposed under Section 78, provided that all the amount including the reduced penalty (i.e. 25% amount) is paid within 30 days. Vide the impugned order the adjudicating authority did not grant the benefit of the relevant Notification as claimed by the appellant due to failure of submission of the proper documents/records from the appellant, required for granting exemption/reduction in service tax.



2(iv). Being aggrieved with the impugned order, the appellant preferred the present appeal. Under the said appeal the appellant submitted that they are a Proprietorship Firm and activities carried out by them are falling under the category of 'Works Contract Service'; that they carried out works for Government body/authority or Local Authority in majority of cases and for a few body corporate agencies & customers; that service provided to Nagarpalikas and Gram Panchayat is not taxable and are exempted in view of Sr.No.12/12A of the Notification No.25/2012-ST and properly fall under Section 65B(31); that under Notification No.30/2012-ST, 50% of taxable value will be taxed by service provider; that they refer to the EA-2000 audit, conducted in their case, with no such point; that they provide only labour service, original works contract service and repair and maintenance service; that the adjudicating authority has adopted the entire works contract value for taxable service; that the intention of appellant was not to evade service tax; that the SCN is time-barred; that the penalty can not be imposed under Section 78 and penalty under Section 77 of the Finance Act, 1994 is not imposable.

3. Personal Hearing of the case was held on 17.12.2019. Shri Bishan R. Shah, Chartered Accountant, represented the appellant and reiterated the submission made in Appeal Memorandum and requested to consider the same.

4. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as those made at the time of personal hearing. I find that the issue to be decided in the instant appeal is whether the appellant is liable to pay service tax under Works Contract Service.

5(i). The appellant has contended that demand consists of the work done for Government, a Local Authority or a Governmental Authority and for body corporate which is eligible for exemption/abatment. Some documents which have been produced before this authority shows that the Mehsana Municipality, Mahila Samras Kadvasan Gram Panchayat, Kherva Gram Panchayat, Idar Nagarpalika, ONGC etc. have given work contract to the appellant. It is pertinent to mention that when the appellant is claiming some exemption or any abatment in service tax, the onus to prove so is on the appellant.

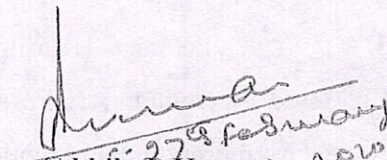
5(ii). It is observed from the impugned order that the appellant had not submitted any defence reply before the adjudicating authority. Besides that, they had not appeared for personal hearing on any of the given dates. Hence, the impugned order has been passed ex-parte.

5(iii). It is further observed that the demand has been confirmed in absence of the documents required for consideration of exemption/abatment in view of Notfn. No.25/2012-ST and 30/2012-ST. The facts on record also reveal that the documents submitted before this



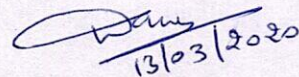
authority were never submitted before the adjudicating authority and therefore there was no scope for the adjudicating authority to consider the same for ascertaining the service tax liability. Besides that, the order had been passed without giving opportunities for natural justice. Looking to the totality of the facts, it would be prudent that the matter may be remanded back to the adjudicating authority so as to enable the appellant to submit the documents in support of their claim before the adjudicating authority and adjudicating authority should consider the same for ascertaining the demand and also verify the applicability of the Notifications in case of the appellant. The adjudicating authority is also directed to pass the order afresh after considering the contentions raised by the appellant in the matter.

6. In view of above, the matter is remanded back to the adjudicating authority for a fresh order in terms of direction contained here-in-above. Appellant is directed to produce/submit all the documents required by the adjudicating authority for consideration of their claim. Adjudicating Authority is directed to consider the documents to be produced/submitted by the appellant and pass the order afresh after following the principal of natural justice.


(Akhilesh Kumar) *now.*
Commissioner (Appeals)

Date : .02.2020.

Attested


13/03/2020

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Yash Corporation,
2/B, Balkrishna Shopping Centre,
Opp. S.T. Workshop, Mehsana-384002

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Gandhinagar Comm'rate, Ahmedabad.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Ex., Gandhinagar Comm'rate, Ahmedabad.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-Mehsana, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.

