



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:- 20240564SW00006184E1

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4568/2023-APPEAL / 4568-4568
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-009/2024-25 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. 27/ADJ/GNR/PMT/2021-22 dated 21.03.2022 passed by the Deputy Commissioner, CGST, Division : Gandhinagar, Commissionerate : Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s 7 Span, 503, I Square, Nr. Sukhan Mall Cross Road, Science City Road, Sola, Ahmedabad, Gujarat – 380060

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 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 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 Appellate 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 अपीलो 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।

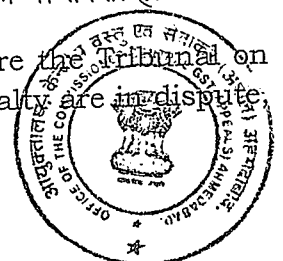
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 7 Span, 503, I Square, Nr. Sukhan Mall Cross Road, Science City Road, Sola, Ahmedabad, Gujarat – 380060 [address mentioned in OIO – Office No. 408, Siddhraj Zori, Nr. Sargasan Circle, Sargasan, Gandhinagar -382421] (hereinafter referred to as '*the appellant*') against Order in Original No. 27/ADJ/GNR/PMT/2021-22 dated 21.03.2022 [hereinafter referred to as '*the impugned order*'] passed by the Deputy Commissioner, CGST, Division : Gandhinagar, 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. AABFZ4144RSD001 and were engaged in the business activity of "Information Technology Software Service". As per the information received from the Income Tax department, it was observed by the jurisdictional officer that the gross value of Sale of Services declared in the ST-3 filed with Service Tax Department was less than the gross value of Sale of Services declared in Income Tax Returns /TDS Returns filed with the Income Tax Department during the period F.Y. 2015-16 and 2016-17. In order to verify the discrepancies, letter dated 17.06.2020 was issued to the appellant. They did not submit any reply. Further, the jurisdictional officer considering service provided by the appellant during the relevant period as taxable under Section 65 B (44) of the Finance Act,1994 determined the Service Tax liability on difference of the value of 'Sales of Services' under Sales/Gross Receipts from Services declared in ITR & the value of 'Sale of Services' declared in ST-3 for the period of F.Y. 2015-16 and 2016-17. Details are as under:

Table-A

Sr. No.	Details	(Amount in Rs)	
		F.Y. 2015-16 @ 14.5%	F.Y. 2016-17 @ 15%
1	Total income as per ITR-V	13,28,850/-	40,62,171/-
2	Income on which Service Tax paid	3,32,372/-	20,30,820/-
3	Difference of value mentioned in 1 & 2 above	9,96,478/-	20,31,351/-
4	Amount of Service Tax along with Cess	1,44,489/-	3,04,703/-
5	Grand Total	4,49,192/-	

3. Show Cause Notices F. No. GEXCOM/SCN/ST/373/2020-CGST-DIV-GNR dated 10.09.2020 (in short 'SCN') was issued to the appellant for the period F. Y. 2015-16 & F.Y. 2016-17 respectively wherein it was proposed to



- Demand and recover service tax amounting to Rs.4,49,192/- for F. Y. 2015-16 & F.Y. 2016-17 under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act,1994 ;
- Impose penalty under Section 76, Section 77(2), Section 77(3)(c) and Section 78 of the Finance Act, 1994;

4. The said SCN was adjudicated *ex-parte* vide the impugned order wherein the demand for Rs.4,49,192/- was confirmed under Section 73(1) of the Finance Act,1994 alongwith interest under Section 75. Penalty amounting to Rs.4,49,192/- was imposed under Section 78 of the Finance Act, 1994. Penalty of Rs.10,000/- each were imposed under Section 77(2) and Section 77(3)(c) of the Finance Act, 1994 respectively.

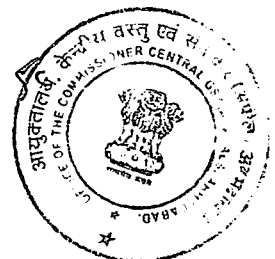
5. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds:

- The appellant having service tax registration number AABFZ4144RSD001 was engaged in the business of Information Technology Software Services during the financial year 2015-16 and 2016-17. The appellant regularly filed service tax returns and was discharging service tax liability.
- The total value of consideration shown in the income tax return for the F.Y. 2015-16 and F.Y. 2016-17 is Rs. 13,28,850/- and Rs. 40,62,171/- respectively. The same has been reflected in the profit and loss accounts in the income tax return filed by the appellant. The appellant has regularly filed service tax returns and has shown value of domestic services provided and has fully discharged service on the provision of domestic services. As service tax is not payable on export of services under Rule 6A of service tax rules, appellant has not paid service tax on the amount of export of services.
- SCN was issued to the appellant asking him to explain the difference between provision of services reflected in service tax returns (FORM ST-3) and the amount of sale of services shown in income tax returns. Appellant replied on 3rd October, 2020 to the SCN that along with evidence of the export of services that as per Rule 6A he is not liable to pay service tax on the export of services. There was no further communication from the adjudicating



authority. Appellant never received any further letter or order from the adjudicating authority.

- On 27th July 2023, appellant received an email which contained a letter from the adjudicating authority regarding recovery of service tax dues based on an adjudication order passed in the month of March 2022 (the order was never received by the appellant). The email also contained copy of the adjudication order. To appellant's utter surprise, the adjudication order stated that the appellant has not replied any communication from the adjudicating authority. This statement is factually incorrect as appellant had replied to SCN with necessary evidence. The order was passed ex-parte without even looking at the reply submitted by the appellant. Aggrieved by the adjudication order the appellant has preferred this appeal.
- As per clause 1 of Rule 6A of service tax rules, any service provided or agreed to be provided shall be treated as export of service if all of the following conditions are satisfied-
 - 1) The service provider is located in a taxable territory.
Appellant is a partnership firm situated in India and as per clause 52 of section 65B of the Finance Act, 1994 (Service tax law), the term 'taxable territory' means the territory to which the provisions of the Act apply. Under section 64(1) of the Act, the Act extends to the whole of India except the State of Jammu & Kashmir. As the service provider is located in a taxable territory, first condition of clause 1 of Rule 6A is satisfied.
 - 2) The recipient of service is located outside India
Appellant has provided services to clients who are located outside India. The invoices clearly establish location of the service recipient as outside India.
 - 3) Service is not listed in section 66D of the Finance Act, 1994
Appellant is engaged in provision of software and related service. This service is not covered under any clause of section 66D of the Finance Act, 1994.
 - 4) Place of provision of service is outside India



Place of provision of service is determined under service tax as per Place of Provision of Service rules 2012. As the service provided by the appellant is covered under general rule 3 of the Place of Provision of Service Rules, 2012, place of supply shall be the place of service recipient. As mentioned in point 2) above, appellant has provided service to overseas clients. Hence, the Place of provision of service is outside India.

5) The payment for provision of service has been received by the service provider in convertible foreign exchange

Foreign Remittance advice received from the digital portals clearly establishes that the appellant has received the payment in convertible foreign exchange. As per the advices, payment for provision of service is received in convertible foreign exchange.

- Based on above mentioned points, it is clearly established that the appellant was engaged in export of services which are not taxable as per Rule 6A of Service Tax Rules.
- They submitted that interest and penalty levied under Section 75, Section 77(2), Section 77(3)(c) and Section 78 of the Finance Act, 1994 is not legal and tenable as service tax itself is not leviable.

6. Personal Hearing in the case was held on 19.12.2023. Shri Brijesh Thakar, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the contents of the written submission. He stated that his client is doing export of services, so not liable to pay Service Tax.

7. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing and the facts available on records. The issue before me for decision in the present appeal is whether the demand for Service Tax amounting to Rs.4,49,192/- confirmed alongwith interest and penalties vide the impugned order in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.



8. I find that the impugned order is dated 21.03.2022 while the appeal has been filed on 17.08.2023. The appellant claimed that they received the copy of the OIO vide email dated 27.07.2023 which reads as under:

“Enclosed herewith letter F.No.V/04-170/O&A/SCN/7SPAN/20-21 issued by the Assistant Commissioner, CGST, Gandhinagar Division along with copy of above mentioned OIO on the above subject matter. You are requested to pay the Government dues at the earliest and if any difficulties arise, please contact this office during weekdays (except Saturday & Sunday).”

This office vide letter dated 12.10.2023 issued from F.No.GAPPL/COM/STP/4568/2023-APPEAL inquired from the jurisdictional officer regarding the issuance of the impugned order.

The office of the CGST Division, Gandhinagar vide their email dated 16.10.2023 informed as under:

“With reference to your office letter dtd. 12.10.2023 on the above subject matter, it is to reply that date of issue of order is 21.03.2022 and on verification of file it is found that the said order was dispatched vide dispatch no. 5842 in March 2022.”

As the order was dispatched in March 2022 itself, the claim of the appellant to have received the order on 27.07.2023 is not acceptable. Further, I find that the address mentioned in the ITR and the ST-3 return is same. Hence, the order would not have gone to wrong address. In para 4 of the statement of the facts of the appeal memorandum, the appellant has claimed that they replied to the SCN. This means that they received the SCN and the address was proper. Hence, there is no reason to presume that the order would not have been delivered to the appellant in reasonable time period. Considering the reasonable time period, the impugned order would have been delivered in April 2022. Therefore, there is inordinate delay in filing appeal in August 2023.

Commissioner (Appeals) can condone delay only upto one month after stipulated time period for filing appeal. Relevant provision reads as under:

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the



assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."

Since the appeal has been filed beyond stipulated time period and even condonable time period, appeal is hit by limitation.

9. In view of the above discussion and finding, the appeal is not allowed.

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.



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 7 Span,

503, I Square,

Nr. Sukhan Mall Cross Road,

Science City Road, Sola,

Ahmedabad, Gujarat – 380060.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division - Gandhinagar, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.

