



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

75
आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW000000A167

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3022/2023-APPEAL / 9103 - 02
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-149/2023-24 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. 107/ST/OA/ADJ/2022-23 dated 30.03.2023 passed by the Assistant Commissioner, CGST, Division - Himmatnagar, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Dipal Jyotindrakumar Upadhyay, 24/25, Eklingji Society, Near ST Work Shop, Motipura, Himmatnagar, Gujarat-383001

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:-

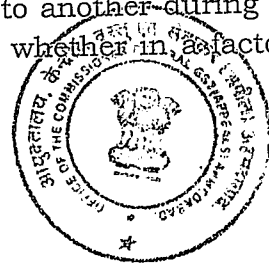
Revision application to Government of India:

(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 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 वों 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 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।

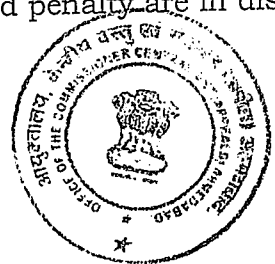
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The present appeal has been filed by M/s Dipal Jyotindrakumar Upadhyay, 24/25, Eklingji Society, Near ST Work Shop, Motipura, Himmatnagar, Gujarat-383001 [hereinafter referred to as "the appellant"] against Order in Original No. 107/ST/OA/ADJ/2022-23 dated 30.03.2023 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, 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 No. AALPU1657L. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2015-16, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, in order to seek information, letters dated 29.07.2020, 17.03.2021, 25.03.2021 and summons dated 12.04.2021 were issued to the appellant calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers 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. 2015-16 on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per 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 liability to be demanded (in Rs.)
1.	2015-16	10,72,823/-	14.5%	1,55,559/-

3. The appellant was issued Show Cause Notice No. V/15-65/CGST-HMT/O&A/2021-22 dated 23.04.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.1,55,559/- 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(1) and Section 78 of the Finance Act, 1994.

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



- Service Tax demand of Rs.1,55,559/- was confirmed under Section 73(1) 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(1) of the Finance Act, 1994.
- Penalty of Rs.1,55,559/- was imposed under Section 78(1) 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:

- Lack of Notice - Assessee has been shifted to Foreign Country from 3 year for his education and now at his Residential Address the documents were delivered but the Parents and relatives were unable to understand the same and has not communicated the same to the Assessee so as he is unable to appear to the respected authority so kindly give him condonation and allow him to appeal on merit basis.
- Inadequate Evidence - As no Submission has been made at the Division Himmatnagar so due to lack of Evidence the Authority is unable to pass the order on natural justice.
- The Amount has been shown along with ITR by Mistake of the Tax Consultant and now Income Tax Department will not allow them to correct the same.

6. Personal Hearing in the case was held on 28.11.2023. Shri Chaitanya Shah, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He stated that as per ITR of A.Y. 2015-16 (F.Y.2014-15), the sales of service is 9,32,275/- which is below the threshold limit. Hence, in F.Y. 2015-16 the benefit of Rs. 10 lakhs exemption from turnover should be given. Hence, taxable value will be only Rs.72,623/- only. The benefit of SSI may be granted as per Notification No. 33/2012. He submitted ITR of A.Y. 2015-16 & 2016-17 today itself.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral 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.1,55,559/- 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 of F.Y. 2015-16.

8. Examining the submissions made by the appellant, I find that they are engaged in the activity of "Insurance Auxiliary Servicers" as an independent 'Insurance Surveyors & Loss Assessors/Valuer'. They had provided 'Insurance survey and valuation of the conveyance' services to the Insurance Companies and Financial Institutions. During the course of personal hearing, they stated that total value of service provided during the Financial Year 2014-15 was Rs.9,32,275/- which remained below to the threshold exemption limit of Rs.10 Lakhs in terms of Notification No.33/2012-ST. The taxable value in F.Y. 2015-16 was Rs.10,72,823/-, by extending the said benefit, they are eligible to avail basic exemption limit in F.Y. 2015-16 and they are liable to pay Service Tax on the taxable value of Rs.72,823/-. In support of their claim they submitted ITR for the F.Y. 2014-15 & F.Y. 2016-17, Form 26AS, P&L A/c, Balance Sheet & certificate of Insurance Surveyors & Loss Assessors.

10. Now the issue to be decided in the case is grant of benefit of threshold exemption to the appellant in terms of Notification No. 33/2012-ST dated 20.06.2012. The relevant portion of the notification is reproduced below :

*Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 33/2012 - Service Tax*

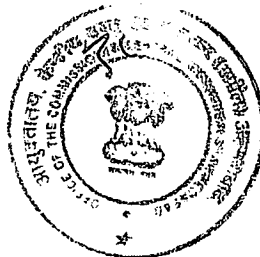
New Delhi, the 20th June, 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1 st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1 st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.



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;
- (ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;
- (iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;
- (iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;
- (v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;
- (vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;
- (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; and
- (viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

...
 (B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."
 ...

Examining the above legal provisions with the facts of the case, I find that the appellants are eligible for the benefit of the said notification.

11. I find that the benefit of threshold exemption is available to the appellant since the total value of service provided during the Financial Year 2014-15 was Rs.9,32,275/- which remained below to the threshold exemption limit of Rs.10 Lakhs in terms of Notification No.33/2012-ST. The taxable value in F.Y. 2015-16 was Rs.10,72,823/-, by extending the said benefit, they are eligible to avail basic exemption limit in F.Y. 2015-16 and they are liable to pay Service Tax on the taxable value of Rs.72,823/- for the period F.Y. 2015-16.

12. In view of the above, the benefit of threshold exemption is admissible and therefore taxable value comes to Rs.72,823/-. Therefore, Service Tax of Rs.10,559/-



has been confirmed and to be paid for the F.Y. 2015-16 under Section 73(1) of the Finance Act, 1994 along with interest at applicable rate on the confirmed demand of service tax under Section 75 of the Finance Act, 1994. Penalty of Rs. Rs.10,559/- is imposed for non-payment of Service Tax under Section 78 of the Finance Act, 1994. Penalty of Rs. 1,000/- is imposed for contravention of provision of the Section 77(1) of the Finance Act, 1944.

14. 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.
30.11.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 30th November, 2023

सत्यापित/Attested :

रेखा

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,

M/s Dipal Jyotindrakumar Upadhyay,
24/25, Eklingji Society, Near ST Work Shop,
Motipura, Himmatnagar, Gujarat-383001.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
3. The Assistant Commisisoner, CGST & CEX, Mehsana Division, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.