



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:- 20230264SW0000217792

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2665/2022-APPEAL <i>SHIS-19</i>
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-117/2022-23 and 16.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	16.02.2023
(ङ)	Arising out of Order-In-Original No. 06/D/GNR/PMT/2022-23 dated 26.05.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s S S Corporation (Snehalkumar Satishbhai Thakor) (PAN-APUPT7472G), 1035, Kathivalovas, Vadodara, Gandhinagar, Gujarat-382355

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:-

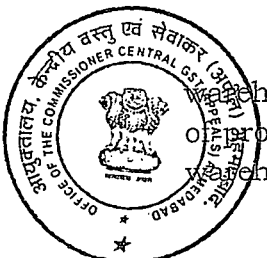
Revision application to Government of India:

(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 हो।

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 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 :-

(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 / demand 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 Appellate 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 और 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, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Snehalkumar Satishbhai Thakor, 1035-Kathivalovas, Vadodara, Gandhinagar-382355 (hereinafter referred to as the appellant) against Order in Original No. 06/D/GNR/PMT/2022-23 dated 26.05.2022 [hereinafter referred to as “*impugned order*”] passed by the Deputy Commissioner, Central GST, Division - Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were engaged in providing taxable services and holding Service Tax Registration No.APUPT7472GSD001 for the same. As per information received from the Income Tax department, discrepancies were observed in total income declared in the Income Tax Return when compared with the Service Tax returns of the appellant for the period F.Y.2015-16 and F.Y.2016-17. In order to verify the said discrepancies and the details of services provided during the period, letters dated 08.05.2020 and 25.05.2020 were issued to the appellant, to which they did not reply.

2.1 The services provided by the appellant were found to be covered under the definition of ‘Service’ as defined under Section 65 B(44) of the Finance Act, 1994 and not covered under any provisions of Section 66D of the Finance Act, 1994 and were also not exempted by virtue of “Mega Exemption Notification No.25/2012-ST dated 20.06.2012”. In the absence of any reply filed by the appellant, the Service Tax payable was calculated on the basis of “Sales of Services” figures mentioned in the ITR-5/26AS provided by the Income Tax for the F.Y.2015-16 and 2016-17 as per details given under :

Sr. No	Details	F.Y. 2015-16 (in Rs.) @ 14.5%	F.Y. 2016-17 (in Rs.) @ 15%
1	Total Income as per ITR-5/26AS	2,32,06,359/-	2,17,33,395/-
2	Income on which Service Tax paid	1,03,71,436/-	1,00,12,714/-
3	Difference of Value (Sr.No.1 – 2)	1,28,34,923/-	1,17,20,681/-
3	Service Tax alongwith Cess	18,61,063.84/-	17,58,102.15/-
	Total Service Tax demand	36,19,165.99/-	

3. The appellant was issued a Show Cause Notice vide F.No. V/04-39/SCN/SST/20-21 dated 27.06.2020 (in short SCN) for demand and recovery of Service Tax amounting to Rs. 36,19,165.99/- under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the

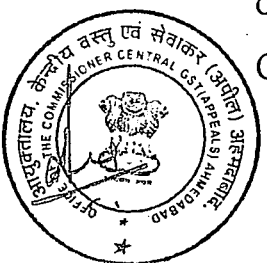


Act. The SCN also proposed imposition of penalties under Sections 76, 77(2), 77(3) (C) and 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand of Service Tax amounting to Rs. 36,19,165.99/- was confirmed alongwith interest. Penalty of Rs. 36,19,165.99/- was imposed under Section 78 of the Finance Act, and Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act,1994.

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

- The appellant is a Proprietorship firm and during the period F.Y.2015-16 and F.Y.2016-17, they have provided services under 'Manpower Supply Agency Services' to Body Corporates and Non-Body Corporates by way of supplying labours. The taxable value amounting to Rs.2,45,55,604/- calculated as per the impugned order actually pertains to the services covered under 'Reverse Charge Mechanism' in terms of Sl.No-8 of Notification No.30/2012-ST dated 20.06.2012, as amended vide Notification No.07/2015-ST dated 01.03.2015.
- Details of Form 26AS shows that TDS was deducted by M/s Vimal Crop Care Pvt. Ltd on which the service tax liability was with the Service recipient. Hence, if the taxable value of the impugned order is considered as services provided to body corporate, the demand is nullified.
- As the demand of service tax confirmed by the adjudicating authority is nullified, as discussed above, penalty imposed under Section 77(2) of the Finance Act,1994 is not justified.
- The ingredients for invocation of extended period of limitation are not fulfilled in the case and therefore it is wrongly invoked. Further the adjudicating authority has not explicitly discussed these ingredients in the impugned order, therefore the impugned order is in violation of the CBIC Circular No.312/28/97-CX dated 22.04.1997 issued in pursuance of the order of the Hon'ble Supreme Court in the case of Padmini Products and Chemphar Drugs etc.



➤ The impugned order is non-speaking order and therefore required to be set aside. And in support of their contentions they cited the following judgements :

- Anil Products Ltd. Vs Commissioner of Central Excise, Ahmedabad-II –2010 (2) TMI 662 - Gujarat High Court.
 - Aspinwall & Co. Ltd. Vs Commissioner of Central Excise, Mangalore – 2010 (10) TMI 321 – CESTAT, Bangalore.
 - Mahindra & Mahindra Vs CCE – 2001 (129) ELT 188 (CEGAT).
 - The Commissioner of Central Excise Vs Indian Oil Corporation – 2017 (6) Tmi 573 – Madras High Court.
 - CCE, Bangalore Vs Brindavan Beverages (p) Ltd – 2007 (6) Tmi – 4 – Supreme Court.
 - Micromax Grinding Technologies Ltd. Vs CCE & ST, Ghaziabad – 2019 (8) TMI 320 – CESTAT Bangalore.
 - Smt.Shrishti Dhawan Vs Shaw Brothers – 1992 (1) SCC 534.
 - Apex Electricals (P) Ltd Vs UOI – (1992) 61 ELT 413 (Hon'ble Gujarat High Court.
 - Gammon far Chems Ltd. Vs CCE (1994) 71 ELT 59 (CEGAT).
 - Padmini Products Vs CCE – 1989 (43) ELT 195 (SC)
 - CCE Vs Surat Textile Mills – 2004 (167) ELT 379 (SC).
 - Gopal Zarda Udhyog Vs CCE – 2005 (188) ELT 251 (SC)
 - Rainbow Industries Vs CCE (1994) (74) ELT 3 SC – AIR 1994 SC 2783.
 - CC Vs MMK Jewellers (2008) 225 ELT 3 (SC)
- Alongwith the appeal memorandum they had submitted copies of Form-26AS for the F.Y.2016-17; Profit & Loss account for the F.Y.2016-17; Form-3CB; Balance Sheet for F.Y.2016-17; Sample Invoices ; Service Tax Registration – ST-2; Service Tax Returns-ST-3.



6. Personal Hearing in the case was held on 23.11.2022 and 09.01.2023 in virtual mode. Shri Rohan S.Thakkar, Chartered Accountant, appeared on behalf of the appellant for the hearing. He explained the reasons for delay in filing the appeal and submitted relevant documents. It was stated that the consultant was admitted in ICU during relevant period and hence, the appeal was filed delayed. I find the reasons of the appellant to be cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994. He also re-iterated the submissions made in their appeal memorandum.

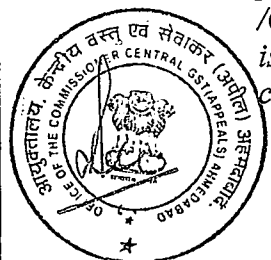
7. I have gone through the facts of the case, submissions made in the appeal memorandum and oral submissions made during the personal hearing. The issue to be decided in the case is whether the impugned order issued against the appellants, confirming the demand of Rs.36,19,165.99/- alongwith interest and penalties, is legal and proper or otherwise. The demand pertains to the period F.Y.2015-16 and F.Y.2016-17.

8. It is observed that the demand was raised on the basis of data received from the Income Tax department. The appellants are registered with the department and had filed their ST-3 returns. The SCN was issued without ascertaining the category of service rendered by the appellant and the impugned order confirmed the demand in same lines. From the ST-3 returns, it is observed that for the period April-2015 to September-2015, they had rendered Services classified under 'Manpower Recruitment Service' and 'Legal Consultancy Service' and for the remaining period of F.Y. 2015-16 to F.Y.2016-17, they had provided services under 'Manpower Recruitment Service' only. Hence, the SCN was issued indiscriminately without carrying out any verification and the impugned order was passed without appreciation of facts available on record. They are held to be vague.

8.1 I find it relevant to refer to refer to CBIC Instruction dated 26.10.2021. Para-3 of the said instruction categorically states that :

...

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are



expected to pass a judicious order after proper appreciation of facts and submission of the noticee

...
Considering the facts of the case in light of the above instructions, it is found that the adjudicating authority has failed to follow the specific directions issued by the board and passed the impugned order without even considering the details available in ST-3 Returns filed by the appellant. Hence, the impugned order is not legally sustainable, being non-speaking order passed in violation of principles of natural justice.

9. As regards merits of the case, I find that the appellant has claimed exemption vide Sl.No-8 of Notification No.30/2012-ST dated 20.06.2012 as amended vide Notification No.07/2015-ST dated 01.03.2015 and contended that they had provided 'Manpower Recruitment Service' to body corporate and the liability of Service Tax lies with the Service receiver. It is observed from Form 26AS of the appellant for F.Y. 2016-17 that they had received an amount of Rs.1,17,20,853/- from M/s Vimal Crop Care Private Limited on which TDS was deducted under Section 194C of the Income Tax Act,1961. Further, from the sample copy of Invoices submitted by them their contention is substantiated. It is observed that the impugned order has been passed ex-parte. The submissions made by the appellant were never perused by the adjudicating authority. Hence, the documents submitted by the appellant during appeal proceedings needs to be examined and reconciled by the adjudicating authority to arrive at correct assessment.

10. In view of the above, I am of the considered view that since the appellants have contested the SCN for the first time before this authority and the matter requires verification from the documents of the appellant, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contentions of the appellant. Therefore, the matter is required to be remanded back for denovo adjudication after following the principles of natural justice. 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 appellant should also attend the personal hearing as and when fixed by the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.



11. The appeal filed by the appellant is hereby allowed by way of remand.
12. 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.

Akhil Kumar
(Akhil Kumar)
Commissioner (Appeals)
Date: 16th February, 2023

Attested:

(Somnath Chaudhary)
Superintendent (Appeals),
CGST (Appeals), Ahmedabad



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