



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1795/2022-APPEAL / 1152 -61
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-020/2023-24 and 03.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	09.05.2023
(ङ)	Arising out of Order-In-Original No. 145/AC/DEM/MEH/ST/Gurjar Rikesh Pramodbhai/2021-22 dated 29.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Gurjar Rikesh Pramodbhai, 15, Sarvoday Govt. Society, Dhobi Ghat, Nr. Talav, Mehsana, Gujarat - 384001

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 मंचिव, 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 हैं।

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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनों के तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई 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 हो तो 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.

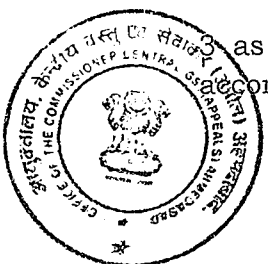
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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- 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 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 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।

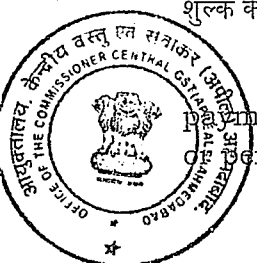
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Gurjar Rikesh Pramodbhai, 15, Sarvoday Govt. Society, Dhobi Ghat, Nr. Talav, Mahesana, Gujarat-384001 (hereinafter referred to as the appellant) against Order in Original No. 145/AC/DEM/MEH/ST/Gurjar Rikesh Pramodbhai/2021-22 dated 01/04/2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ABDPG9083HST001 for providing taxable services. As per the information received from the Income Tax department discrepancies were observed in the total income declared by the appellant in their Income Tax Return (ITR) when compared with Service Tax Returns (ST-3) filed by them for the period F.Y. 2015-16 and F.Y. 2016-17. Accordingly, letters/emails dated 08.05.2020 was 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 did not submit any reply. The services provided by the appellant during the relevant period were considered taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) or "Total amount paid/credited under Section 194C, 194I, 194H & 194J of Income Tax Act, 1961" shown in the ITR-5 and Form 26AS for the relevant period as per details below :

Table

Sr. No	Period	Differential Taxable Value as per Income Tax data	Rate of Service Tax	(Amount in Rs)
				Amount of Service Tax
1	F.Y.- 2015-16	0	14.5%	0
2	F.Y.- 2016-17	36,83,133/-	15%	5,52,470/-
			Total	5,52,470/-

3. The appellant was issued Show Cause Notice vide F.No. V.ST/11A-56/Gurjar/2020-21 dated 30.06.2020 (in short 'SCN'), wherein it was proposed to:



- Demand and recover service tax amounting to Rs. 5,52,470/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77(2), 77C and 78 of the Finance Act, 1994;

4. The said SCN was adjudicated ex-parte vide the impugned order wherein the demand for Rs. 5,52,470/- was confirmed under Section 73 (2) of the Finance Act, 1994 alongwith interest under Section 75. Penalty amounting to Rs. 5,52,470/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under clause (ii). Penalty of Rs.10,000/- was imposed under Section 77 (2) of the Finance Act, 1994 and Penalty @ Rs.200/- per day till the date of compliance or Rs. 10,000/- whichever is higher, was imposed under the provisions of Section 77 C(1) of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds :

- ⊙ The appellant has entered into supply of material contract with M/s ONGC and they are eligible for exemption in terms of Notification No. 12/2003-ST dated 20.06.2003. The SCN was issued without classifying the service provided by the appellant. In support, they have referred to the decision of the Hon'ble Supreme Court in the case of Amrit Foods Vs CCE – 2005 (190) ELT 433 (SC).
- ⊙ The appellant has clearly mentioned the value of material in their Sale Bill and also charged VAT on them. These evidences confirm their eligibility for claiming the benefit of Notification No. 12/2003-ST dated 20.06.2003. In support of their contention, they relied on the judgement of the Hon'ble CESTAT in the case of Shilpa Color Lab – 2007 (5) STR 423 (Tri. Bang.).
- ⊙ In case of indivisible contracts, the value of service provided is required to be separately calculated for computing the taxable value by deducting the value of material from the total value. Accordingly, the appellant has correctly calculated their taxable value in the returns and paid appropriate service tax.



- ⊙ As the demand is based entirely on data obtained from the Income Tax Returns hence the same is not sustainable.
- ⊙ The demand for the period F.Y. 2016-17 was computed considering the ITR data of Rs. 36,83,133/- as taxable value. However, out of the said amount, an amount of Rs. 28,97,946/- was to be deducted being the value of material and Rs. 54,559/- being the amount of VAT paid on the material. The taxable value computed after allowing these deductions is the exact amount declared in their ST-3 return.
- ⊙ They further relied on the following citations :
 - Decision of the Hon'ble CESTAT in the case of Regional Manager Tobacco Board Vs Commr. of C.Ex., Mysore - 2013 (31) STR 673 (Tri.Bang).
 - Decision of the Hon'ble CESTAT in the case of Anvil Capital Management (P) Ltd Vs Commr. of S.T, Mumbai - 2010 (20) STR 789 (Tri. Mum).
 - Decision of the Hon'ble CESTAT in the case of Commr. of Service Tax, Ahmedabad Vs Purni Ads Pvt.Ltd - 2010 (19) STR 242 (Tri. Ahmd).
 - Decision of the Hon'ble CESTAT in the case of Sify Technologies Vs Commissioner of Service Tax, Chennai - 2009 (16) STR 63 (Tri. Mad).
 - Decision of the Hon'ble CESTAT in the case of Bhogilal Chhagulal Vs Commr. of S.T, Ahmedabad - 2013 (30) STR 62 (Tri. Ahmd).
- ⊙ The demand is time barred. Penalty under Section 78 cannot be imposed as there is no suppression of facts on part of the appellant.
- ⊙ They further relied on the following citations :
 - Hindustan Steel Ltd Vs State of Orissa reported as AIR 1970 (SC) 253.
 - Kellner Pharmaceuticals Vs CCE, reported as 1985 (20) ELT 80.
 - Pushpam Pharmaceuticals Company Vs CCE reported as 1995 (78) ELT 401 (SC).
 - CCE Vs Chemphar Drugs and Liniments reported as 1989 (40) ELT 276 (SC)
 - Bharat Wagon & Engg.CO.Ltd Vs Commissioner of C.Ex., Patna reported as (146) ELT 118 (Tri.Kol).



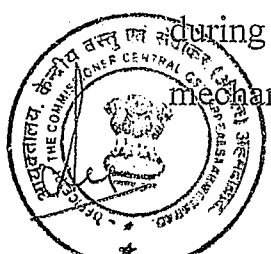
- Goenka Woollen Mills Ltd Vs Commissioner of C.Ex., Shillong, reported as 2001(135) ELT 873 (Tri. Kol.)
- Bhilwara Spinners Ltd. Vs Commissioner of Central Excise, Jaipur reported as 2001 (129) ELT 458 (Tri. Del).
- ⊙ Alongwith their appeal memorandum they submitted copies Tax Invoicess raised by them during the period F.Y. 2016-17.

6. Personal Hearing in the case was held on 18.04.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted a written submission during the hearing. He reiterated the submissions made in the appeal memorandum.

6.1 Vide their additional written submission, the appellant reiterated the grounds submitted in their appeal memorandum and also submitted a calculation sheet for the period F.Y. 2016-17 wherein the break-up of the components of value shown in each invoice was detailed alongwith the justification for the taxable value shown in their ST-3 return. They also submitted copies of some more invoices for the period F.Y. 2016-17.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the additional written submission submitted by the appellant. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs. 5,52,470/- confirmed vide the impugned order 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 from the case records 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. It is also observed that the SCN has been issued without classifying the services provided by the appellant which implies that, no further verification has been caused so as to ascertain the exact nature of services provided by the appellant during the period F.Y. 2016-17. Hence, the SCN issued in this case is mechanically issued and is vague.



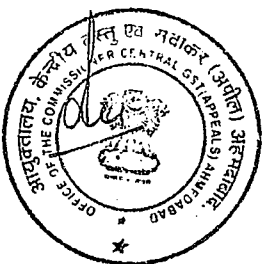
8.1 The appellants have also contended that they did not get an opportunity to present their case before the adjudicating authority. I find that the impugned order was adjudicated ex-parte on the basis of the demand of Service Tax proposed vide the SCN, which was issued entirely on the basis of data received from the Income Tax department. No further investigations conducted.

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

...
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
 ...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN and the impugned order has been issued indiscriminately and mechanically without application of mind, and is vague, being issued in clear violation of the instructions of the CBIC discussed above. Further, as the impugned order has been passed ex-parte, the violation of principles of natural justice is apparent.

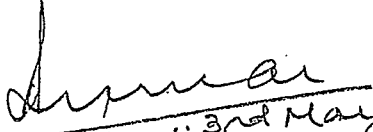
10. I find that the appellant have in their appeal memorandum and in additional submission submitted various documents i.e copies of Invoices issued by them during the relevant period in their defense. They have also claimed exemption in terms of Notification No. 12/2003-ST dated 20.06.2003. The submissions of the appellant were also not perused by the adjudicating authority earlier as neither did they attend the personal hearing, nor any oral submissions were made by them in their defense. Accordingly, the submissions of the appellant are being presented before this authority for the first time. Therefore, it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submissions of the appellant, made in the course of the present appeal, and, thereafter, adjudicate the matter.



11. In view of the above, I am of the considered view that since the appellants have contested the SCN for the first time before this authority and the matter requires verification from the documents of the appellant, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contentions of the appellant. Therefore, the matter is remanded back for denovo adjudication after affording the appellant the opportunity of filing their defense reply and after granting them the opportunity of personal hearing. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant should also attend the personal hearing as and when fixed by the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.


12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

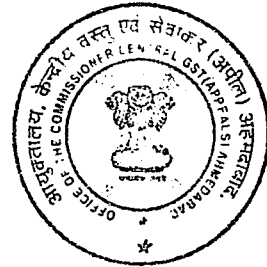
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 03rd May, 2023

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 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.

