



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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By SPEED POST

DIN:- 20231271ML000000E307

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3008/2023-APPEAL / 9-33-37
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-146/2023-24 and 30.11.2023
(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. KLL DIV/ST/YOGENDRA SINGH RAWAT/192/22-23 dated 27.02.2023 passed by the Assistant Commissioner, CGST, Division – Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jyoti Advertisers, D-2, Navjivan Centre, Mahendra Mills Road, Kalol, Gandhinagar, Gujarat-382721

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:-

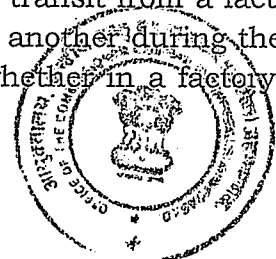
Revision application to Government of India:

(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 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.

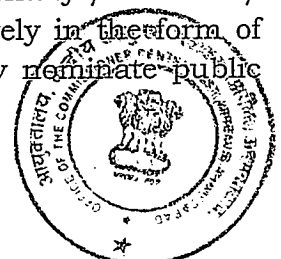
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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।

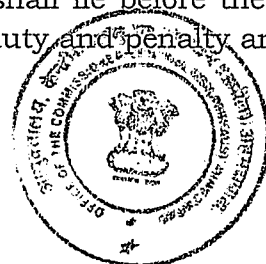
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Shri Jyoti Advertisers, D-2, navjivan Centre, Mahendra Mills Road, Kalol, Gandhinagar-382721 (hereinafter referred to as "the appellant") against Order-in-Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/192/22-23 dated 27.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division Kalol, Gandhinagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding service tax no No. ABBPB4718QST001. They are proprietary concern. During the course of audit for the period from Oct-2014 to June-2017, it was noticed that the appellant had provided the services concerning advertising agency and paying service tax on commission earned from the newspapers publishing such advertising. Further they earned rent income from its commercial property. The same was reflected in the trail balance for the period from Oct-2014 to Maqr-2015 and in form 26AS from Apr-2015 to june-2017. However, they didn't pay the service tax on the above rent income.

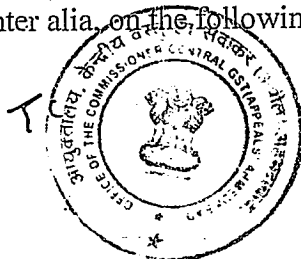
2.1 Subsequently, the appellant were issued Show Cause Notice F. No.VI/1(b)-41/AP-68/Cir-X/2019-20 dated 29.09.2020 demanding Service Tax amounting to Rs. 2,11,119/- for the period from Oct-2014 to June-2017, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalty under Section 78 of the Finance Act, 1994.

2.2 The appellant filed their submission vide letter dated 31.05.2022 in which they claimed that:

- they are into the business of Advertisement in the newspaper and as per prevailing Service Tax Law, taxable value of their supply is only commission portion from total supply as Advertisement in the newspaper is nil rated supply;
- they have fully paid all the service tax on taxable value;
- for the period covered in audit, they have also received rent which is less than Rs.10 lacs therefore, they are not liable to pay Service Tax on the same.

3. Personal hearing was fixed on 17.03.2022, 17.05.2022, 03.06.2022 & 10.06.2022 in the case but no one appeared to attend the hearing. Therefore the adjudicating authority decided the matter on merits and confirmed the service tax demand of Rs. 2,11,119/- for the period from Oct-2014 to June-2017, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with the applicable interest under Section 75 of the Finance Act, 1994; and imposed of penalty of Rs. 2,11,119/- under Section 78 of the Finance Act, 1994.

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



- That the impugned OIO suffers from legal infirmity and has resulted into important grav miscarriage of justice and is therefore required to be set aside in interest of justice. The impugned OIO passed by the learned adjudicating authority is ex-facie untenable and unsustainable in law and is liable to be set aside. The appellant is a small service provider and as such is eligible for availing the exemption extended to small service providers by virtue of Notification No.33/2017 - ST dated 20.06.2012. The appellant submitted that the auditors have failed to consider that the appellant had been paying service tax as he was getting commission on advertising and accordingly he was filing Service tax return in respect of services provided by him, even though he was eligible for exemption extended to small service providers as his turnover was less than ten lakhs.
 - The appellant further submitted that the exemption contained in the notification shall apply to the condition that the provider of taxable service has the option not to avail the exemption contained in the notification and pay service tax on the taxable services provided by the service provider and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year. He had started discharging service tax liability only because his consultant had asked him to obtain registration and pay service tax .
 - The appellant submitted that the observation made by the auditor and demand confirmed by the learned adjudicating are incorrect and made on assumptions and presumptions and the same is required to be discarded.
 - The appellant therefore submitted that the filing of return and paying the tax may be considered as service tax paid by mistake and the appellant had no intention to not availing the exemption available to small scale service providers. They have never given any communication to the Department that they are not willing to avail the exemption available to small scale service providers as per Noti. No 33/2012- ST
 - The appellant was discharging service tax and filing returns only on the basis of suggestions given by his consultants and the appellant therefore requested that the payment of service tax and filing of ST 3 returns may not be considered as exercising of option of not availing the SSI benefit extended to small service providers and also requested to grant the exemption benefit extended to small service .
4. Personal hearing in the case was held on 28.11.2023. Shri Anil Gidwani, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated the contention of the written submission and requested to allow the appeal.
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. 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 against the appellant along with interest and penalty, in the facts and



circumstance of the case, is legal and proper or otherwise. The demand pertains to the period From Oct-2014 to June-2017.

6. It is observed that the main contention of the appellant is that they earned income from commission on advertising service and rent income from its commercial property. They were discharging service tax liability only on the income from commission on advertising service and filing returns only on the basis of suggestions given by his consultants even after their total annual turnover was below threshold limit i.e. 10 lakhs. Therefore they are not liable to pay service tax on their rent income as per Noti. No 33/ 2012-ST dated 20.06.2012. Relevant portion of the same is re-produced as unde:

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-
(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services;

From going through the above it may be seen that the appellant failed to avail benefit of SSI exemption and made payment of service tax and filed ST-3 returns. As per Condition No 2(i) Once the assessee opt to pay service tax , can't withdraw within the F. Year. Further as per condition no 2(vii) the exemption under this notification was available to the aggregate value of all taxable services and not separately for each services. Hence, they were required to pay the service tax on rent income also. Therefore the contention of the appellant appears to be unsustainable.

7. In view of the above, I am in the considered view that adjudicating authority correctly confirmed the demand as discussed above, and the same is recoverable along with interest and penalty.

8. In view of above, I uphold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of Rent income received by the appellant during the period from Oct-2014 to June-2017 and reject the appeal filed by the appellant.

10. 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. J.
30.11.23

(ज्ञानचंद जैन)

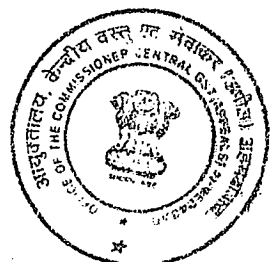
आयुक्त (अपील)

Date : 30.11.23

Attested

Manish Kumar

Manish Kumar



Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Shri Jyoti Advertisers,
D-2, navjivan Centre, Mahendra Mills Road,
Kalol, Gandhinagar-382721.

Appellant

Respondent

The Assistant Commissioner,
CGST, Division- ~~VI~~ **Kalol**
Ahmedabad Gandhinagar

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad Gandhinagar
- 3) The Assistant Commissioner, CGST, Division ~~VII~~ **VII**, Ahmedabad Gandhinagar
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad Gandhinagar
(for uploading the OIA)

- ✓ 5) Guard File
- 6) PA file



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