



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव
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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/597/2022-APPEAL/4321 - 25
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-052/2022-23 and 27.10.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.10.2022
(ङ)	Arising out of Order-In-Original No. PLN-AC-STX-03/2021-22 dated 17.01.2022 passed by the Assistant Commissioner, CGST & CE, Division-Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Venkatesh Marbles Pvt. Ltd. Address:- Factory-48/2, Taluka-Danta, Ambaji, Banaskantha, Gujarat-385110

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:-

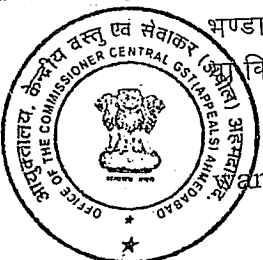
Revision application to Government of India:

(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 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 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 दो 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-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

1. This Order arises out of an appeal filed by M/s. Venkatesh Marbles Pvt. Ltd, Factory- 48/2, Kumbhariya, Tal-Danta, Ambaji, Banas Kantha-385110 and H.O.- 701B, Citi Scape, CHS Ltd, Near Hotel Kohinoor, J.B. Nagar, Andheri-Kurla Road, Andheri (E), Mumbai-400059 (hereinafter referred to as '*appellant*') against Order in Original No. PLN-AC-STX-09/2021-22 dated 17.01.2022 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise , Division-Palanpur, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant firm is a Private Limited company engaged in activities of cutting and sawing of marble blocks into marble slabs (falling under CETH-25151220/90) and trading thereof. They are also engaged in carrying out job-work of cutting of marble slabs for various principals, for the said purpose they were registered under the Central Excise Act, 1944. They are holding GST Registration No.24AAACV1739N1Z4.

3. On the basis of information received from the Income Tax Department, Government of India, certain discrepancies were observed with regard to non-payment of Service Tax by the appellant on income due to certain activities falling under the definition of the term "Service" as defined in clause 44 of Section 65 of Chapter-V of the Finance Act, 1994. Thereafter, on the basis of scrutiny of various documents obtained from the appellant for the period F.Y.2013-14 to F.Y.2017-18 (upto June-2017), a Demand Cum Show Cause Notice dated 26.05.2020 was issued to them by the Assistant Commissioner, CGST & CX, Division- Palanpur vide F.No. IV/16-02/PLN/Venkatesh/2020-21. The SCN covered the period from 01.04.2015 to 30.06.2017 [2015-16, 2016-17 and 2017-18 (upto June-2017)] and alleged recovery of :

- (i) total Service Tax amounting to Rs. 7,70,877/- (Rs.6,92,008/- on account of Service tax not paid on Job-Work income; Rs.26,377/- on account of Service tax not paid on GTA Services under Reverse Charge Mechanism; and Rs.52,492/- on account of Service tax not paid on Manpower Supply services) under proviso to Section 73 (1) of the Finance ACT, 1994 alongwith interest under section 75.
- (ii) Imposition of Penalty under each of the provisions of Clauses (a) and (d) of sub-section (1) of Section 77 and under Section 78 of the Finance Act, 1994.

(iii) Late fee in terms of Section 70 of the Service Tax Rules, 1994 for non-filing of returns.

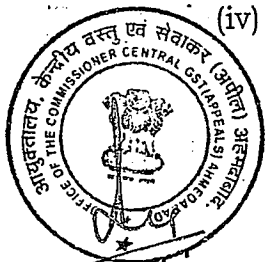


4. The said demand cum show cause notice was adjudicated vide the impugned order, and it was ordered as under :

- (i) demand of Rs. 25,120/- was confirmed being the amount of Service Tax not paid on receipt of GTA Service for the period F.Y 2015-16 to F.Y 2016-17 (upto June-2017) in terms of Section 73(i) of the Finance Act, 1994 by invoking the extended period;
- (ii) Recovery of Interest on the Service Tax amount of Rs. 25,120 /- under Section 75 of the Act;
- (iii) Penalty of Rs.10,000/- was imposed in terms of Section 77(1)(a) of the Finance Act, 1994 for failure to take registration, under the provisions of Section - 69;
- (iv) Penalty of Rs.10,000/- was imposed in terms of Section 77(1)(d) of the Finance Act, 1994 for failure to take registration under the provisions of Section - 69;
- (v) Penalty of Rs.25,120/- was imposed in terms of Section 78 of the Finance Act, 1994 and option was given for the reduced penalty under clause (ii) of the second proviso to Section 78(1) of the act.
- (vi) Late fee to be charged under Section 70 of the Service Tax Rules alongwith the ST-3 returns as and when filed by the appellant.

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

- (i) Re-iterating their earlier submissions made before the adjudicating authority, they submitted that they have received transport services from registered GTA and all those GTA have duly charged Service tax in their consignment note issued and also mentioned that Service tax liability is to be borne by the transporter.
- (ii) they have provided sample copies of consignment notes relevant to the period from 2015-16, 2016-17 & 2017-18 (upto June-2017).
- (iii) they have submitted copies of ST>Returns and declaration from one of the GTA regarding discharge of Service tax liabilities.
- (iv) It was contended that - "any tax recovered once can not be recovered on the principal of natural justice" and in support of their contention, they submitted following case laws :



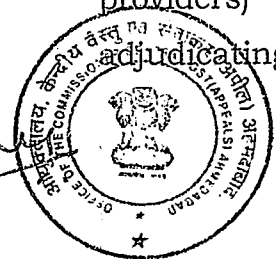
- (a) Order No. A/1736/WZB/(AHD.) of 2008 in the case of Navyug Alloys Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Vadodara - II - [2009] 13 STR 421 (AHD - CESTAT).
- (b) Order No. A/873/2013/SMB/C-IV November 28,2013 in the case of Umasons Auto Compo (P.) Ltd. Vs Commissioner of Central Excise & Customs, Aurangabad - CESTAT-Mumbai.
- (c) OIA No.AHM-EXCUS-001-APP-135-17-18 dated 23.11.2017 in favour of M/s Sanidhya Infrastructure Private Limited, Ahmedabad.

6. Personal Hearing in the case was held on 31.08.2022. Shri Naresh Jhawar and Shri Vinayak Mantri appeared as authorised representatives of the appellants for hearing. They re-iterated the submissions made in appeal memorandum and stated that they would submit some case laws on the subject as part of their written submission.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant/their representative at the time of Personal Hearing. The issue before me for decision is whether the impugned order confirming the demand of Service Tax amounting to Rs.25,120/- against the appellant on receipt of GTA Service alongwith interest as well as imposition of Penalties (as detailed supra), is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 to F.Y. 2017-18 (upto June-2017).

8. It is observed that out of the total demand of Service Tax under GTA amounting to Rs.26,377/-, the adjudicating authority has confirmed demand of Service Tax amounting to Rs. 25,120/- for the period F.Y.2015-16 to F.Y.2017-18 (upto June-2017) on the grounds that in terms of Section 68 (2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012, Service Tax on GTA Services fall under the RCM (Reverse Charge Mechanism) category. Even when the service provider (GTA) has wrongly charged service tax in their bills, the liability of service receiver is not discharged and the service tax is required to be deposited by the service recipients (the appellants).

9. It is further observed from the case records that the appellant has received services from various GTA service providers, who are registered with the Service Tax department. It is also a fact that all the GTA Service providers have charged Service Tax from the appellants in their respective consignment notes raised by them and the said amount of Service tax has been paid to the GTA's (service providers) by the appellant. These facts are also acknowledged by the adjudicating authority in the impugned order.



10. I also find that the appellants have produced copy of a Certificate from one of their GTA's (service providers) wherein they have categorically mentioned that they have charged and received service tax from the appellants (service recipients) and that they have also filed their ST-3 returns for the relevant periods. Under the circumstances, demand confirmed against the appellant would amount to double taxation and is not legally tenable.

11. This view has been taken by various Tribunals and some of the judgements have been relied upon by the appellant :

(i) Decision of the CESTAT Ahmedabad vide Order No. A/1736/WZB/(AHD.) of 2008 in the case of Navyug Alloys Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Vadodara - II - [2009] 13 STR 421 (AHD - CESTAT) wherein it was held that -
"... once tax already paid on the Services, it was not open to the Department to confirm the same against the appellant, in respect of the same services. I accordingly set aside"

(ii) Decision of the Hon'ble CESTAT Mumbai vide Order No. A/873/2013/SMB/C-IV November 23,2013 in the case of Umasons Auto Compo (P.) Ltd. Vs Commissioner of Central Excise & Customs, Aurangabad. Wherein it was held that :
" I find that there is no dispute regarding payment of service tax by the provider of GTA service. Once the amount of service tax is accepted by the revenue from the provider of GTA service, it cannot be again demanded from the recipient of the GTA service. In view of this, the ..."

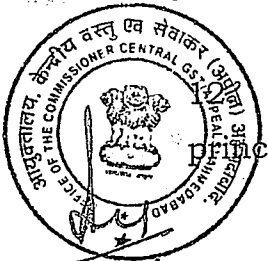
(iii) By referring to both the above decisions, the Commissioner (Appeals), Ahmedabad has vide OIA No. AHM-EXCUS-001-APP-135-17-18 dated 23.11.2017 decided the matter in favour of M/s Sanidhya Infrastructure Private Limited, Ahmedabad and held that :

" ... so, I find that the adjudicating authority has failed to analyse the vital issue of payment of service tax in the impugned order in view of the above case laws....."

(iv) The CESTAT, SZB, Chennai had held in the case of M/s Nagaraja Printing Mills Versus Commissioner of Central Excise, Salem that :

"... I note that the GTA had paid the bulk of the tax. Therefore, prima facie, the appellants cannot be called upon to pay the same amount once again..."

In view of the judicial pronouncements above, I find that it is a settled principle that "Once the amount of service tax is accepted by the



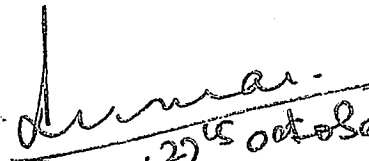
revenue/department from the provider of GTA service, it cannot be demanded again from the recipient of the GTA service". Hence, it is held that the adjudicating authority has failed to analyze the issue in above context and that the demand of Service Tax amounting to Rs. 25,120/- confirmed against the appellant is not legally sustainable. Therefore the demand of Service Tax amounting to Rs. 25,120/- confirmed vide the impugned order is set aside. When the demand of duty fails to survive, there does not arise any question of interest and penalty in the matter.

13. It is further observed that during the period F.Y. 2015-16 to F.Y. 2017-18 (upto June-2017) as no demand of Service Tax is sustainable against the appellants under GTA Services, therefore, in terms of Para - 6.1 of CBIC Circular No.97/8/2007 dated 23.08.2007, they are not required to file any ST-3 return. Consequently, the imposition of late fee under Section 70 of the Finance Act, 1994 is also not legally sustainable.

14. It is further observed that the appellant have in their appeal memorandum requested to pass an order of refund for amount already paid under protest amounting to Rs.45,271/-. In this regard, I find that the appellant has to approach the jurisdictional authorities to claim any relief arising out of this Order-in-appeal.

15. Accordingly, the impugned order is set aside for not being legal and proper and the appeal filed by the appellants is allowed.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटान उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms..


27th October, 2022
(अखिलेश कुमार)

(Akhilesh Kumar)
आयुक्त (अपील)
Commissioner (Appeals)

Dated: 27th October, 2022.

साक्ष्यांकित / Attested:

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



By Regd. Post A. D

M/s Venkatesh Marbles Pvt.Ltd
Survey No.48/2, Village-Kumbhariya, Post-Ambaji,
Taluka-Danta, Dist.Banaskantha, Gujarat-385110

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Pr. Commissioner, CGST and Central Excise, Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division-Palanpur, Mehsana-384002.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Gandhinagar.
- ~~5.~~ Guard file
6. PA File



