



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, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



By Regd. Post

DIN No.: 20230164SW000072247F

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STP/796/2022-APPEAL / 6836-40 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-086/2022-23 and 29.12.2022 |
| (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. 23/AC/DEMAND/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 Dhara Construction, 80, Anmol Sahara Township, Dediyanan, Mehsana, 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:-

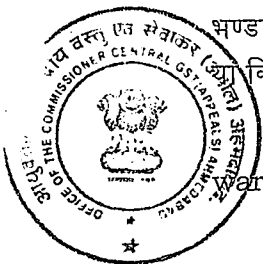
Revision application to Government of India:

(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 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 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 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, or penalty, where penalty alone is in dispute."



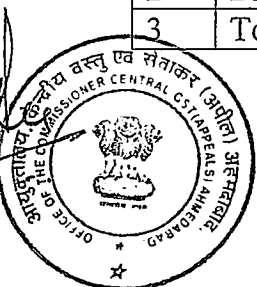
अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Dhara Construction, 80, Anmol Sahara Township, Village - Dediyan, Tal & Dist.: Mehsana, Gujarat – 384001 (hereinafter referred to as the appellant) against Order in Original No. 23/AC/DEMAND/2021-22 dated 15.02.2022 [hereinafter referred to as the “*impugned order*”] passed by the Assistant Commissioner, CGST, Division: Mehsana, Commissionerate: Gandhinagar [hereinafter referred to as the “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAIFD8915DSD001 for providing Taxable Services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in the Income Tax Returns of the appellant for the period F.Y. 2015-16 and F.Y. 2016-17 in comparison to the data reflected in their Service Tax Returns. Accordingly, letters/emails 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 letters. It was 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’ or ‘Value for TDS’ mentioned in the ITR returns filed by the appellant for the relevant period as per details given below :

| Sr. No | Period | Differential Taxable Value as per Income Tax Data | Rate of Service Tax including Cess | Service Tax liability (in Rs.) |
|--------|---------|---|------------------------------------|--------------------------------|
| 1 | 2015-16 | 0/- | 14.5% | 0/- |
| 2 | 2016-17 | 1,62,38,165/- | 15% | 24,35,725/- |
| 3 | Total | 1,62,38,165/- | | 24,35,725/- |



4. The appellant was issued a Show Cause Notice under F. No. V.ST/11A-12/Dhara/2020-21 dated 29.06.2020 (in short SCN) wherein it was proposed to demand and recover service tax amounting to Rs. 24,35,725/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 77(2) , 77C and 78 of the Finance Act, 1994;

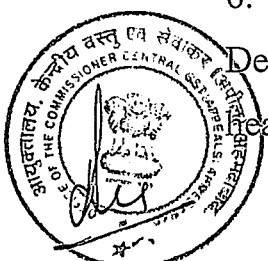
5. The impugned SCN was adjudicated vide the impugned order wherein:

- the demand for Rs. 24,35,725/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest;
- Penalty of Rs. 10,000/- was imposed under Section 77 (2) of the Finance Act, 1994;
- Penalty of Rs. 10,000/- was imposed under the provisions of Section 77 C of the Finance Act, 1994;
- Penalty amounting to Rs. 24,35,725 /- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under clause – (ii).

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

- The demand has been raised on assumption, hence the same is not legal and acceptable.
- During the period F.Y. 2016-17, the appellants have provided Civil work activity service to M/s LVJ Projects Pvt. Ltd, which is a Company/Body Corporate. Therefore, the actual Service tax liability of the appellant would be 50% of the labour services provided by them.
- Service Tax audit of the records of the appellant had been conducted for the period 21.09.2015 to March, 2017 and a copy of Final Audit Report No. 352/2017-18 (ST) dated 16.11.2017 was submitted which shows 'NIL' audit objections.
- As the demand of service tax is not proper, hence interest and penalty under various sections are wrongly imposed on them.

6. Personal Hearing in the case was held on 23.11.2022. Shri Kunal V. Desai, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted a written submission during hearing. He reiterated the



submissions made in the appeal memorandum as well as in the additional submissions made during hearing.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, additional written submissions submitted during hearing and the material available on records. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 24,35,725/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.

8. It is observed that the SCN in the case has been issued only on the basis of data received from the Income Tax department. The appellant is registered with the service tax department, which is apparent from the SCN which mentions the Service Tax Registration No. of the appellant. No further verification has been caused so as to the nature of services provided by the appellant. Admittedly, the appellant has filed their ST-3 Returns and no discrepancies were noticed during F.Y. 2015-16 when compared to the data received from the Income Tax department. Further, I also find that the demand has been confirmed against the appellant and penalties imposed ex-parte, merely on the basis of data received from the Income Tax department, without any further verification by the adjudicating authority.

8.1 I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

*Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)
CX & ST Wing Room No.263E,
North Block, New Delhi,*

Dated- 21st October, 2021

To,
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.
Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax
Authorities- reg.

Madam/ Sir,



3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

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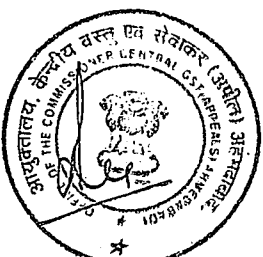
Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN and the impugned order has been passed indiscriminately and mechanically without application of mind, and is vague, being issued in clear violation of the instructions of the CBIC discussed above.

9. It is further observed that the appellant had, in their appeal memorandum, submitted details and various documents in their defense. They have contended that they had provided civil work activity service to M/s LVJ Projects Pvt. Ltd, which is a Company/Body Corporate. Therefore, their actual service tax liability would be 50% of the labour services provided by them. It is observed from the ST-3 Returns for the relevant period filed by the appellant that they have filed returns under Transport of Goods/GTA and claimed abatement under Notification No. 08/2015-ST, Serial No. 1 (iv) and under the Works Contract Service claimed exemption under Notification No. 30/2012-ST dated 20.06.2012, Serial No. 9. They have submitted a reconciliation statement alongwith appeal memorandum explaining the tax liability arrived by them during the period of dispute. Further, it has also been contended that the 'Service Tax Audit' of their records were conducted for the period 21st September 2015 to March-2017 and Final Audit Report No. 352/ 2017-18 (S.T) dated 17.11.2017 was issued by the Assistant Commissioner, Circle-IX, CGST Audit, Ahmedabad vide F.No.VI/1(b)-25/Dhara/IA/17-18/AP-61 wherein it is recorded that:

...

| | | |
|--|---|---|
| <i>Services</i> | : | <i>Works Contract Service , GTA</i> |
| <i>Period of Last Audit Conducted</i> | : | <i>First Audit</i> |
| <i>Period of Audit</i> | : | <i>21st Sept. to March-2017;</i> |
| <i>Date on which Audit undertaken</i> | : | <i>21.09.2017</i> |
| <i>Summary of Major Audit objections from the working papers</i> | : | <i>NIL</i> |

...



9.1. In view of the above facts, it is established that the department was fully aware of the services rendered by the appellant during the relevant period i.e. F.Y. 2016-17 as well as of the Service Tax paid and ST-3 returns filed. Further, upon verification of the ST-3 returns vis-à-vis Financial records of the appellant, a Final Audit Report No. 352/2017-18 (S.T) dated 17.11.2017 was issued without any objections. The audit report was issued much before the issuance of SCN. Hence, I find that the SCN as well as the impugned order has been issued indiscriminately and legally not sustainable. They are liable to be set aside. Since the demand of service tax fails to sustain, the question of interest and penalty does not arise. Hence, they are also set aside.

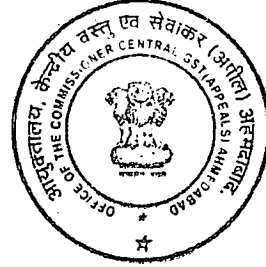
10. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed with all consequential relief.

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

Akhil Kumar
29th December, 2022
(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 29th December, 2022

Attested:

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



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1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy Commissioner, Central GST Division – Mehsana ,
Commissionerate : Gandhinagar.

4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)

✓ 5. Guard File.

6. P.A. File.



