



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 : 20220164SW000000BFA1

स्पीड पोस्ट

- क फाइल संख्या File No : GAPPL/COM/STP/1375/2021 /5651 7 0 5655
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-86/2021-22**
दिनांक Date : **07-01-2022** जारी करने की तारीख Date of Issue 10.01.2022
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **AC/M.P. Dabhi/20/CEX/Kadi** दिनांक: **30.10.2020** issued by Assistant Commissioner, CGST& Central Excise, Division Kadi, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Sonya Ceramics (Kadi Unit)
22, GIDC Estate, Kadi, Taluka-Kadi,
District Mehsana - Gujarat

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:

- (i) 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।
- (ii) 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 :
- (iii) 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।
- (iv) 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 दिनोंक 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.

(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.

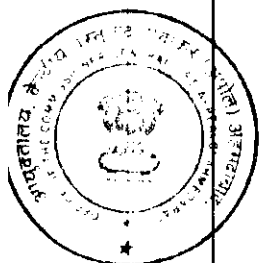
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2ndमाला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) 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 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 पट्टी 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.

- (63) 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 111) 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:

- (clxxii) amount determined under Section 11 D;
- (clxxiii) amount of erroneous Cenvat Credit taken;
- (clxxiv) 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."

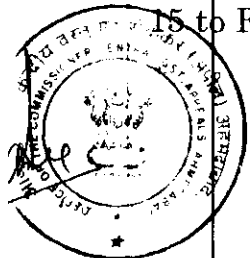


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Sonya Ceramics (Kadi Unit), 22, GIDC Estate, Kadi, Taluka : Kadi, District : Mehsana, Gujarat (hereinafter referred to as the appellant) against Order in Original No. AC/M.P.Dabhi/20/CEX/KADI dated 30-10-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST & Central Excise, H.Q., Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant engaged in the manufacture of L.T. Insulators and is also holding Service Tax Registration No. AAKFS9654EST001. In pursuance of difference indicated in the value of taxable services as per Form 26AS of the appellant and the ST-3 returns filed by them, clarification with supporting documents were called for, which were provided by the appellant to the department. Scrutiny of the documents submitted by the appellant indicated that they had declared in their ST-3 returns to be the recipient of Transportation of Goods by Road/Goods Transportation Agency service and paid the applicable service tax under reverse charge.

2.1 On scrutiny of the Balance Sheet and Profit & Loss statement submitted by the appellant, it appeared that they had also availed Legal Service during the period, however, the same was not declared in their returns and no service tax was paid. In terms of Section 68 (2) of the Finance Act, 1994, service tax is to be paid on Legal Services under reverse charge by the service recipient. The appellant submitted to the department that the Legal Fee expense shown in their Profit & Loss account does not pertain to fee paid to any advocate and that it pertains to professional charges paid to C.A., VAT Audit Fee, TDS Return Fee, Bank Renewal Charges, Liaison Charges etc. however, no supporting documents were submitted by them. Therefore, it appeared that the appellant had not paid service tax amounting to Rs.59,545/- in respect of Legal Services during the period from F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).



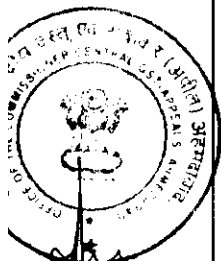
2.2 It was also observed during scrutiny of the documents submitted by the appellant that they had received services in relation to GTA on which they were liable to pay service tax under reverse charge. However, it appeared that the appellant had not paid Service Tax amounting to Rs.53,764/- on GTA services during the period from F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

2.3 The appellant was, therefore, issued a SCN under F.No. V.ST/03-06/2019-20/Sonya dated 04.10.2019 proposing to recover the Service Tax amounting to Rs.53,764/- in respect of GTA services and Service Tax amounting to Rs.59,545/- in respect of Legal Service under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of Penalty under Section 78 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. Penalty was also imposed under 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. The adjudicating authority has erred in not considering that the legal expenses includes payment made to Chartered Accountant. Management Consultant etc. which relates to compliance matter or consulting in compliance, technical or management service matter on which no service tax is payable.
- ii. The adjudicating authority has also erred in not considering that on some of the bills service tax was charged on forward charge mechanism.
- iii. They prefer to submit copies of invoices for which the accounting was done under legal fees, audit fees etc. during the personal hearing. Though the accounting head is legal fees, audit fees etc. the transactions recorded under the said head are different in nature.
- iv. The audit fee was paid to the Chartered Accountant and to Bureau Veritas Certification Pvt Ltd for surveillance audit. Service tax cannot

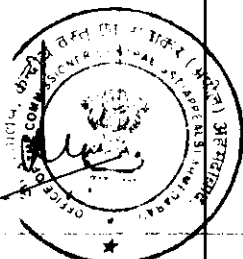


be recovered from them in respect of invoice on which service tax has been paid by the service provider.

- v. The consultancy service fee was paid to management system consultancy charges. All invoices issued by Qualice Solution are service tax paid under forward charge.
- vi. Consultancy Fee is paid for consultancy in management matters, fees for asset valuation, excise consultation. The amount paid for excise consultation includes service tax charged in the invoice.
- vii. The amount of legal fees is paid against compliance matters like filing of VAT returns, TDS returns etc. This service does not fall under Legal Service.
- viii. The adjudicating authority has also erred in confirming the demand under GTA service. The accounting head includes amount paid for inward carting and carriage. The loading and unloading charges, labour charges paid for movement of goods within the factory , carting charged in purchase are covered under the said accounting head. For the purpose of understanding the landing cost of the product, they were debited to 'inward carting expense' in the books of accounts.
- ix. In order to charge tax under reverse charge for GTA, it is necessary that the service provider has to provide transport service for movement of goods from supplier to customer for two different locations, which is not present in the case.
- x. The demand itself is bad in law and therefore, there does not arise any ground to levy and collect penalty or interest.

5. The appellant filed additional written submission vide letter dated 11.11.2021, inter alia, submitting that :

- Legal Service has been defined in Notification No.25/2012-ST dated 20.6.2012 to mean any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- They submit copies of invoices and ledgers for which the accounting is done under the head of legal fees, audit fees, consultancy fees and consultancy services. On perusal of these, it can be appreciated that the said services does not fall under the term 'Legal Services'.



- They withdraw the point of liability of Service Tax under RCM on GTA services and are ready to discharge service tax liability.

6. Personal Hearing in the case was held on 22.11.2021 through virtual mode. Shri Bharat Patel and Shri Harsh Patel, CAs, appeared on behalf of the appellant for the hearing. They reiterated the submissions made in appeal memorandum. They further stated that they are not pursuing the demand on the issue of GTA and would make payment of tax shortly.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The demand for service tax was confirmed vide the impugned order on two services viz. GTA Service and Legal Service. The appellant have in their additional written submission dated 11.11.2021 and during the course of personal hearing submitted that they are not pursuing the demand in respect of GTA service and that they would be paying the tax shortly. Therefore, I am not going in to the merits of this issue and take up for decision the other issue, i.e., demand for service tax under reverse charge on Legal Service.

8. I find that Legal Service has been defined at Para 2 (w) of Notification No. 25/2012-ST dated 20.06.2012 to mean "*any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority*". Further, in terms of Clause I (A) (iv) of Notification No. 30/2012-ST dated 20.06.2012, services provided by "*an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates, or*" is chargeable to service tax under reverse charge in terms of Section 68 (2) of the Finance Act, 1994. Therefore, there is no ambiguity regarding the fact that legal services provided by an individual advocate or a firm of advocates is chargeable to service tax on reverse charge.

9. The appellant have, however, contended that the expenses booked by them under the accounting head of 'legal' service actually pertains to Audit Fees, Consultancy Service Fees, Consultancy Fees and that the certain legal fees pertains to legal fees paid against compliance matters like filing VAT

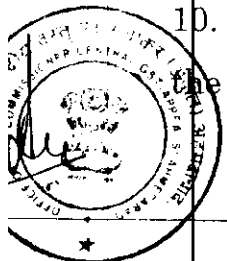


Returns, TDS Returns, Excise Consultants, preparation of legal documents etc. They have also submitted the invoices received by them in this regard. They have also contended that the invoices of the provider of Consultancy Services are with service tax paid by the service provider. The appellant have also contended that the Audit services provided by the Chartered Accountants are taxable under the forward charge and, therefore, service tax cannot be demanded from them under the reverse charge.

9.1 I have examined the documents submitted by the appellant and find that the invoices issued for Management Consultancy, Surveillance Audit, Excise Consultants are those where the service tax has been paid by the respective service providers. I also find merit in the contention of the appellant that the services provided by the Chartered Accountant are taxed under forward charge. Therefore, the value of the taxable services as determined in the SCN and the impugned order requires to be re-determined by excluding the value of taxable services where service tax has been already paid under the forward charge and also by excluding the value of taxable services, where the service tax is payable under forward charge.

9.2 I, however, do not find any merit in the contention of the appellant that legal fees paid against compliance matters like filing VAT Returns, TDS Returns, Excise Consultants, preparation of legal documents etc. are not liable to service tax under reverse charge considering the nature of the services. The definition of 'legal service' as per Para 2 (w) of Notification No. 25/2012-ST dated 20.06.2012 includes '*any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner*'. The services provided for filing of VAT Returns, TDS returns or preparation of legal documents are nothing but legal services provided in relation to the respective laws and covered by the terms used in the said definition viz. 'advice', 'consultancy', 'assistance'. Therefore, these services availed by the appellant are falling within the ambit of the definition of legal services and, therefore, chargeable to service tax under reverse charge and the appellant is liable to pay service tax on the taxable value of these services.

10. However, since the demand is required to be re-worked after excluding the value of services where service tax is chargeable on forward charge and



11. In view of the facts discussed herein above, I uphold the impugned order in so far as it pertains to the demand of service tax on GTA service. The impugned order pertaining to demand for service tax on Legal Services is set aside and remanded back to the adjudicating authority for deciding afresh in light of the directions contained hereinabove.

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

Attested:

To

Appellant

Respondent

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.