



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 Regd. Post

DIN No.: 20221264SW000000D2BC

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/986/2022-APPEAL / 3252-63
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-075/2022-23 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. 18/AC/DEM/ST/MEH/2021-22 dated 15.02.2022 passed by the Assistant Commissioner, CGST & CE, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s S N Corporation, SF 18, Someshwar Mall, Modhëra Road, Mehshana, Gujarat-384002.

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 से 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 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.

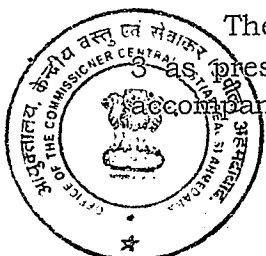
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd मांला, 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 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।

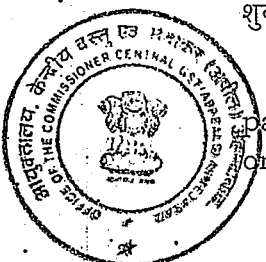
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



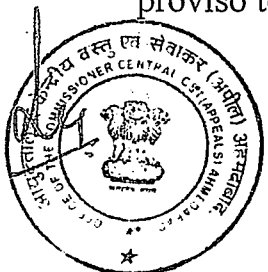
अपीलिय आदेश/ ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. S N Corporation, SF 18, Someshwar Mall, Modhera Road, Mehsana, Gujarat -384002 [hereinafter referred to as "the appellant"] against Order-in-Original No. 18/AC/DEM/ST/MEH/2021-22 dated 15.02.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Division: Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant were registered for providing taxable services under Service Tax Registration No. ACVFS3357HSD001. As per the information received through Preventive Section, HQ Gandhinagar vide DG Systems Report No. 02 & 03, discrepancies were noticed in the total income declared in the Income Tax Return of the appellant and their Service Tax Returns for the period F.Y. 2015-16 & F.Y. 2016-17. They were asked by the jurisdictional officers vide letter dated 08.05.2020 to provide the details of services provided during the said period. However, the appellant failed to submit the required details. It appeared to the department that nature of activities covered by the appellant were covered under the definition of service under the Finance Act, 1994 and the service tax payable was determined on the basis of Differential value of sales of service under Sales/Gross Receipts from Services (Value from ITR)" or "Total amount paid/credited Under Section 194C, 194I, 194H, 194J of Income Tax Act, 1961" as provided by the Income Tax Department through DG Systems Report No. 02 & 03 for the Financial Years 2015-16 & 2016-17 as per details below:

Sr. No.	Period	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax including Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	0	14.5%	0
2.	2016-17	1,43,33,648	15%	21,50,047.
3.	Total	1,43,33,648		21,50,047

2.1. The appellant were issued a Show Cause Notice No. V.ST/11A-14/SN/2020 - 21 dated 29.06.2020 demanding service tax amount of Rs. 21,50,047/- under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75



of the Act. The SCN also proposed imposition of penalty under Section 77(2), Section 77C and Section 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the proposals made the SCN were confirmed.

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

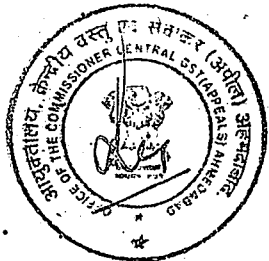
(i) They provided service to the government, a local authority or a government authority by way of construction, erection, commissioning, installation, completion, fitting out and repair.

(ii) Notification No. 25/2012 dated 20.06.2012 and amended by Notification No. 09/2016 dated 01.03.2016 specified that exemption is available on service provided to the government, a local authority, or a government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alternation.

(iii) They, during Financial Year 2016-17, were engaged in activity of providing service to Gram Panchayats for installing toilet at different gram panchayats. All amount were received from government body for installing personal toilet as per agreement. As the amount of value of taxable service was received from a government body, it is exempted as per above notification.

(iv) As they are not liable to pay Service Tax, no penalty for the provisions as mentioned in clause (c) of sub-section (1) of Section 77 of the Finance Act, 1994 or any other provision of the law, penalty under Section 77(2) of the Finance Act, 1994 can be imposed. Similarly, they are not liable for penalty under Section 78 of the Finance Act, 1994.

5. Personal Hearing in the case was held on 30.11.2022. Mr. Sanni A. Shah, Chartered Accountant, appeared for personal hearing. He re-iterated submissions made in the appeal memorandum.



6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum and the impugned order passed by the adjudicating authority. The issue before me for decision is whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand of service tax amounting to Rs. 21,50,047/- under proviso to Section 73 (1) of Finance Act, 1994 by invoking extended period of limitation alongwith interest, and imposing penalties under Section 77 (2), Section 77C and Section 78 of the Finance Act, 1994, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.

7. It is observed that the appellant is registered with the department. The SCN has been issued on the basis of data received from the Income Tax Department, which showed that the appellant had earned income amounting to Rs. 1,43,33,648/- which was excess to the amount of taxable service declared in the ST-3 returns for the relevant period. The service tax liability was determined on this amount at Rs. 21,50,047/-. It is the contention of the appellant that they were engaged in providing services by way of "Repairing, Renovation and Construction of Civil Nature" to Gram Panchayat during the relevant period F.Y. 2016-17, which were exempt as per Serial No. 12A of "Mega Exemption Notification".

7.1. The adjudicating authority has, while confirming the demand, at Para 23.1 of the impugned order observed as under:

" 23.1 On going through the defense reply, I find that the assessee has not submitted any documentary evidence like Copy of Work Contract, Invoices etc. to substantiate the claim that they have only provided services of Repairing, Renovation and Construction of Civil Nature to Gram Panchayat during the relevant period. In absence of these vital documents, it is impossible to determine the nature of activities carried out by them, its recipients and to decide the exemption for the services provided during F.Y. 2016-17. I also find that even though they were registered with the Service Tax department, but they have neither filed periodical ST-3 returns nor claimed any exemption for said services during the said period. Hence, the above contention of the assessee that their services are exempted vide serial no. 12A of the Notification No. 25/2012 – ST dated 20.06.2012 is not acceptable."



7.2. It is observed that serial no. 12 (a) of Notification No. 25/2012 – ST dated 20.06.2012 provided exemption to services provided to Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

The said notification was subsequently amended vide Notification No. 9/2016 – ST dated 01.03.2016 whereby the exemptions were restored for the services provided under a contract, which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date.

7.3. It is observed that the appellant have, alongwith the appeal memorandum, submitted copies of the contract as well as the audit report for the F.Y. 2016-17. The same was not submitted before the adjudicating authority. Further, the appellant has also not appeared before the adjudicating authority for personal hearing. Therefore, it would be in the interest of natural justice that the matter is remanded back to the adjudicating authority to examine the claim of the appellant regarding exemption claimed.

8. In view of the discussions made above, I set aside the impugned order and allow the appeal filed by the appellant by way of remand to the adjudicating authority. The appellants are directed to submit all the relevant documents before the adjudicating authority within 30 days of receipt of this order. The adjudicating authority shall pass the order in accordance with the principles of natural justice.

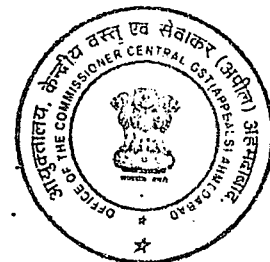
9. अपीलकर्ताद्वारा दर्ज की गई अपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

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

Akhil Kumar
12th December, 2022
(AKHILESH KUMAR)
Commissioner (Appeals)
Dated: 12th December, 2022

साक्ष्यंकित/Attested:

Sominath Chaudhary
सोमनाथ चौधरी/SOMNATH CHAUDHARY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST(APPEALS), AHMEDABAD.



By REGD/SPEED POST A/D

To,

M/s: S N Corporation,
SF 18, Someshwar Mall,
Modhera Road,
Mehsana, Gujarat -384002.

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, Division- Mehsana, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website .
5. Guard file
6. PA File

