



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

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1766/2022-APPEAL / 19369-13
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-143/2022-23 and 09.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	10.03.2023
(ङ)	Arising out of Order-In-Original No. 13/AC/DEM/MEH/ST/Patel Jayesh/2022-23 dated 11.05.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Patel Jayesh Manilal, Near Police Station, Langhnaj, Mehsana, Gujarat – 382730

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, 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 :-

(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 प्रकिया 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 मामले 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 भीतर मूल-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 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.

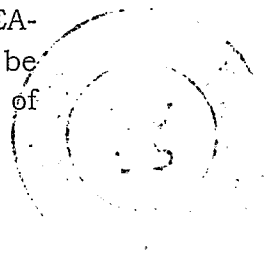
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA- 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, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

M/s Patel Jayesh Manilal, Near Police Station, Langhnaj, Mehsana-382730 (hereinafter referred to as the "appellant") has filed the present appeal against Order-In-Original No.13/AC/DEM/MEH/ST/Patel Jayesh/2022-23, dated 11.05.2022 (hereinafter referred to as the "impugned order"), issued by Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate-Gandhinagar (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AKQPP8162LST001 for providing taxable services. During the course of audit of the books and account of the appellant by the officers of the Central Tax Audit, Ahmedabad, Revenue Para Nos. 01 and 2, raised under Final Audit Report No.ST-1654/2019-20, dated 11.06.2020, remained unsettled. Issues involved in the Final Audit Report were as under:-

- i) Short-payment of Service Tax on reconciliation during the F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. [Service Tax involved- Rs. 5,72,771/-]
- ii) Wrong/ Incorrect outright abatement claimed on contract income during the F.Y. 2015-16 and F.Y. 2016-17; [Service Tax involved- Rs.2,11,852/-]

The appellant had not paid the Service Tax alongwith interest and penalty involved in the above audit paras raised by the officers of the Central Tax Audit, Ahmedabad.

3. Therefore, the appellant was issued a Show Cause Notice vide F.No. VI/1(b) 137/J.M.Patel/IA/17-18/AP-62, dated 12.06.2020, wherein it was proposed to:

- Demand and recover Service Tax amount of Rs.5,72,771/- and Rs. 2,11,852/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994;
- Recover penalty under Section 78(1) & Section 77(1)(b) of the Finance Act, 1994.

4. The Show Cause Notice was adjudicated vide *the impugned order* wherein *the adjudicating authority* has:

- Confirmed the demand of Service Tax totally amounting to Rs.7,84,623/- [Rs.5,72,771/- and Rs. 2,11,852/-] under proviso to Section 73(1) of the Finance Act, 1994



- Ordered to pay interest under Section 75 of the Finance Act, 1994 on the above demand of Service Tax.
- Imposed a penalty of Rs.10,000/- under Section 77(1)(b) of the Finance Act, 1994.
- Imposed a penalty of Rs.7,84,623/- under Section 78 of the Finance Act, 1994.
- Option was given for reduced penalty vide clause (ii) of the second proviso to Section 78(1) of the Finance Act, 1994.

5. Being aggrieved, the appellant have filed the appeal wherein they, *inter alia*, contended as under:-

- As per the reconciliation, there is no Service Tax liability upon the appellant.
- Welfare cess reimbursed is not required to be included in the value of taxable service – it is a pure agent.
- The appellant provided supply of Man Power service to GETCO and the services provided to Body corporate are covered under RCM as per Sr. 7(a) of Notification No. 30/2012 -ST, dated 20.06.2012.
- Filing return under wrong head does not tantamount to the suppression of facts; classification is merely for statistical purposes.
- Works contract service provided by the appellant is eligible for 60% abatement.
- Extended period cannot be invoked especially when the appellant is filing ST-3 returns.
- Demand raised vide above invoking proviso to Section 73 is erroneous.
- Impugned SCN is vague and incoherent.
- Demands raised vide SCN invoking proviso to Section 73 is time barred and hence null and void.
- Since Tax itself is not payable, interest and penalty cannot be demanded from the appellant.
- No interest is chargeable under Section 75 of the Finance Act, 1994.
- Penalty cannot be imposed mechanically since the essential ingredients for levy of penalty are missing.
- Penalty under Section 77 of the Finance Act, 1994 is not applicable in the present case.
- No penalty under Section 78(1) of the Finance Act, 1994 is imposable upon the appellant.
- Penalty cannot be imposed when there is interpretation of law.



- The appellant has relied upon various case laws in support of their claim of demand being barred by limitation, imposition of penalty under Section 78, levy of interest under Section 75 etc.

The appellant submitted that for the reasons stated hereinabove, neither Service Tax can be recovered from the Appellant, nor interest and/or penalty could be imposed.

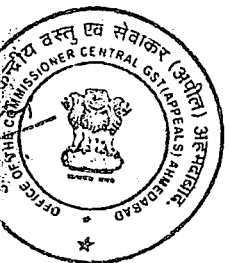
7. Personal hearing in the case was held on 10.01.2023. Shri Bishan R. Shah, Chartered Accountant, as authorized representative of the appellant, appeared for the hearing. He re-iterated the submissions made in appeal memorandum.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing 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.7,84,623/-, along with interest and penalty, in the facts and circumstances of the case, is legal and proper *or* otherwise. The demand pertains to the period to F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17.

9. It is observed that the appellant was issued SCN on the basis of audit of the books and account of the appellant by the officers of the Central Tax Audit, Ahmedabad and subsequent issuance of Final Audit Report No.ST-1654/2019-20, dated 11.06.2020. The adjudicating authority had confirmed the demand of Service Tax, along with interest and penalty, ex-parte, vide the impugned order.

10. The appellant, in the present appeal, have mainly contended that as per the reconciliation there is no Service Tax liability upon them. The appellant have also contended that they had provided supply of Man Power services to M/s GETCO and the services provided to Body corporate are covered under reverse charge mechanism as per Sr.7(a) of Notification No. 30/2012 -ST, dated 20.06.2012.

11. I find that at Para 15 of the impugned order passed by the adjudicating authority, it has been recorded that the appellant appeared for personal hearing and stated that his consultant / Chartered Accountant would file defense reply within 3-4 days, but the appellant had not submitted any defense submission and documents. It is, therefore, observed that effective hearing in the matter could not



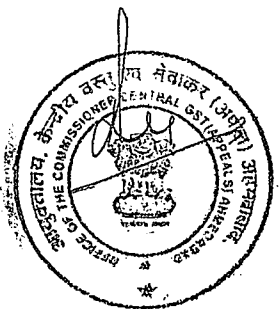
take place and the adjudicating authority has decided the matter, without giving any further opportunity for hearing.

11.1 In terms of Section 33A (1) of the Central Excise Act, 1944, the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that in the instant case, three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. I find it relevant to refer to the judgment of the Hon'ble High Court of Gujarat in the case of Regent Overseas Pvt. Ltd. Vs. UOI - 2017(6) GSTL 15 (Guj) wherein it was held that:

*12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing."*

Therefore, the impugned order has been passed in violation of principles of natural justice and is not legally sustainable.

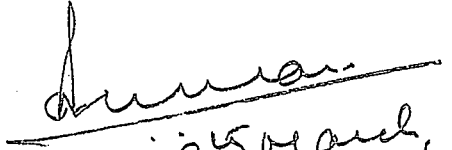
12. It is further observed that the appellant have made various submissions in their appeal memorandum, which were not made before the adjudicating authority. In view of the above, I am of the considered view that in the interest of the principles of natural justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of personal hearing.



13. In view of the above, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh, after following the principles of natural justice. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant is also directed to appear before the adjudicating authority as and when personal hearing is fixed by the adjudicating authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.


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

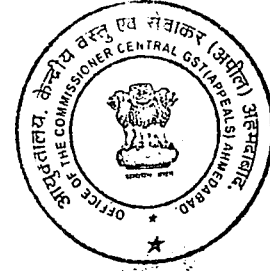
The appeal filed by the *appellant* stands disposed of in above terms.

  
 (Akhilesh Kumar) 20/3/23  
 Commissioner (Appeals)

Date: 09.03.2023

Attested

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



**BY RPAD / SPEED POST**

To,  
 M/s Patel Jayesh Manilal,  
 Near Police Station,  
 Langhnaj, Mehsana-382730.

**Copy to: -**

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-Mehsana, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.