



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



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240564SW00004404A4

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1798/2024-APPEAL / 5982 - 86
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-029/2024-25 and 30.05.2024
(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. 196/AC/DEM/MEH/ST/M/s Gaurav Ispat Industries/2023-24 dated 25.09.2023 passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Gaurav Ispat Industries, At - Kansara Kui, TA- Visnagar, Dist- 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 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 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.

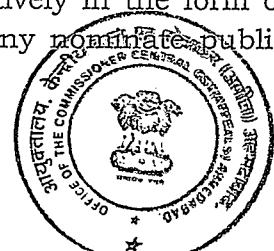
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 non-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 और 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."



अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Gaurav Ispat Industries, At-Kansara Kui, TA-Visnagar, Dist- Mehsana – 384002 (hereinafter referred to as '*the appellant*') against Order in Original No. 196/AC/DEM/MEH/ST/M/s Gaurav Ispat Industries/2023-24 dated 25.09.2023 [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 not registered under Service Tax and were holding PAN No. AAOFG3402G. As per the information received from the Income Tax department, total service income earned by the appellant during the period F.Y. 2016-17 was shown as Rs. 21,74,363/-. In order to verify the said service income as well as ascertain the fact whether the appellant had discharged their service tax liabilities during the F.Y. 2016-17, letter dated 17.09.2021 and emails dated 25.08.2021, 17.09.2021 & 02.10.2021 were sent to the appellant. However, the appellant did not submit any reply. Further, the jurisdictional officers observed that the nature of service provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) as provided by the Income Tax department. Details are as under:

Table-A

(Amount in Rs)				
Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax payable but not paid (in Rs.)
1.	2016-17	21,74,363/-	15%	3,26,154/-

3. A Show Cause Notice F.No. CGST/DIV-MEHSANA/397/AAOFG3402G/2021-22 dated 18.10.2021 (in short 'SCN') was issued to the appellant wherein it was proposed to:

- Demand and recover service tax amounting to Rs.3,26,154/- for the period F.Y. 2016-17 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 70, 77(1)(a) and 78 of the Finance Act, 1994;

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein the demand for Rs.3,26,154/- for the period F. Y. 2016-17 was confirmed under Section 73 of the Finance Act, 1994 along with interest under Section 75. Penalty amounting to Rs.3,26,154/- was imposed under Section 78 of the Finance Act, 1994 along with option for reduced penalty under proviso to clause (ii). Penalty of Rs.20,000/- under Section 70 and penalty of Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.

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

- The Appellant submitted that they have earned Income from certain trading related income. Such income is out of the purview of service tax, accordingly, service tax is not applicable.

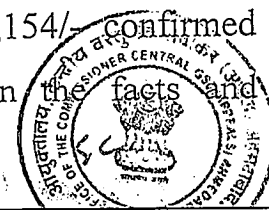
SECTION 66D. Negative list of services. The negative list shall comprise of the following services, namely: -

(e) trading of goods;

- They further submitted that they earned income which is not liable for service tax. They hereby produce the relevant document for reference. The requested to consider the same and close the matter.

6. Hearing in the case was held on 20.05.2024 virtually. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He informed that the appellant is in the business of trading of goods. However by mistake in the ITR it was shown as sale of service. The client is registered in VAT and in written submission VAT registration certificate and return copies are submitted.

7. I have minutely 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.3,26,154/- confirmed along with 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. 2016-17.

8. I find that the SCN was issued on the basis of third party data without any verification and the impugned order has been decided *ex-parte*.

9. Upon verification of the documents submitted by the appellant, I find that they were engaged in business of trading of excisable goods (old / used plate material obtained by breaking of imported ships, boats & floating structure and M S Round) and registered under the Gujarat Value Added Tax Act 2003 vide Registration No. 24040403096. They submitted VAT Registration Certificate (Date of effect: 14.08.2015), VAT return for the period of F.Y.2016-17, Purchase Invoice & Sales Invoice. They also claimed that the activity of 'Trading of goods' falls under the Negative list of service.

10. As contended by the appellant, I find that during the period F.Y. 2016-17 they were engaged in trading of goods for which they have paid requisite amount of Excise Duty & VAT (Value Added Tax) as is also evident from the copies of sample Invoices submitted by them. Further in the P&L A/c for the F.Y. 2016-17, they have shown income of Rs.21,71,148/- from 'Sales 4%' and remaining income from indirect income from interest. As the activity of the appellant is sales, I find that the same falls under trading activity. In terms of Sub-section (e) of Section 66D of the Finance Act, 1994 the activity of 'Trading of goods' falls under the Negative list of service. Relevant portion of Section 66D(e) of the Finance Act, 1994, is reproduced below :

"SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :-

(a)

(b)

(e) trading of goods;"

In view of the above, I find that the activities carried out by the appellant during the period F.Y. 2016-17 stands covered under the ambit of Section 66D of the Finance Act, 1994, i.e under the 'Negative List', therefore their activities are not liable for payment of Service Tax.

11. In view of above discussions, I am of the considered view that the activities carried out by the appellant during the period F.Y. 2016-17 amounts to 'Trading of Goods' and are exempted from levy of Service Tax. Therefore the impugned



order passed by the adjudicating authority confirming demand of Service Tax amounting to Rs.3,26,154/- is unsustainable being legally incorrect and liable to be set aside. As the demand of service tax fails to sustain, question of interest and penalty does not arise.

12. Accordingly the impugned order is set aside and the appeal filed by the appellant is allowed.

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

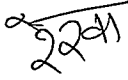


ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 30th May, 2024

सत्यापित/Attested :

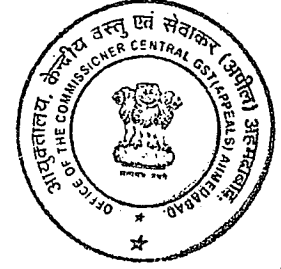


रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,

M/s Gaurav Ispat Industries,
At- Kansara Kui, TA-Visnagar,
Dist- Mehsana – 384002.

Copy to :

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

