



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:- 20230264SW0000888F78

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2422/2022-APPEAL / ६२९ - ६३०८
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-114/2022-23 and 15.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	15.02.2023
(ङ)	Arising out of Order-In-Original No. 66/ST/OA/ADJ/2021-22 dt. 31.03.2022 passed by the Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Keshav Security and Services, At Limbhoi, Modasa, Aravalli - 383316

कोई व्यक्ति इस अपील-आदेश से असंतोश 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:-

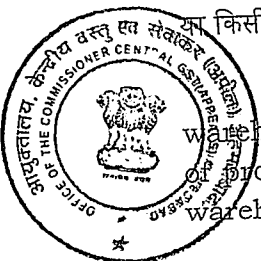
Revision application to Government of India:

(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 हों।

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 होते 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 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 अपील 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।

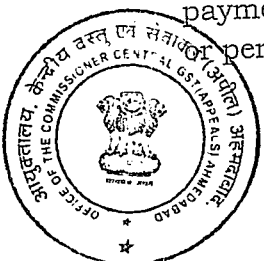
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Keshav Security and Services (a Partnership Firm), Limbhoi, Modasa, Distt. Aravalli- 383316, Gujarat (hereinafter referred to as "the appellant") against the Order-In-Original No.66/ST/OA/ADJ/2021-22, dated 31.03.2022 (hereinafter referred as the 'impugned order') passed by the Assistant Commissioner, CGST & C.Ex., Division-Himatnagar, Commissionerate-Gandhinagar. [hereinafter referred to as "the adjudicating authority"].

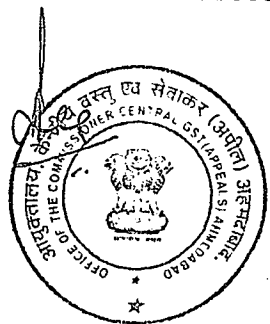
2. Briefly stated, the facts of the case are that the appellant were engaged in providing of services falling under the category of "Security/detective Agency services" and "Manpower recruitment / Supply agency services" and were holding Service Tax Registration No. AAPFK7816FSD001. As per the information received from the Income Tax Department, the appellant had earned substantial income from the services amounting to Rs.26,18,825/- during the Financial Year 2016-17, but the value declared in the ST-3 Returns for the said period was Rs.8,64,420/- only. It appeared that the appellant had evaded / short paid the Service Tax amounting to Rs.2,63,161/- on the differential value of Rs.17,54,405/- reflected in the Income Tax Returns, which was suppressed from the Service Tax department .

Detail of the ITR data vis-a-vis ST-3 data are as under:-

(Amount in Rs.)

F. Y.	Taxable Value as per IT data [From ITR]	Value as per ST-3 Returns	Difference between IT data & ST-3 Returns	S.Tax Rate [including SBC & KKC]	Service Tax Payable
2016-17	26,18,825	8,64,420	17,54,405	15%	2,63,161

2.1 Accordingly, a show cause notice was issued to the appellant vide F.No.V/15-83/CGST-HMT/O & A/20-21, dated 24.07.2020, wherein it was proposed to demand and recover:



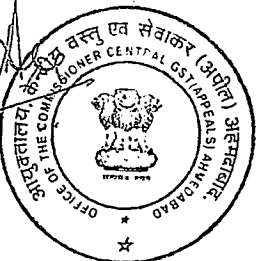
- (i) Service Tax amount of Rs.2,63,161/- under proviso to Section 73(1) of the Finance Act, 1994 readwith Section 68 of the Finance Act, 1994.
- (ii) Interest under Section 75 of the Finance Act, 1994 on the above amount of Service Tax.
- (iii) Penalty under Section 78 of the Finance Act, 1994.

3. The show cause notice was adjudicated vide *the impugned order* wherein the *adjudicating authority* has:

- (i) Confirmed the demand of Service Tax amount of Rs.2,63,161/- ;
- (ii) Ordered to pay interest under Section 75 of the Finance Act, 1994 on the above demand of Service Tax.
- (iii) Imposed a penalty of Rs.2,63,161/- under Section 78(1) of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds:-

- SCN issued based on presumptions and third party information not sustainable.
- Extended period of limitation not applicable in terms of proviso to Section 73(1) of the Finance Act, 1994. In support they relied upon the decision in case of M/s Cosmic Dye Chemical Vs Collector of C.Ex., Bombay [1995(75) ELT 721 (SC)] .
- Demand cannot be raised solely on the basis of figures appearing in the Income Tax Return / Form 26AS as information of provision of service was well within the knowledge of the Revenue Authorities. Hence, alleged wilful suppression of facts cannot be sustained.
- Services provided by the appellant are exempt as per Mega Exemption Notification No.25/2012-ST, dated 20.06.2012 [Sr. No. 25(a)], as amended. The appellant has provided services to Modasa Nagarpalika and Bayad Nagarpalika, and as per Section 65B(31) both are local authorities. In case of



AC, CGST, Div-G Vs Sh. Bharat Singh, it was held that the supply of "Tractor Trolley" and "Front End Loader" to the Nagar Nigam, Jaipur for cleaning different wards is squarely covered under "management of waste services related to collection / loading, transportation and dumping of the solid waste at designated areas by front end loaders to the Jaipur Municipal Corporation is exempt as per Sr.25(a) of Notification No. 25/2012-ST".

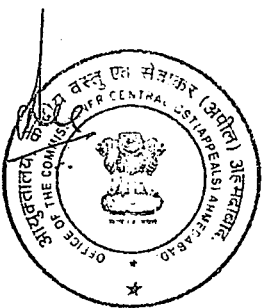
- Also referred clarification issued vide DO F.No.334/15/2014-TRU, dated 10.07.2014 at point No. 2.2.2 (ii)-

Services ordinarily provided by a Municipality: For greater clarity, the exemption in respect of services provided to Government or local authority or governmental authority [in entry at Sl.No.25], has been made more specific. Services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation will continue to remain exempted but the exemption would not be extendable to other services such as consultancy, designing, etc., not directly connected with these specified services.

- Department further issued Circular No.199/09/2016-ST covering wide range of activities/ services provided to a Govt./ Local authority .. etc.
- Benefit of exemption limit of 10 Lakhs and fees charged inclusive tax when not charged additionally. Appellant's taxable turnover for 2015-16 reported in ITR was Rs.1,49,947/. Hence, they were eligible for exemption limit of 10 lakhs while calculating S.Tax Liability for 2016-17. The adjudicating authority erred in applying the benefit of basic exemption of ten lakhs.

5. Personal hearing in the case was held on 09.01.2023. Shri Sachin Dharwal, Chartered Accountant, on behalf of the appellant, had appeared for the personal hearing. He reiterated submissions made in the appeal memorandum.

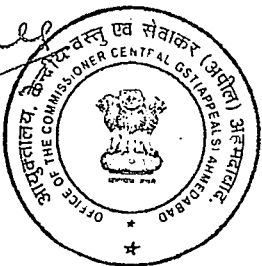
6. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the materials available on the record. The issue before me for decision is as to whether the impugned order confirming the demand of service tax



amounting to Rs.2,63,161/- for the F.Y. 2016-17, along with interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise.

7. I find that the appellant was issued the Show Cause Notice on the basis of the data received from the Income Tax Department according to which there was difference found in their income from Services which was reported in the ST-3 Returns when compared to those in the Income Tax Returns filed by the appellant. I find that the appellant represented before the adjudicating authority that they have provided Manpower services to Modasa Nagarpalika and Bayad Nagarpalika and they are eligible for exemption as per Sr. No.8 of Notification No.30/2012- Service Tax, dated 20.06.2012 as amended. Hence, there appeared no service tax liability on them being service provider. They mentioned that Modasa Nagarpalika and Bayad Nagarpalika, being body corporate, have to pay Service Tax under RCM. I find that the adjudicating authority, in his findings, concluded that Modasa Nagarpalika and Bayad Nagarpalika are *neither* business entity *nor* covered as Body corporate for the purpose of seeking exemption under Notification No.30/2012-Service Tax, dated 20.06.2012 by virtue of RCM. The adjudicating authority found the claim of the appellant unjustified and unacceptable and confirmed the demand against them.

7.1 I find that the appellant, in their appeal memorandum, have submitted details and various documents in their defense. The appellant have, in their appeal memorandum, now claimed that the appellant have provided services to Modasa Nagarpalika and Bayad Nagarpalika, which are local authorities as per Section 65B(31) of the Finance Act, 1994. They have claimed that the services provided by the appellant to these local authorities are exempted as per Mega Exemption Notification No.25/2012-ST, dated 20.06.2012 [Sr. No. 25(a)], as amended. The appellant also referred the clarification issued by the CBIC vide DO F.No.334/15/2014-TRU, dated 10.07.2014 at point No. 2.2.2 (ii) clarifying the services ordinarily provided by a Municipality which were eligible for exemption.

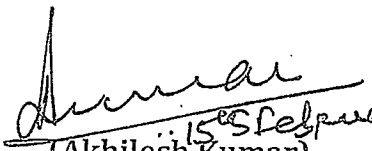


7.2 I find that the defence before the adjudicating authority is totally different than what they have submitted before this appellate authority. Accordingly, the original adjudicating authority did not have the opportunity of considering these submissions of the appellant before passing the impugned order what they have represented before this appellate authority. Therefore, I am of the considered view that it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submissions of the appellant, made in the course of the present appeal, relied upon judgments & Notifications etc. and, thereafter, adjudicate the matter.

8. In view of the above, I am of the considered view that in the interest of the justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of filing their defense reply and after granting them the opportunity of personal hearing. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appeal filed by the appellant is allowed by way of remand.

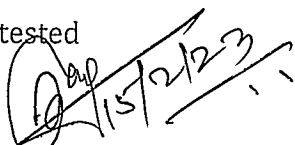
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals) no. Q.

Date: 15.02.2023

Attested


15/2/23

(Ajay Kumar Agarwal)
Assistant Commissioner [In-situ] (Appeals)
Central Tax, Ahmedabad.



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1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Assistant Commissioner, CGST & C.Ex., Division-Himatnagar, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.



