



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:- 20240564SW0000333B3E

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/5637/2023-APPEAL/6013-21
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-031/2024-25 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. PLN-AC-ADJ-STX-134/2023-24 dated 31.07.2023 (Date of Issue : 10.08.2023) passed by the Assistant Commissioner, CGST, Division- Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Chetankumar Hareshbhai Kadiya, Near Govind Mahadev Temple, Mandi Bazar, At-Sidhpur, Dist- Patan – 384151

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, 4<sup>th</sup> 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.

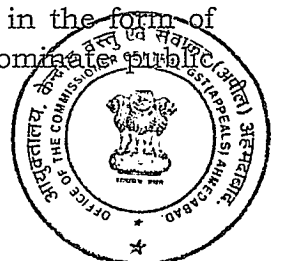
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 nominated bank.



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 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."



**ORDER IN APPEAL**

M/s. Chetankumar Hareshbhai Kadiya, Opposite Govind Madhav Mandir, Near Nava Tower, Sidhpur- 38415, Patan (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. PLN-AC-ADJ-STX-134/2023-24 dated 31.07.2023/10.08.2023 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division- Palanpur, Ahmedabad Gandhinagar (hereinafter referred to as '*the adjudicating authority*'). The appellant is holding PAN No. AYMPK4261F.

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 have shown substantial income in their ITR on which no tax was discharged. As the appellant was not registered and had not filed ST-3 Returns, letters were issued seeking clarification and to produce evidences for the same. However, the appellant did not respond, therefore, the service tax liability of Rs.3,52,576/- was quantified considering the differential income of Rs.23,50,509/- as taxable income.

**Table-A**

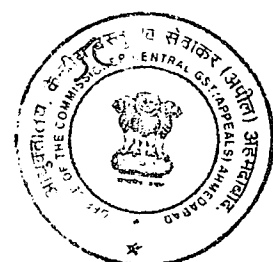
F.Y.	Value shown in ITR	Value shown in Form-26AS	S.Tax	Service tax payable
2016-17	23,50,509	20,20,000/-	15%	3,52,576/-

2.1 A Show Cause Notice (SCN) No. GEXCOM/SCN/ST/9853/2021-CGST-Div-PLN-COMMRTE-GANDHINAGAR dated 21.10.2021 was issued to the appellant proposing recovery of service tax amount of Rs. 3,52,576/- not paid on the differential income received during the F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Penalties each under Section 77 (1) (a), Section 77 (1) (b) & Section 77 (1) (c) (i) & (ii) & Section 77(2) and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 3,52,576/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each was imposed under Section 77(1)(a), 77(1)(b) & 77(1)(c) (i), (ii). Penalty of Rs.20,000/- was imposed under Section 70 and penalty of Rs.3,52,576/- was also imposed under Section 78. However, penalty under Section 77(2) was dropped.

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

- The appellant is engaged in providing works contract service as a sub-contractor. The appellant has rendered services to main contractor (M/s. N.B.Construction). The appellant has constructed English Medium School to Nutan Sarv Vidhyala Kelavani Mandal (a trust registered under Section 12AA of Income Tax Act). Allotment of work from Nutan Sarv Vidhyala Kelavani Mandal to M/s. N.B.Construction is submitted as proof.

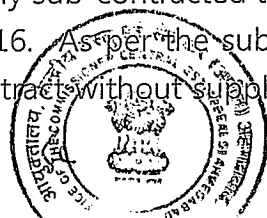


- The P&L account for the F.Y. 2016-17 shows that the income has been received from only one customer i.e. M/s. N.B.Construction. This is also evident from Form-26AS. Copy of the same is submitted.
- The appellant has provided service to the main contractor which includes supply of services also. The works contract service is exempted vide Entry No.13 of Exemption Notification No.25/2012-ST dated 20.06.2012.
- Construction service provided to Nutan Sarv Vidhyala Kelavani Mandal which is a trust registered under Section 12A/12AA of the I.T Act and being a charitable trust established for the purpose of relief to the poor, is also a religious activity hence exempted under Entry no.13. As the services of main contractor is exempted, the appellant being a sub-contractor shall also be exempted in terms of clause (29) of Mega Notification No.25/2012-ST.
- When there is no tax liability, question of recovering interest does not arise.As the appellant was not liable to obtain registration and pay taxes, question of imposing penalty does not arise.
- Extended period cannot be invoked as there was no suppression, omission or failure to disclose the information with the intent to evade payment of service tax. All the income details were disclosed in ITR before the Income Tax Act. Reliance placed on following decision;
  - Sunil Forging & Steel Ind- 2016 (332) ELT 341 (Tri-Mumbai)
  - Pahwa Chemicals Pvt.- 2005(189) ELT 257 (SC)
  - Meghmani Dyes & Intermediate Ltd.- 2013 (288) ELT 514
- For imposing penalty under Section 78, there should be an intention to evade payment of taxes supported by documentary evidences.

5. Personal Hearing in the case was held on 16.05.2024. Ms. Nisha Vora, Chartered Accountant, appeared for personal hearing. She informed that the client is a sub-contractor providing works contractor service to main contractor who is providing exempt services. Hence, under Sr.no. 29(h) of the Notification no.25/2012-ST, the appellant is exempted.

6. 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. 3,52,576/-** 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**.

6.1 In Form-26AS filed for the F.Y. 2016-17, the appellant has shown the income of Rs.20,20,000/- received from M/s. N.B. Construction. They submitted a copy of contract dated 30.11.2016, wherein Nutan Sarv Vidhyala Kelavani Mandal has entrusted the construction work to M/s. N.B. Construction. This work was subsequently sub-contracted to the appellant by M/s. N.B. Construction vide contract dated 15.10.2016. As per the sub-contract dated 15.10.2016, the appellant was entrusted the labour contract without supply



of material. So, the appellant was providing exclusively labour services to the main contractor and not the construction service.

**6.2** The appellant claim that services of main contractor is exempted in terms of entry no.13 of Mega Notification No.25/2012-ST and therefore they being sub-contractor shall also be exempted in terms of clause (29) of Mega Notification No.25/2012-ST. To examine their claim relevant entry is re-produced below;

**13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-**

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

In terms of above entry the construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of building owned by entity registered under Section 12AA of the Income Tax Act, 1961 and meant predominately for religious use by general public is exempted. I find that Nutan Sarv Vidhyala Kelavani Mandal is not a religious institute but a private educational institute hence exemption claimed by the appellant under above entry is not admissible.

**6.3** Further, it is observed that the appellant was purely supplying labour /manpower without any supply of material, involved in such construction. In terms of sl.no.8 of Notification No. 30/2012-ST dated 20.06.2012, the liability to pay tax on supply of manpower shall be 25% on service provider and remaining 75% shall be on the service recipient.

TABLE

<i>Sl. No.</i>	<i>Description of a service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by the person receiving the service</i>
8.	<i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose</i>	25%	75 %

**6.4** However, the above entry was substituted vide Notification No.07/2015 dated 01.03.2015 as;

TABLE

<i>Sl. No.</i>	<i>Description of a service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by the person receiving the service</i>
8.	<i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose</i>	Nil	100 %



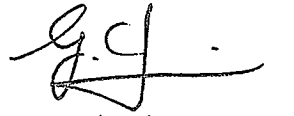
Thus, in terms of amended Sl.no.8 above, there is no tax liability on the appellant as the entire liability to pay taxes has been shifted to the service recipient i.e. on M/s. N.B.Construction.

7. On the remaining income of Rs.3,30,509/-, the appellant has not provided any documents. However, they claim that their income in previous F.Y. 2015-16 was less than Rs.10 lacs, they also produced P&L Account for the same. I have gone through the same and I find that their income from sale of service was Rs.7,20,600/- which is below the threshold limit prescribed in Notification No. No.33/2012-ST dated 20.06.2012. Hence, I find that the appellant shall be eligible for SSI exemption in the subsequent F.Y. 2016-17, as the taxable value in the previous year is below the threshold limit. Accordingly, I find that the appellant shall not be required to pay any tax also on the remaining income of Rs.3,30,509/-. I, therefore, find that the demand of Rs. 3,52,576/- confirmed in the impugned order is not legally sustainable.

8. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand alongwith interest and penalties.

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

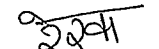
The appeal filed by the appellant stands disposed of in above terms.



(मानचंद जैन)  
आयुक्त(अपील्स)

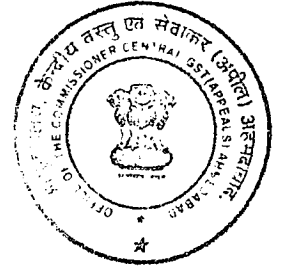
Date: 20.05.2024

Attested

  
(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



**By RPAD/SPEED POST**

To,

M/s. Chetankumar Hareshbhai Kadiya,  
Opposite Govind Madhav Mandir,  
Near Nava Tower,  
Sidhpur- 38415, Patan

- **Appellant**

The Assistant Commissioner,  
Central GST, Division- Palanpur,  
Ahmedabad Gandhinagar

- **Respondent**

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.

(For uploading the OIA)

4. Guard File.

