



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**By Regd. Post**

DIN No.: 20230164SW000000D1A5

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/757/2022-APPEAL / 6825 - 29
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-084/2022-23 and 23.12.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	02.01.2023
(ङ)	Arising out of Order-In-Original No. PLN-AC-STX-43/2021-22 dated 17.03.2022 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 Balaram Construction Ltd., Village-Dhanpura, Sarotra, Shri Amirgadh, Banaskantha, Gujarat- 385130

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 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 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-3 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 अपीलो 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, penalty, where penalty alone is in dispute."



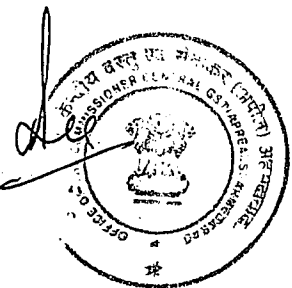
अपीलिय आदेश / ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Balaram Construction Limited, Village- Dhanpura, Sarotra, Amirgarh, Dist.Banaskantha, Gujarat - 385130 [hereinafter referred to as the appellant] against OIO No. PLN-AC-STX-43/2021-22 dated 17.03.2022 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, Division : Palanpur, Commissionerate : Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Facts of the case, in brief, are that the appellant are engaged in provision of Construction Services/Works Contract Service and were having Service Tax Registration No. AAACB6264CST001. As per information received from the Income Tax department, there were discrepancies in the total income declared in the Income Tax Returns /26AS and those declared in the ST-3 Returns filed by them for the F.Y. 2014-15. To explain the discrepancies, the appellant were requested to provide documents relevant documents vide e-mail dated 19.06.2020. However, the appellant did not respond. It was also observed that the activities undertaken by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and during the relevant period they were taxable.

2.1 Accordingly, the service tax liability of the appellant was determined for the F.Y. 2014-15 based on difference between the value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" or "Total amount Paid/Credited under Section 194C, 194I, 194H, 194J of the Income Tax Act,1961" and Taxable Value shown in the ST-3 return as under:

Sr. No	Details	F.Y. - 2014-15 (Amount in Rs.) [Service Tax @ 14.5 %]
1	Taxable Value as per Income Tax data i.e Total Amount Paid/Credited under Section 194C, 194I, 194H, 194J or Sales/Gross Receipts from Services (From ITR)	16,49,33,786 /-
2	Taxable Value declared in ST-3 Returns	16,41,95,426 /-
3	Difference of value (S.No.1-2)	7,38,360 /-
4	Amount of Service Tax alongwith Cess not paid /short paid	91,261/-



3. The appellant was issued a Show Cause Notice No. IV/16-11/TPI/PI/Batch 3B/2018-19/Gr.V dated 25.06.2020 (in short SCN) for demand and recovery of Service Tax amounting to Rs.91,261/- 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(2), 77C and 78 of the Finance Act, 1994.

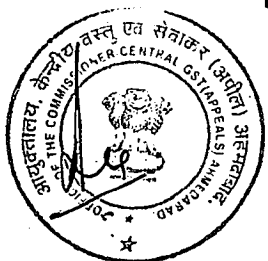
3. The SCN was adjudicated vide the impugned order wherein it was ordered as under :

- Demand of Service Tax amounting to Rs.346/- (for value of Rs.2,800/-) was confirmed under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the FA,1994.
- Penalty of Rs.10,000/- was imposed under the provisions of Section 77(2) of the FA,1994.
- Penalty of Rs.10,000/- was imposed under the provisions of Section 77(C) of the FA,1994.
- Penalty of Rs.346/- was imposed under the provisions of Section 78 of the FA,1994.
- In view of clause (ii) of the second proviso to Section 78(1) of the FA,1994, the option of reduced penalty was granted.

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

(i) The appellant had submitted all relevant documents to show that the value of Rs.2800/- was fully exempt from Service Tax in terms of Clause 12(a) of Notification No. 25/2012 – ST dated 20.06.2012 for the period F.Y.2014-15.

(ii) They had submitted letter from Govt.of India, CPWD for acceptance of tender work, the RA Bills and proof of payment received from CPWD as reflected in bank statement which are in same line as the other copies of bills, contract, income ledger, copy of contract with Government agency and



other documents produced before the adjudicating authority and were accepted by dropping the demand vide the impugned order.

(iii) Recovery of Interest under Section 75 of the FA,1994 is not proper as demand of Service Tax is not sustainable.

(iv) Since, they had filed their ST-3 returns for the period F.Y.2014-15 on 25.04.2015, therefore, the SCN for the said period issued on 25.06.2020 by invoking extended period, becomes infructuous as there was no suppression of facts. In support of their contention, they relied on the following decisions:

- Monarch Catalyst Pvt.Ltd. Vs CCE [2016(41)STR 904 (Tri.-Mum)]
- Decision of the Hon'ble Supreme Court in the case of Tamilnadu Housing Board Vs. CCE – 1194(74) ELT 9(SC).
- Decision of the Hon'ble Supreme Court in the case of Collector Vs. Chemphar Drugs – 1989 (40) ELT 276 (SC).

(v) Penalty imposed for failure of correct assessment under Section 77(2) of the Finance Act,1994 is not sustainable as there was no failure on their part in as much as the amount left out was actually exempted by virtue of notification.

(vi) Penalty imposed for failure of furnishing information under Section 77 C of the Finance Act,1994 is not sustainable as there was no failure on their part and the penalty was imposed mechanically without going into the merits of the case.

(vii) Imposition of penalty of Rs.346/- under Section 78 of the Finance Act,1994 without any evidence of fraud, collusion or willful misstatement or intent to evade payment of tax, was mechanical and without application of mind as they had always shown their bonafide by payment of Service Tax as and when liable to them.

(viii) In support of their above contentions they further relied on the following citations :

- Pahwa Chemicals P.Ltd Vs CCE, Delhi [2005(189) ELT 257 (S.C.)]
- Orient Packaging Ltd. Vs. CCE [2011 (23) STR 167 (Tri.Del.)]



- Decision of the Hon'ble Supreme Court in the case of Cement Marketing Co.-1980 (6) ELT 295 (SC).
- CC Vs.Seth Enterprises [1990(49) ELT 619 (Tri.Del.)]
- Neon News Pvt.Ltd. Vs CCE [2019 (26) G.S.T.L. 241 (Tri.All.)]

(ix) As Chapter V of the Finance Act, 1994 was omitted with effect from 01.07.2017 in terms of provisions of Section 173 of the CGST Act,2017, the SCN issued on or after 01.07.2017 is not legal and proper.

5. Personal Hearing in the case was held on 23.11.2022. Mr. N.V.Suchak, 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 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. 346/- 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. 2014-15.

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. Further, the demand has been confirmed on reconciliation by holding that the appellant had earned income amounting to Rs. 2,800/-, 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. 346/-. It is the contention of the appellant that they were engaged in providing services by way of "Construction Services/Works Contract services" to Government authority during the relevant period F.Y. 2014-15, which were exempt as per Serial No. 12A of "Mega Exemption Notification".

8. I find that the documents and explanations submitted by the appellant before the adjudicating authority was accepted by him. The adjudicating authority, after recording the fact that the services rendered by the appellant during the relevant



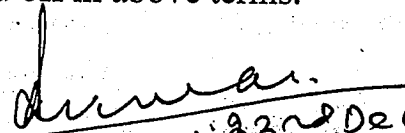
period F.Y. 2014-15 were exempt as per Serial No. 12A of "Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012, has dropped the demand of Rs.91,261/-. The adjudicating authority, at Para-20 of the impugned order, has recorded that "*Hence, it is found that the work contract is awarded to the assessee by the government authority and is fall under the mega exemption as stated at Sr.No.12(a). Hence, their argument that they had not incorporated the same in the ST return as the same is exempted and no service tax applicability was there, found correct. Hence*". However, it is also observed that, the adjudicating authority has confirmed the demand amounting to Rs. 346/- on the grounds that the appellant had not submitted the corresponding documents claiming exemption.

9. I further find that, the appellants have in appeal memorandum produced copies of 'Work Order' dated 23.03.2011, 'Final Bill' dated 20.10.2014 and 'Bank Statements' in support of their contention of exemption in respect of the amount of demand confirmed vide the impugned order. The said documents reflects the fact that payment in respect of the Services provided by the appellant amounting to Rs. 2,800/- was sanctioned by the Government Authority (CPWD, Gandhinagar) and the amount was credited in their bank account. These documents clearly establishes the claim of exemption by the appellant and accordingly, the demand of Rs.346/- is set aside. As the demand of Service Tax fails to sustain, question of interest and penalty does not arise.

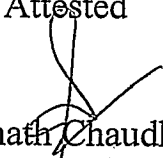
10. In view of the discussions made above, the impugned order passed by the adjudicating authority is set aside and the appeal filed by the appellant is allowed.

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

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


 (AKHILESH KUMAR)
 Commissioner (Appeals)
 Date: 23rd December, 2022

Attested


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



By Regd. Post A. D

M/s Balam Construction Limited,
 Village-Dhanpura, Sarotra, Amirgarh,
 Dist.Banaskantha, Gujarat - 385130.

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-Palanpur, Commissionerate - Gandhinagar
4. The Deputy/Asstt. Commissioner (Systems), CGST (Appeals), Ahmedabad
- ✓ 5. Guard file
6. PA File



