



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

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DIN:- 20240564SW000000C4FD

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4580/2023-APPEAL / ८८१५ - १४
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-003/2024-25 and 23.04.2024
(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	01.05.2024
(ङ)	Arising out of Order-In-Original No. 89/AC/DEM/MEH/ST/ Ramanbhai Devrajbhai/2022-23 dated 23.06.2022 passed by the Assistant Commissioner, CGST, Division - Mehsana, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Ramanbhai Devrajbhai Chaudhary, 1, Veer Complex, Second Floor, Nr. Janpath Hotel, Mehsana - 384002

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:-

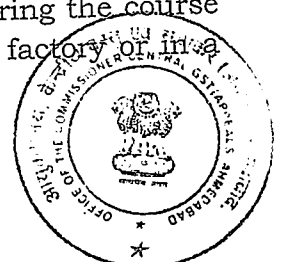
Revision application to Government of India:

(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 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.

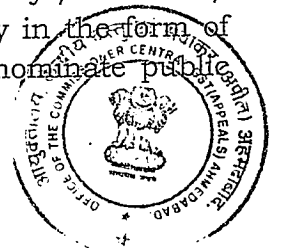
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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



अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s Ramanbhai Devrajbhai Chaudhary, 1, Veer Complex, Second Floor, Nr. Janpath Hotel, Mehsana - 384002 [hereinafter referred to as "the appellant"] against Order in Original No. 89/AC/DEM/MEH/ST/Ramanbhai Devrajbhai/2022-23 dated 23.06.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, Division - Mehsana, Commissionerate - Gandhinagar [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 AATPC3028MSD001 for providing taxable services. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2015-16, the appellant had declared less the gross value of Sale of Services in ST-3 returns than the gross value of Sale of Services in Income Tax Returns / TDS Returns. Accordingly, in order to verify, letters dated 08.05.2020, 16.06.2020 & 02.07.2020 were issued through mail 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 determined the Service Tax liability for the F.Y. 2015-16 on the differential value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) / Form 26AS & ST-3 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 liability to be demanded (in Rs.)
1.	2015-16	2,34,04,219/-	14.5%	33,93,612/-

3. The appellant was issued Show Cause Notice No. V.ST/11A-211/Ramanbhai Devrajbhai/2020-21 dated 18.08.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.33,93,612/- 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), 77C, 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein :

- Service Tax demand of Rs.13,40,089/- was confirmed on the differential taxable value of Rs.92,41,990/- 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(2) of the Finance Act, 1994.
- Penalty @ Rs.200/- per day till the date of compliance or Rs.10,000/-, whichever is higher, was imposed under Section 77(2) of the Finance Act, 1994.
- Penalty of Rs.13,40,089/- 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 submitted that they were engaged in the Work Contract Services. The order is issued without any verification of records and applicability of provision of the act like exemption notification, abatement etc. Hence, order is very much defective and without any base. In this regards appellant stated that they have carried out various work of Government organization related to various canal, irrigation work etc. which is exempted as per the Notification No 25/2012 Dated 20/06/2012 as amended. Relevant paras of the notification are reproduced below for your reference:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a)

(b)

(c).....

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

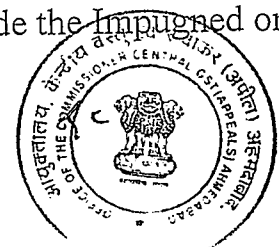
(f).....

- Hence, work related to such government organization for the canal, water supply & irrigation is not liable for service tax. The exemption benefit is also available to sub contractor. They reproduced the relevant cause of the notification,

29. Services by the following persons in respective capacities -

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt

- The appellant requested to consider the same and set aside the Impugned order.



6. Personal Hearing in the case was held on 08.01.2024. Shri Arpan Yagnik, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission. He stated that the value of services should have been taken based on ITR and not on 26AS. He further requested for two days time to submit additional documents.

6.1 Subsequently, the appellant submitted copy of Contracts, Sales Ledger of Contract Income, Party-wise Sales Ledger, Invoices, Trading A/c, P&L A/c, Balance Sheet, Bank Statement, ITR, Form 26AS the F.Y. 2015-16.

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 and additional submission, 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.13,40,089/- 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.

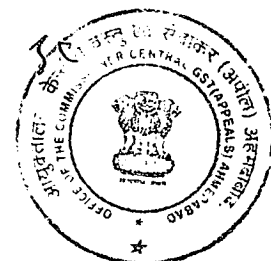
8. I find that at para 26 & 27 the adjudicating authority has observed as under :

“ ...

26. From FORM 26AS of F.Y.2015-16, I further find that the assessee has also provided services worth of Rs.13,93,947/- to M/s Almighty Ventures Pvt. Ltd. during F.Y.2015-16. However, the assessee has not provided copy of any Agreement/Contract/Works Order, Invoices etc. in respect of services provided to M/s Almighty Ventures Pvt. Ltd. In absence of these vital documents, the nature of services provided by them cannot be ascertained and consequently, admissibility of exemption cannot be determined for the same.

27. I further find that the assessee has also not provided copy of any Agreement/Contract/Works Order, Invoices etc. in respect of remaining value of Rs.78,48,083/- (Rs.2,34,04,219/- (-) Rs.1,41,62,229/- (-) Rs.13,93,947/-) of services provided by them during F.Y.2015-16. In absence of these vital documents, nature and scope of services, its recipients, admissibility of exemption etc. cannot be determined.

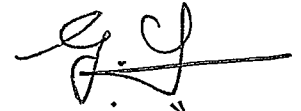
...”



9. As the appellant did not produce the required documents before the adjudicating authority in respect of the taxable value of Rs.13,93,947/- (M/s Almighty Ventures Pvt Ltd) and Rs.78,48,043/-, the adjudicating authority did not get the chance to examine the claim of the appellant vis-a-vis relevant documents. Hence, it is in the fitness of the thing that the matter pertaining to the taxable value of Rs.92,41,990/- (Rs.78,48,043 + Rs.13,93,947) is remanded back to the adjudicating authority for fresh adjudication following the course of natural justice.

10. In view of the above findings and facts, I uphold the impugned order to the extent of allowing exemption of Service Tax on their contract income amounting to Rs.1,41,62,229/- and partially remand the matter to the adjudicating authority for afresh adjudication for the taxable value amounting to Rs.92,41,990/- only.

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.

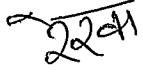


ज्ञानचंद जैन

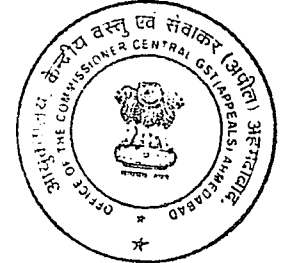
आयुक्त (अपील्स)

Dated: 23rd April, 2024

सत्यापित/Attested



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



By REGD/SPEED POST A/D

To,
M/s Ramanbhai Devrajbhai Chaudhary,
1, Veer Complex, Second Floor,
Nr. Janpath Hotel, Mehsana - 384002.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
3. The Assistant Commissioner, 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.

