



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 SPEED POST**

DIN:- 20231064SW000000CDA3

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/528/2023-APPEAL / 6631 - 35
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-108/2023-24 and 29.09.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	04.10.2023
(ङ)	Arising out of Order-In-Original No. 41/ST/OA/ADJ/2022-23 dated 19.12.2022 passed by the Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Pramodkumar Ramabhai Patel, At and Post – Jadar, Taluka – Idar, District – Sabarkantha, Gujarat-383430.

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 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 के माल के 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.

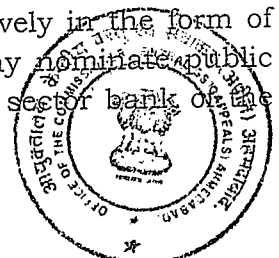
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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-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 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 रु 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।

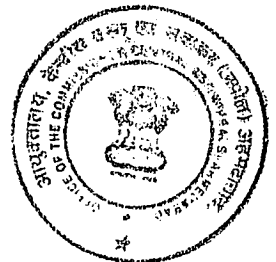
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

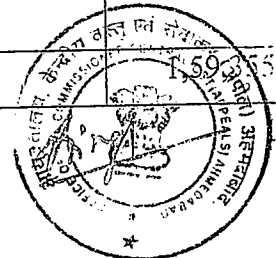
This order arises out of an appeal filed by Shri Pramodkumar Ramabhai Patel, At & Post – Jadar, Taluka – Idar, District – Sabarkantha, Gujarat-383430 (hereinafter referred to as the “*appellant*”) against Order-In-Original No. 41/ST/OA/ADJ/2022-23 dated 19.12.2022 [hereinafter referred to as the “*impugned order*”], passed by the Assistant Commissioner, CGST & C.Ex., Division: Himmatnagar, Commissionerate: Gandhinagar [hereinafter referred to as the “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax and were holding PAN - BDRPP9033P. They were engaged in providing services related to Construction work alongwith material as per the requirement of the clients. They were also involved in selling of lands/plots. As per the information received from the Income Tax department, total income earned by the appellant during the period F.Y. 2015-16 was shown as Rs. 10,99,000/-. In order to verify the said service income as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities during the period F.Y. 2015-16, letters dated 28.07.2020, 12.10.2020, 15.03.2021 & summons dated 26.03.2021 were issued to the appellant. They did not file any reply to the query. Further, it was observed that the nature of services provided by the appellant were covered under the definition of ‘Service’ as per Section 65B(44) of the Finance Act, 1994 , and their services were not covered under the ‘Negative List’ as per Section 66D of the Finance Act, 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 was determined on the basis of value of ‘Sales of Services under Sales/Gross Receipts from Services (Value from ITR)’ as provided by the Income Tax department. The ‘Taxable Value’ was considered what the appellant had declared in the Income Tax Returns. Details are as under:-

(Amount in Rs.)

Period	Total Income as per ITR-5	Rate of Service Tax @ 14%	SBC @ 0.5%	KKC @ 0.5%	ST Total
2015-16	10,99,000/-	1,53,860/-	5,495/-	-	1,59,355/-







4. Show Cause Notice vide F.No.V/15-04/CGST-HMT/O&A/2021-22 dated 09.04.2021 (SCN for short) wherein it was proposed to:

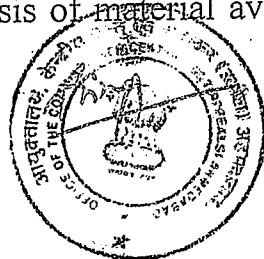
- Demand and recover Service Tax amount of Rs.1,59,355/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act,1994 ;
- Impose penalty under Section 77(1) and 78 of the Finance Act, 1994.

5. The SCN was adjudicated *ex-parte* vide the impugned order wherein:

- Demand for Rs.1,59,355/- was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act,1994 ;
- Penalty of Rs.10,000/- was imposed under Section 77(1) of the Finance Act, 1994;
- Penalty amounting to Rs.1,59,355/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii) ;

6. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on following grounds:

- They were engaged in the activity of providing services related to Construction work along with material whenever client demanded and was also involved in the selling of land/plots. They were unregistered with Service Tax Department due to total receipts is less than Threshold Exemption limit under the Service Tax Act. They had earned total revenue amounting to Rs. 10,99,000/- during the period F. Y. 2015-16 and the said revenue included reimbursement of material supplied to various client for which service provided by him. Hence, their income was less than Threshold exemption limit for services rendered by him during the year 2015-16. Therefore, since service tax liability did not arise on such revenue the appellant were not liable for payment of service tax.
- The adjudicating authority have passed the impugned order *ex-parte* by confirming the demand of Service Tax on the basis of material available with department alongwith interest and penalty.





7. It is observed that the appellant is contesting the demand of Service Tax amounting to Rs. 1,59,355/- alongwith interest and equivalent penalty for the first time before this authority. Upon scrutiny of the appeal papers filed by the appellant, it was observed that the appellant did not submit any proof regarding pre-deposit of 7.5% of the duty demanded or penalty imposed in terms of Section 35F of the Central Excise Act, 1944. The appellant was informed vide letter dated 27.02.2023 & reminder letter dated 16.08.2023 regarding non-submission of payment proof of pre-deposit, however, no reply was received from them.

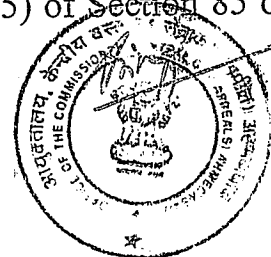
8. It is observed that, in terms of Section 35F of the Central Excise Act, 1944, an appeal before the Commissioner (Appeals) shall not be entertained unless the appellant deposits 7.5% of the duty in case where duty and penalty are in dispute or 7.5% of penalty where such penalty is in dispute. Relevant legal provisions are reproduced below:-

*"SECTION 35F: Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. — The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal —*

*(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the [Principal Commissioner of Central Excise or Commissioner of Central Excise];"*

9. Since the appellant have not submitted proof of having made the pre-deposit of 7.5% of the Service Tax demanded, they were requested vide letter dtd. 27.02.2023 & reminder letter dated 16.08.2023 to submit the same. However, the appellant failed to comply to these mandatory requirement and did not submit proof of having made the pre-deposit of 7.5% though sufficient time was granted to the appellant for submission of the proof of payment in respect of the pre-deposit.

10. In view of the above, the appeal filed by the appellant is liable to be dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide Sub-section (5) of Section 85 of the Finance Act, 1994.

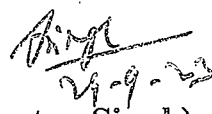




11. Accordingly, without delving into the merits of the case, the appeal filed by the appellant is dismissed for non-compliance of the mandatory requirement in terms of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide Sub-section (5) of Section 85 of the Finance Act, 1994.


12. 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.

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Date: 29 Sept, 2023

Attested

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

**BY RPAD / SPEED POST**

To,

Shri Pramodkumar Ramabhai Patel,  
At & Post – Jadar, Taluka – Idar,  
District – Sabarkantha, Gujarat-383430



Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division –Himmatnagar, Commissionerate : Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA on website)

5. Guard File.

6. P.A. File.

