



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By Regd. Post

DIN No.: 20221264SW000000A3EF

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| (क) | फाइल संख्या / File No. | GAPPL/COM/STP/1143/2022-APPEAL / 535M-38 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-074/2022-23 and 12.12.2022 |
| (ग) | पारित किया गया / Passed By | श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 12.12.2022 |
| (ङ) | Arising out of Order-In-Original No. 65/ADJ/GNR/PMT/2021-22 dated 31.03.2022 passed by the Deputy Commissioner, CGST & CE, Division-Gandhinagar, Gandhinagar Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s Jalaram Catering Services, GSECL, GEB Colony, Type 11/5, Gandhinagar, Gujarat-382041 |

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 हैं।

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 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 रूपये या उससे कम होतो रूपये 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 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-8 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।

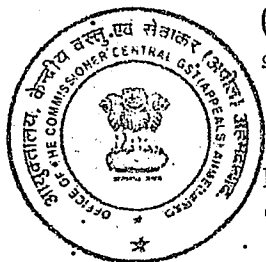
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

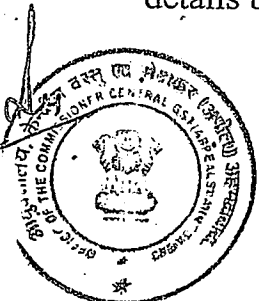


अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Narvatsinh Mahendrasinh Rathod (Jalaram Catering Services), Near Suraj Hari & Sons, At & Post Rayka, Nandesari, Vadodara- 391780 and having address of communication at GSECL, GEB Colony, Type-11/5, Gandhinagar-382041 (hereinafter referred to as the appellant) against Order in Original No. 65/ADJ/GNR/PMT/2021-22. dated 31.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AFHPR2515MSD001 for providing Restaurant Services. As per the Income Tax Returns (ITR-5) and Form 26AS (TDS) data of the appellant for the period F.Y.2015-16 and F.Y.2016-17 received from the Income Tax department, there were discrepancies in the total income. Accordingly, letters were issued to the appellant calling for the details of services provided during the period F.Y.2015-16 and F.Y.2016-17. The appellants failed to reply to the queries. It was also observed by the Service Tax authorities that the appellants had not filed their Service Tax Returns for the relevant period. It was also observed that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and their services were not covered under the "Negative List" as per Section 66D of the FA,1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 (as amended), hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y.-2015-16 and F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' shown in the ITR-5 and 26AS for the relevant period provided by the Income Tax department as per details below :



Table

| Sr. No | Details | F.Y. – 2015-16 (Amount in Rs.) [Service Tax @ 14.5 %] | F.Y. – 2016-17 (Amount in Rs.) [Service Tax @ 15 %] |
|--------|--|--|--|
| 1 | Taxable Income as per ITR-5/26AS (Income Tax Data) | 25,96,821 /- | 23,21,040/- |
| 2 | Income on which Service Tax paid | 0 /- | 0/- |
| 3 | Difference of value (S.No.1-2) | 25,96,821 /- | 23,21,040/- |
| 4 | Amount of Service Tax alongwith Cess not paid /short paid | 3,76,539/- | 3,48,156/- |
| | TOTAL demand of Service Tax | Rs. 7,24,695/- | |

3. The appellant was issued a Show Cause Notice vide F.No. V/04-112/O&A/SCN/NARAVAT/20-21 dated 11.08.2020 wherein it was proposed to:

- Demand and recover service tax amounting to Rs.7,24,695/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act,1994 ;
- Impose penalty under Section 76, 77(2) and 78 of the Finance Act, 1994;
- Impose penalty under Section 77(3)(c) of the Finance Act, 1994

4. The said Show Cause Notice was adjudicated vide the impugned order wherein the demand for Rs. 7,24,695/- was confirmed under Section 73(1) of the Finance Act, 1994. Penalty amounting to Rs.7,24,695/- was imposed under Section 78 of the Finance Act, 1994. Penalty of Rs.10,000/- was imposed under Section 77 (2) of the Finance Act, 1994 and Penalty of Rs.10,000/- was imposed under the provisions of Section 77 of the Finance Act, 1994 and Rules made thereunder.

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

- During the F.Y. 2015-16, they were running Canteen business with 'Gujarat State Electricity Corporation' Limited at the operation & maintenance unit of Sardar Hydro Power, Old ADM Building, Kevadia Colony, Dist. Narmada, Gujarat – 383151. During this period, 'Canteen Service' were exempted under Notification No.14/2013 and, therefore, they did not pay any Service Tax for the said period.



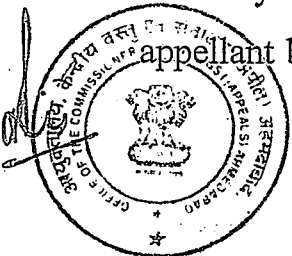
- The rate of Service Tax for 'Restaurant Services' were 6% (after abatement) and not 15%, as calculated by the adjudicating authority vide the impugned order.
- They had submitted their reply to the show cause notice vide e-mail – cgstgnr@gmail.com on 24.08.2020 which was not considered by the adjudicating authority. They had also tried to submit the physical copy of the reply but the same was not accepted.
- The SCN was first sent to their address at Vadodara, whereas they have shifted to their addresss at Gandhinagar, Gujarat.

6. Personal Hearing in the case was held on 30.11.2022, Shri Ramesh Pujara, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to the confirmation of demand for Service Tax amounting to Rs. 7,24,695/- alongwith interest and penalty as well as other penalties imposed. The demand pertains to the period F.Y.2015-16 to F.Y. 2016-17.

8. I find that it has been recorded at Para 20 of the impugned order that the appellant has not submitted their defence submission. Further, it has also been recorded that the opportunity of personal hearing was granted on 08.03.2022, 22.03.2022, and 31.03.2022, but, the appellant did not appear. Thereafter, the case was adjudicated ex-parte.

8.1 I find that the appellant has in their appeal memorandum submitted details and various documents in their defense. They have claimed exemption under Notification No. 14/2013-ST dated 22.10.2013. They have also submitted that reply to the show cause notice was submitted by them before the adjudicating authority through e-mail, however the same was not considered. The submissions of the appellant were not perused by the adjudicating authority as also neither did they attend the personal hearing granted, nor any oral submissions were made by them in their defense. Accordingly, the adjudicating authority did not have the opportunity of considering the submissions of the appellant before passing the impugned order. Therefore, I am of the considered



view that it would be in the fitness of things 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, and, thereafter, adjudicate the matter.

9. 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 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 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.

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

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

Attested:

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

Akhilesh Kumar
12th December, 2022
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 12th December, 2022



BY RPAD / SPEED POST

To

M/s Narvatsinh Mahendrasinh Rathod.
(Jalaram Catering Services)
Near Suraj Hari & Sons
At & Post – Rayka, Nandesari,
Vadodara – 391780

M/s Narvatsinh Mahendrasinh
Rathod,
(Jalaram Catering Services),
GSECL, GEB Colony,
Type-11/5, Gandhinagar - 382041

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy Commissioner, Central GST Division - Gandhinagar, Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. ~~Guard File.~~
6. P.A. File.

