

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad

Phone: 079-26305065 - Fax: 079-26305136

E-Mail : commrappl1-cexamd@nic.in



सत्यमेव जयते

आजादी का  
अमृत महोत्सव**By Regd. Post**

DIN No.: 20221164SW000000D6B2

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/655/2022-APPEAL / 11881 - 65
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-058/2022-23 and 07.11.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	18.11.2022
(ङ)	Arising out of Order-In-Original No. AC/S.R./03/ST/KADI/2021-22 dt. 13.01.2022 passed by the Assistant Commissioner, CGST & CE, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Khodal Refinery Contractor [Prop. Narpatsinh Shankarbai Bariya] Address:- C-15, Karnavati Society, Behind Anmol Hotel, Nani Kadi Road, Kadi, Mehsana, Gujarat-382715

कोई व्यक्ति इस अपील-आदेश से असंतोष 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 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 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 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 पढ़ी 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 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 अपीलों 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।

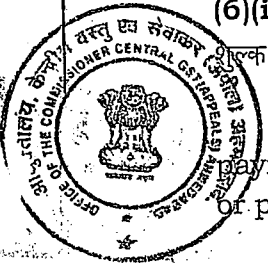
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This Order arises out of an appeal filed by M/s. Khodal Refinery Contractor, C-15, Karnavati Society, Behind Anmol Hotel, Nani Kadi Road, Kadi, Mehsana - 382715 [hereinafter referred to as "the appellant"] against Order-in-Original No. AC/SR/03/ST/Kadi/2021-22 dated 13.01.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Kadi Division, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant are engaged in provision of Maintenance or Repair Service, Manpower Recruitment/Supply Agency Service and were having Service Tax Registration No. AYPPB9057KSD001. The data pertaining to 'Sales/Gross Receipts from Services (Value from ITR), the Total Amount paid/Credited Under 194C, 194H, 194I, 194J' and 'Gross Value of Services Provided' was provided by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, and on its analysis, it was noticed that the appellant had shown less amount of the 'Gross Value of Services Provided in the Service Tax (ST-3) Returns filed with Service Tax Department compared to those filed with the Income Tax Department. To explain the discrepancies, the appellant were asked to provide documents viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the F.Y. 2014-15. However, the appellant did not respond. Accordingly, the service tax liability of the appellant was determined for the F.Y. 2014-15 based on the maximum amount of difference between (i) Value of Services declared in ITR filed by the appellant & Value of Services provided as per Service Tax Returns and (ii) Value of "Total Amount paid/credited Under 194C, 194H, 194I, 194J' & Value of Services provided' as per Service Tax Returns. The details of quantification of demand are as under:

(Amount in Rs.)

Financial Year	Value of services decalred in ITR	Value of total amount paid/credited under 194C, 194H, 194I, 194J	Value of services provided as per service tax returns	Highest Difference	Basic Service Tax@ 12%	Ed. Cess @ 2%	S & H Ed. Cess @ 1%	Total Service Tax
2014-15	0/-	18,19,577.06	10,31,348	7,88,229.06	94,587	1,892	946	97,425



2.1. The appellant was issued a Show Cause Notice No. IV/16-15/TPI/PI/Batch 3C/2018-19/Gr. IV dated 25.06.2020 (in short SCN) for demand and recovery of Service Tax amounting to Rs.97,425/- under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994 read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No 2 of 2020) promulgated on 30.03.2020 by invoking extended period of limitation along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Sections 77 and 78 of the Finance Act, 1994.

3. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein he has confirmed the demand along with interest and imposed penalties as proposed in the SCN.

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

(i) Appellant, being an Individual having a sole Proprietorship firm, is eligible to claim the Small Service Provider exemption under Notification No. 33/2012 – ST dated 20.06.2012 for the year under consideration.

(ii) They are neither in receipt of any services which are liable to reverse charge mechanism nor providing services under a brand name, making him eligible to claim exemption under small service provider.

(iii) They had provided services of Rs. 7,88,231/- under small service provider during the year under consideration and has pro-actively obtained Service Tax Registration w.e.f. 01.12.2014; and has charged service tax on the services of Rs. 10,31,348/- provided post obtaining registration of service tax.

5. Personal Hearing in the case was held on 20.10.2022. Mr. Fenil P. Shah, Chartered Accountant, appeared for hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and the submissions made by the appellant at the time of Personal Hearing. The issue to be decided in the case is whether the impugned order passed by the adjudicating authority, confirming the demand of Rs. 97,425/-

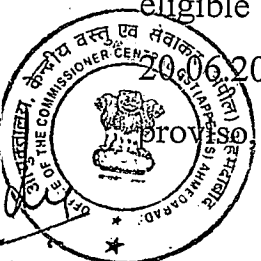


alongwith interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the F.Y. 2014-15.

7. It is observed from the case records that the appellant had, during F.Y. 2014-15, provided Manpower Recruitment Service to M/s. Ruchi Soya Industries Ltd. and received consideration amounting to Rs.18,19,577/- during the period. They had provided services amounting to Rs. 7,88,231/- and claimed value based exemption under Notification No. 33/2012 – Service Tax dated 20.06.2012 and thereafter obtained registration on 01.12.2014. Subsequently, they issued bills amounting to Rs.10,31,348/- under the Manpower Recruitment Service in Financial Year 2014-15 on which service tax amounting to Rs.31,867/- have been paid under Reverse Charge Mechanism @ 3.09% of Rs.10,31,348/-), and also mentioned in ST-3 return of October, 2014 to March, 2015. These are undisputed facts.

7.1. It is further observed that the SCN as well as the impugned order (Para 31) has quantified the demand on Rs. 7,88,231/- by denying the assessment under reverse charge and also by denying the threshold exemption up to value based provision of service amounting to Rs. 10,00,000/-. I find that the appellant has obtained registration after their service value reached Rs. 7,88,231/-. Thereafter, they have discharged service tax liability under reverse charge and filed their return. It is also observed that the adjudicating authority has sought to charge this amount by denying the assessment under reverse charge. I find that there is an inherent contradiction in the impugned order passed by the adjudicating authority in as much as he has assessed the transaction from 01.12.2014 under reverse charge and for transactions prior to this date, he has assessed it under normal assessment, which is also called assessment under forward charge. Since, the assessment for the period for which ST-3 Returns have been filed has not been challenged either in the SCN or in the impugned order, the findings arrived by the adjudicating authority are erroneous both on facts as well as on merits and hence, legally not sustainable.

7.2. It is further observed that the contention of the appellant that they were eligible for threshold exemption under Notification No. 33/2012 – ST dated 20.06.2012 is also not legally sustainable. The said notification, through second proviso, specifically excludes payment of service tax under reverse charge.



mechanism and hence, the appellant was supposed to discharge their service tax liability from the very beginning and not on reaching the value of Rs. 10,00,000/-. I also find that the adjudicating authority has, in Para 22 of the impugned order, given a finding that the value based exemption is available provided that the aggregate value of taxable service in previous year should not exceed Rs. 10 Lakh. I find that the said condition pertains to assessment under forward charge, which is not applicable in this case. It is a fact on record that the appellant has filed returns for the period October, 2014 – March, 2015 disclosing assessment under reverse charge, which has not been disputed. That being the case, the findings arrived by the adjudicating authority in Para 22 of the impugned order is not legally sustainable.

7.3. In view of the discussions made above, I find that the impugned order passed by the adjudicating authority is not legally sustainable, both on facts as well on merits. The same is accordingly set aside. The matter is remanded back to the adjudicating authority to decide the matter afresh keeping in mind the observations made in Para 7.1 and Para 7.2 above. The appellant are also directed to submit necessary documents before the adjudicating authority within 15 days of passing of this order so as to arrive at correct assessment. The adjudicating authority shall pass the order in accordance with the principles of natural justice.

8. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*Akhil Kumar*  
7th November, 2022

(AKHILESH KUMAR)

Commissioner (Appeals)

Date: 07th November, 2022

Attested

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



By Regd. Post A. D

M/s Khodal Refinery Contractor  
C – 15, Karnavati Society,  
Behind Anmol Hotel,  
Nani Kadi Road, Kadi, Mehsana - 382715.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar
3. The Deputy /Asstt. Commissioner, Central GST, Deputy Commissioner of CGST & CE, Kadi Division, 4<sup>th</sup> Floor, Janta Super Market, Near Vepari Junction, Kalol, - 382715
4. The Deputy/Asstt. Commissioner (Systems), CGST (Appeals), Ahmedabad
- ✓ 5. Guard file
6. PA File

