



सत्यमेव जयते

**आयुक्त(अपील )का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 ☎ 07926305065- टेलिफैक्स 07926305136



**DIN : 20211264SW00008136E7**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1484/2021 / *M648 TO M652*
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-66/2021-22**  
 दिनांक Date : **01-12-2021** जारी करने की तारीख Date of Issue 03.12.2021  
 आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **36/AC/MEH/CGST/2020-21** दिनांक: **09.02.2021** issued by Assistant Commissioner, CGST & Central Excise, Division Mehsana, Gandhinagar Commissionerate
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
 M/s Kadia Kamleshbhai Babubhai  
 Sathwara Vas, Visnagar,  
 Mehsana - 384310

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।

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 :**

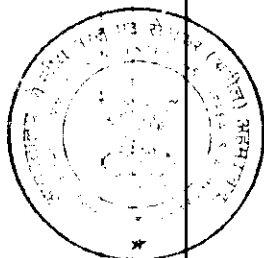
**Revision application to Government of India:**

(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।

(i) 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 :

(ii) 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।

(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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

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।

(c) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका 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.

(2) 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.

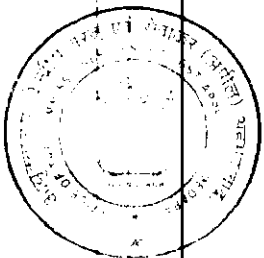
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों 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

(a) 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 in para-2(i) (a) above.



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 पढ़ी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (48) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

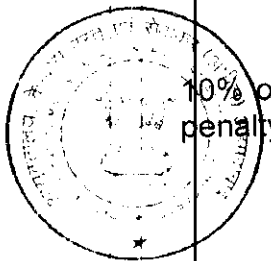
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (cxii) amount determined under Section 11 D;
- (cxiii) amount of erroneous Cenvat Credit taken;
- (cxiv) amount payable under Rule 6 of the Cenvat Credit Rules.

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."

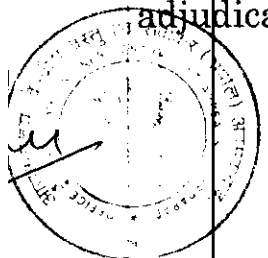


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Kadiya Kamleshbhai Babubhai, At & Post : Tundav, Mahadevpura, Taluka : Unjha, District: Mehsana – 384 170 (hereinafter referred to as the appellant) against Order in Original No. 36/AC/MEH/CGST/20-21 dated 09-02-2021 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division: Mehsana, Gandhinagar Commissionerate [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant was holding Service Tax Registration No. AAAC7015MSD003 and engaged in providing the services of Manpower Recruitment or Supply Agency. As per Procedural Para No. 01 of Audit Report 204/2014-15-ST issued by the officers of the erstwhile Central Excise and Service Tax (Audit) Commissionerate, it was found that M/s.Tirupati Sarjan Limited had received services of Manpower Recruitment or Supply Agency from the appellant and paid an amount of Rs.8,38,044/- for the F.Y. 2012-13 and an amount of Rs.8,84,825/- for the F.Y. 2013-14 to the appellant. However, the appellant had not paid service tax on the said amount received by them. The appellant were, therefore, issued a SCN No. V.ST/11A-19/Kadiya Kamlesh/17-18 dated 16.01.2018 seeking to demand and recover the service tax amounting to Rs.53,237/- along with interest and also seeking to impose penalties. The said SCN was adjudicated vide OIO No. 11/AC/ST/MEH/18-19 dated 27.02.2019 wherein the demand was confirmed along with interest and penalties were also imposed under Section 77 and 78 of the Finance Act, 1994.

2.1 Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad who vide OIA No. AHM-EXCUS-003-APP-015-19-20 dated 09.07.2019 remanded back the case to the adjudicating authority observing that :



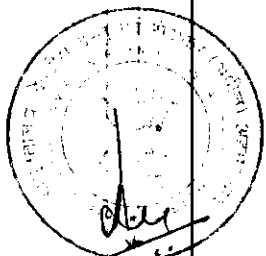
“7. The consultant of the appellant during the course of hearing has submitted that the benefit of SSI exemption may be allowed. The Notification No.33/2012-ST dated 20.06.2012, exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from whole of service tax leviable thereon. I find that the taxable turnover of the appellant is below the above said limit during the period under dispute. I further find that the opportunity of personal hearing given by the adjudicating authority on 25.02.2019, 26.02.2019 and 27.02.2019 which is not as per the order given by Hon'ble CESTAT in various cases. I also find that the opportunity of personal hearing before the adjudicating authority has not been availed by the appellant and the ground of SSI exemption has not been put forth by the appellant before the adjudicating authority. I therefore feel that the matter is required to be remanded back to the adjudicating authority for a fresh order keeping in view of the plea put forth by the appellant in respect of SSI exemption available to them. The appellant is also directed to submit the necessary documents before the adjudicating authority in support of their claim.

8. In view of para-7 supra, matter is remanded back to the adjudicating authority.”

3. In the denovo proceedings, the matter has been decided by the adjudicating authority vide the impugned order wherein he has denied the benefit of SSI exemption and confirmed the demand of service tax along with interest and penalties under Section 77 and Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds:

- i) That the threshold exemption, which was available to all service providers vide Notification No. 6/2005-ST dated 1.3.2005, which was last amended by Notification No. 33/2012-ST dated 20.6.2012 (and new Notification No.25/2012-ST dated 20.6.2012) has been superseded by Notification No.33/2012 dated 26.06.2012. The government has exempted taxable

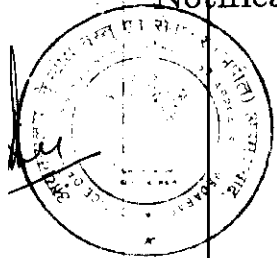


services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon.

- ii) As per the service tax liability computed by the department, their turnover was Rs.8,38,044/- during F.Y. 2012-13 and Rs.8,84,825/- during F.Y. 2013-14. So it is clear that their turnover was below the exemption limit, therefore, they were eligible for SSI exemption.
- iii) The entire demand is barred by limitation as the SCN for the period from 01.04.2012 to 31.03.2013 was issued on 16.01.2018. The SCN has baldly alleged suppression of information from the department.
- iv) The extended period of limitation cannot be invoked as there was no suppression, willful mis-statement on their part.
- v) Penalty cannot be imposed on them under Section 78 of the Finance Act, 1994 as there was no suppression, willful mis-statement on their part with intent to evade payment of service tax.
- vi) Penalty cannot be imposed on them under Section 77 of the Finance Act, 1994 as there is no short payment of service tax and they are not liable for payment of service tax.

5. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri Vipul Khandhar, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. I find that the issue to be decided is whether the appellant is eligible for SSI exemption under Notification No. 33/2012-ST dated 20.06.2012 or not.

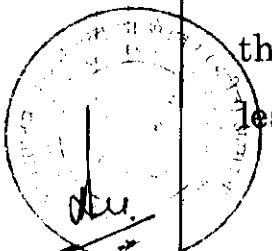


6.1 I find that the said Notification No. 33/2012-ST dated 20.06.2012 exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon. In terms of the proviso (ii) to Notification No.33/2012-ST dated 20.06.2012, the benefit of the notification is not applicable to :

“(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act, 1994 read with the Service Tax Rules, 1994”

6.2 I find that the Manpower Recruitment or Supply Agency service provided by the appellant is covered by sub-section (2) of Section 68 of the Finance Act, 1994 and Rule 2 (d) (F) (b) of the Service Tax Rules, 1994. Accordingly, the service tax in respect of this service is chargeable on Reverse Charge and the person liable to pay service tax is the recipient of service. From a plain reading of the second proviso to the said Notification, it is clear that the value of the taxable service in respect of which service tax is paid by such person in terms of sub-section (2) of Section 68 of the Finance Act, 1994 is excluded from the scope of exemption under the said Notification. This clearly indicates that the taxable value of the service recipient, who is liable to pay service tax under the reverse charge, is not eligible for the benefit of exemption under the said notification.

6.3 In the instant case, I find that the appellant is the service provider of Manpower recruitment or Supply Agency, and therefore, not the person liable for payment of service tax in terms of sub-section (2) of Section 68 of the Finance Act, 1994 read with Rule 2 (d) (F) (b) of the Service Tax Rules, 1994. Therefore, the appellant, being a service provider, is not excluded from the purview of the said Notification by virtue of the second proviso to the said Notification. It is not disputed that the turnover of the appellant during the period under dispute was less than the threshold limit of ten lakh rupees in any financial year.

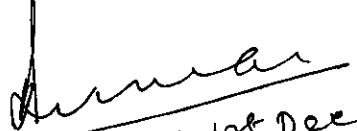


Consequently, the appellant is eligible for the benefit of exemption under Notification No.33/2012-ST dated 20.06.2012.

7. In view of the above, the demand confirmed vide the impugned order is not legally sustainable. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed.


8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

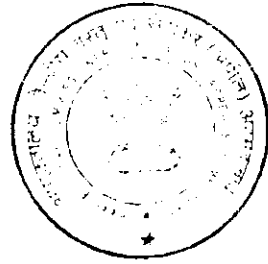
The appeal filed by the appellant stands disposed off in above terms.

  
( Akhilesh Kumar ) 1st December, 2021.  
Commissioner (Appeals)

Attested:

Date: .12.2021.

  
(N.Suryanarayanan. Iyer)  
Superintendent(Appeals),  
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Kadiya Kamleshbhai Babubhai,  
At & Post : Tundav, Mahadevpura,  
Taluka : Unjha,  
District: Mehsana – 384 170

Appellant

The Assistant Commissioner,  
CGST & Central Excise,  
Division- Mehsana  
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.  
(for uploading the OIA)
4. Guard File.
5. P.A. File.