



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240564SW000000C804

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/5638/2023-APPEAL / 5638-91
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-022/2024-25 and 14.05.2024
(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	31.05.2024
(ङ)	Arising out of Order-In-Original No. PLN-AC-ADJ-STX-40/2023-24 dated 26.05.2023 (Date of Issue : 12.06.2023) passed by the Assistant Commissioner, CGST, Division : Palanpur, Commissionerate : Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Alkaben Rameshbhai Prajapati, 33/34 Indraprasth Society, Near Hotel Garden Chanasma Highway, Patan – 384265

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.

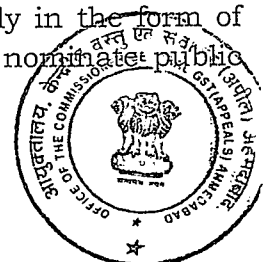
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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



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 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 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।

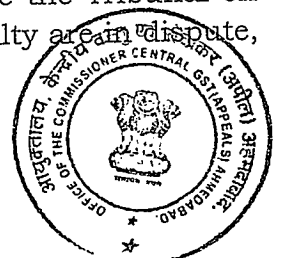
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

M/s. Alkaben Rameshbhai Prajapti, 33/34 Indraprasth Society, Near Hotel Garden, Chanasma Highway, Patan-384265 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. PLN-AC-ADJ-STX-40/2023-24 dated 12.06.2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Palanpur Division, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service and were holding PAN No. AXQPP1461M.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, it was noticed that the appellant in the ITR/Form-26 AS has shown substantial service income on which service tax was not discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

Table-A

<i>F.Y.</i>	<i>Value shown in ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2016-17	50,25,442/-	15%	7,53,816/-

2.1 A Show Cause Notice (SCN) No. GEXCOM/SCN/ST/9706/2021-CGST-DIV-PLN-Commissionerate-Gandhinagar dated 19.10.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs.7,53,816/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a), Section 77(1) (b) & Section 77(1) (c)(i) (ii), Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed. Further, the tax liability for the F.Y. 2017-18 (upto June, 2017) was not available and the same was required to be ascertained in future.

3. The said SCN was adjudicated vide the impugned order wherein the income of Rs.50,25,442/- was considered as taxable and service tax demand of Rs.7,53,816/- was confirmed alongwith interest. Penalty of Rs.10,000/- each was imposed under Section 77(1)(a), 77(1)(b), 77(1)(c) and Section 77(2). Penalty of Rs.20,000/- under Section 70 & Penalty of Rs.7,53,816/- was also imposed under Section 78 of the F.A., 1994.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal alongwith application seeking COD on the grounds elaborated below;

- The appellant is Proprietor firm and carry out exempted work. On the basis of Income Tax Return department issued show cause notice which was not received by appellant. Further, the department issued notice for personal hearing but same was not received. Due to non-availability of details of show cause notice, the appellant was unable to submit any document. The learned adjudicating authority has passed present order ex-parte.



- The appellant has submitted income tax return on which department relied and issued notice, Thus there is no suppression of facts or mis-information, hence, the show cause notice is grossly wrong and incorrect. The appellant has filed Income Tax return on 28-12-2017. Hence, the department is very well aware about my details. Therefore, the notice invoking suppression is not sustainable.
- The appellant carried out exempted work as defined in Mega Exemption Notification 25/2012, hence, the Appellant is not liable for service tax. It is important to note that learned adjudicating authority has not verified details and passed present Order.
- When there is no tax liability on exempted income, interest is also not payable under Section 75 of the F.A., 1994. Penalty would be imposable where there is intention to evade the tax. There is no intention to evade tax rather the appellant has acted under bonafide belief and tried to comply with provision of the act. Relying on the decision of Hon'ble Supreme Court in the case of Hindustan Steel vs State of Orissa -1978 ELT (J159) it is clear that penalty would not be ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted unconscious disregards of its obligation.
- In the COD application they stated that the delay in submitting the appeal was due to the administrative changes in the organization, they therefore requested to condone the delay of few days

5. Personal Hearing in the case was held on 22.04.2024. Shri Arpan A. Yagnik, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He informed that the appellant digs pond for Sandar Gram Panchayat for irrigation purpose which is covered under Sr.No.12(c) of the mega Notification No.25/2012-ST. Further he requested for 3 day's time to submit additional documents.

5.1 In their additional submission they copy of Work Order of Sander Gram Panchayat and Profit & Loss Account and ITR in support of their claim for exemption. The appellant initially claimed the exemption under clause (c) but later corrected to sub-clause (d) of Entry No.12 of the Notification No.25/2012-ST.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 30 days and take up the appeal for decision on merits.



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.7,53,816/-** confirmed 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 **F.Y. 2016-17**.

7.1 It is observed that the appellant in the P&L account, for the F.Y. 2016-17 have shown the income of Rs.50,25,442/- under 'Talav Khodkam Income'. They also submitted the Work Order dated 15.03.2016 issued by Sarpach of Sander Gram Panchayat for carrying out the deepening of Talav /Well of Village Sander. As per the work order the work was to be carried out before 15.06.2016.

7.2 To examine their claim of exemption relevant text of entry No.12 of Notification No.25/2012-ST is re-produced below;

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) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

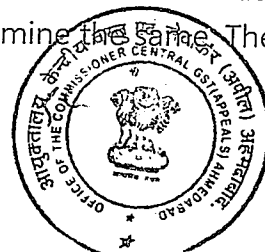
(d) canal, dam or other irrigation works;

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

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

7.3 The above notification was amended vide Notification No.06/2015 dated 01.03.2015 wherein sub-clause (a), (c) and (f) were omitted. In terms of **clause (d)** above, 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 canal, dam or other irrigation work shall be exempted.

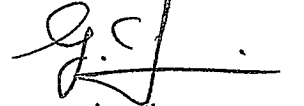
7.4 In the instant case, the appellant has rendered services of deepening of pond to Gram Panchayat which is a local authority. But whether the said pond was used for irrigation work is not forthcoming from the Work Order as the appellant has failed to produce any supporting documents in support of this claim. However, in the interest of natural justice, I, remand the matter back to the adjudicating authority to examine the same. The appellant is



also directed to submit the relevant supporting documents to establish that the said pond was used for irrigation work, to the adjudicating authority.

8. The impugned order is therefore set-aside in light of above discussion & findings.

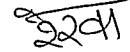
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stands disposed of in above terms.

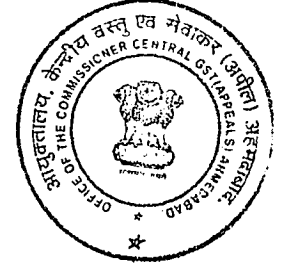

ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 14th May, 2024

सत्यापित/Attested :


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



By REGD/SPEED POST A/D

To,

M/s. Alkaben Rameshbhai Prajapati,
33/34 Indraprasth Society,
Near Hotel Garden,
Chanasma Highway,
Patan-384265

- Appellant

The Assistant Commissioner,
CGST & CEX, Palanpur Division
Gandhinagar Commissionerate

- Respondent

Copy to:

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
4. Guard file.

