



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:- 20231264SW000081838E

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2325/2023-APPEAL / 9123 - 23
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-142/2023-24 and 29.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. 105/AC/DEM/MEH/ST/SHREE P.B./2021-22 dated 30.03.2022 passed by the Assistant Commissioner, CGST, CGST & CEx, Division - Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shree P. B. Thakor & Sons, Muvada Ni Seem, At-Linch, Mehsana, Gujarat

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:-

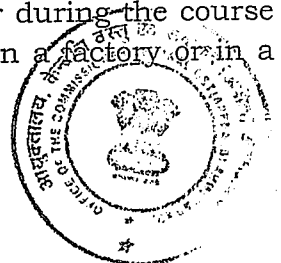
Revision application to Government of India:

(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, 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 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 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 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 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

The present appeal has been filed by M/s Shree P. B. Thakor & Sons, Muvada Ni Seem, At-Linch, Mehsana, Gujarat [hereinafter referred to as "the appellant"] against Order in Original No. 105/AC/DEM/MEH/ST/SHREE P.B./2021-22 dated 30.03.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, CGST & CEx, Division – Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were registered under Service Tax registration no. ABRFS5551JSD001 for providing taxable services. As per the information received from Income Tax Department, it was observed by jurisdictional officer that during the period F.Y. 2014-15, the appellant had earned service income but they had not filed ST-3 returns. Accordingly, in order to verify the said discrepancy, letter dated 19.06.2020 through email issued to the appellant calling for the details of services provided during the period F.Y. 2014-15. But they did not submit any reply. Further, the jurisdictional officer considering the services provided by the appellant as taxable under Section 65 B (44) of the Finance Act, 1994 determined the Service Tax liability for the F.Y. 2014-15 on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS as details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax payable but not paid (in Rs.)
1.	2014-15	16,612/-	12.36%	2,053/-

3. The appellant was issued Show Cause Notice No. V.ST/11A-138/Shree PB Thakor/2020-21 dated 25.06.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.2,053/- 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.

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

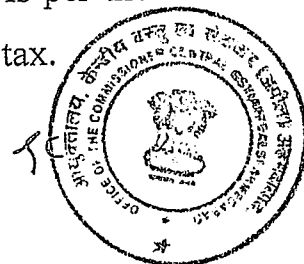
- Service Tax demand of Rs. 2,053/- was confirmed under Section 73(2) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.



- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- Penalty of @ 200/- per day till the date of compliance or Rs.10,000/-, whichever is higher, was imposed under Section 77C of the Finance Act, 1994.
- Penalty of Rs.2,053/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty in terms of clause (ii).

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant agree and ready to make payment of differential service tax of Rs.2053/- with interest thereon. The appellant is herewith enclosing the copy of such paid challan for your kind peruse. The department has confirmed the penalty of Rs.200/- per day u/s 77C, Rs.10000/- u/s 77(2) & Rs.2053/- u/s 78 of the Finance Act, 1994. In respect thereof, the appellant wants to submit that the penalty of Rs.200/- per day u/s 77C is huge penalty against the demand of service tax of Rs.2053/-. The penalty amount must be maximum upto the demand of service tax. The huge demand of penalty of Rs.200/- per day u/s 77C of the Finance Act, 1994 is not sustainable in the interest of law and justice. So, the appellant hereby request you to drop the huge amount of penalty u/s 77C, 77(2) & 78 of the Finance Act, 1994 in the interest of law and justice.
- The show cause notice has proposed to impose penalty under Section 78 of the Finance Act, 1994. The Appellant has demonstrated above that they have not suppressed any information from the department and there was no willful misstatement on the part of the Appellant. The Show Cause Notice has not given any reason whatsoever for imposing the penalty under Section 78 of the Act. The show cause notice is liable to be dropped on this ground also. Further, the Appellant stated that there activities were not taxable. That cannot be treated as suppression from the department. The Appellant rely on Hon'ble Gujarat High Court decision in case of Steel Cast Ltd. 2011 (21) STR 500 (Guj).
- The Appellant submitted that the penalty under Section 77 is not imposable since there is no short payment of service tax. As per the merits of the case, the Appellant is not liable for payment of Service tax.



- The appellant submitted that for imposing penalty, there should be an intention to evade payment of service tax on the part of the Appellant. The penal provisions are only a tool to safeguard against contravention of the rules. The Appellant submits that they have always been and are still under the bonafide belief that they are not liable for payment of service tax. Such bonafide belief was based on the grounds given above. There was no intention to evade payment of service tax as mentioned in the ground above. Therefore, no penalty is imposable in the present case. In support of the above view, reliance is placed on the decision of the Hon'ble Courts and Tribunals in the case of :

- Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253.
- Pushpam Pharmaceuticals Company v CCE 1995 (78) ELT 401 (SC)
- CCE vs. Chemphar Drugs and Liniments 1989 (40) ELT 276 (SC)
- Bharat Wagon & Engg. Co. Ltd. v. Commissioner of C. Ex., Patna, (146) ELT 118 (Tri. – Kolkata),
- Goenka Woollen Mills Ltd. v. Commissioner of C. Ex., Shillong, 2001 (135) ELT 873 (Tri. – Kolkata).
- Bhilwara Spinners Ltd. v. Commissioner of Central Excise, Jaipur, 2001 (129) ELT 458 (Tri. – Del.),

- They requested to drop the demand of penalty u/s 77C, 77(2) & 78 of Finance Act, 1994.

6. Personal Hearing in the case was held on 18.08.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and in the additional submissions which were handed over at the time of personal hearing. He also submitted that the appellant had deposited the entire tax payable prior to issue of the Show Cause Notice. Therefore, the Show Cause Notice was not required to be issued and the proceedings were deemed to be concluded. Therefore, no penalty should have been imposed on the appellant. He, therefore, requested to set aside the impugned orders and allow the appeal.

6.1 On account of change in appellate authority, personal hearing was again scheduled on 20.10.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions & additional submissions



made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.2,053/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15.

8. I find that the appellant were registered with the Service Tax Department but did not file ST-3 returns for the period F.Y. 2014-15. However, they stated during the course of hearing that they paid the entire payable Service Tax prior to SCN, therefore, the SCN was not required to be issued. They also purportedly claimed in appeal memorandum that they agreed to pay the Service Tax of Rs.2053/- with interest thereon and the copy of such paid challan is enclosed herewith. However, they did not submit any documentary evidence to support their claim to this authority.

9. I find that the appellant is willing to pay the outstanding tax with interest. Now the matter remains to decide that the imposed penalty is justifiable or not. In this matter, I find the penalties were imposed under Section 77(2), Section 77C and Section 78 (1) of the Finance Act, 1994. On going through the provisions of these Sections, it turns out that all the penalties have been imposed fairly and justifiably under Section 77(2), Section 77C and Section 78 (1) of the Finance Act, 1994.

10. In view of the discussions made above, the impugned order is upheld.

11. अपील कर्ता 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.

G.C.J.
29.11.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 29th November, 2023

सत्यापित/Attested :

रेखा
रेखा नायर
अधीक्षक (अपील्स)
सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,
M/s Shree P. B. Thakor & Sons,
Muvada Ni Seem, At-Linch,
Mehsana, Gujarat

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 – Mehsana,
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for
uploading the OIA)
- ✓ 5. Guard File.
6. P.A. File.

