



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](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240564SW0000111D75

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/5639/2023-APPEAL / 5872 - 76
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-034/2024-25 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-93/2023-24 dated 26.06.2023 (Date of Issue : 28.06.2023) passed by the Assistant Commissioner, CGST, Division - Palanpur, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hotel Marvel Inn, T. B. Three Road, Patan-Deesa Road, 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, 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 से 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.

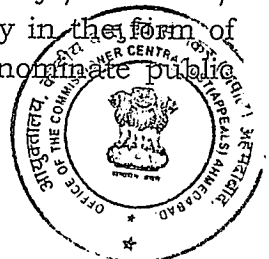
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 non 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।

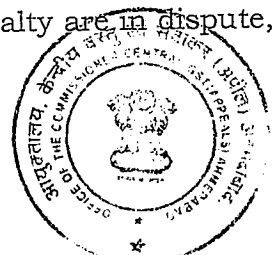
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Hotel Marvel Inn, T.B. Three Road, Patan-384265 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. PLN-AC-ADJ-STX-93/2023-24 dated 26.06.2023/28.06.2023 (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 not registered with the department and is holding PAN No. AAGFH6609A.

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.2,33,060/- was quantified considering the differential income of Rs.15,53,735/- as taxable income.

**Table-A**

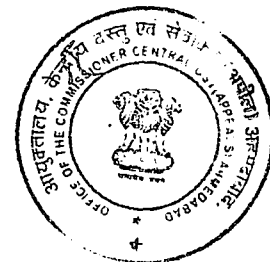
F.Y.	Value shown in ITR	S.Tax	Service tax payable
2016-17	15,53,735	15%	2,33,060/-

2.1 A Show Cause Notice (SCN) No. GEXCOM/SCN/ST/9856/2021-CGST-Div-PLN-COMMRTE-GANDHINAGAR dated 20.10.2021 was issued to the appellant proposing recovery of service tax amount of Rs.2,33,060/- 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) and Section 77(2) was proposed. Penalty under Section 78 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,33,060/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each under Section 77(1)(a), Section 77(1)(b) & Section 77(1)(c) (i), Section 77(1)(c) (ii) and Section 77(2) was imposed. Penalty of Rs.20,000/- under Section 70 and penalty of Rs.2,33,060/- under Section 78 was also imposed.

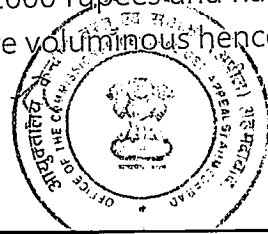
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below;

- The appellant is providing services of Renting of Banquet Hall, Restaurant Service, Accommodation in hotels, inn, guest house, club, or camp site, Construction services other than residential complex including Commercial/Industrial buildings or civil structures. During the disputed period the appellant has provided accommodation service at two non-star or guest house facility under the name of Hotel Marvel Inn.



- The accommodation service at two of their hotels named Hotel Marvel Inn declared tariff of both the hotels were below Rs.1000/- which is exempted vide Sl.no.18 of Notification No. 25/2012 dated 20/06/2012. The appellant would like to cite the landmark decision given by Delhi High Court in the case of Federation of Hotels and Restaurants Association of India & Ors. Vs Union of India & Ors, wherein, the court struck down Section 65(105)(zzzzw) of the F.A., 1994 pertaining to levy of service tax on short term accommodations.
- The sales in the profit & loss accounts amounting to Rs. 13,72,549 is pertaining to the income from the restaurant service income. The appellant was having AC well as Non-AC restaurant during the period covered in OIO. It is also to be noted that in the total sales income, only the AC restaurant income is chargeable to service tax which is very much less than Non AC restaurant income.
- Vide entry no. 19 of Mega Exemption Notification No. 25/20 12 - ST dated 20.06.2012, the services provided in relation to serving of food or beverages by a restaurant having air conditioning facility is exempted. From the total income of Rs.13,72,549, the income from Banquet sales is Rs.1,81,186/- which is taxable, income of Rs.12,87,764/- is exempted as is covered under Entry No.18 of mega notification and income of Rs.13,788/- is Dividend income which is not taxable.
- As, the appellant is not having taxable income under service tax more than Rs. 10 Lacs as per Notification No. 33/2012 – Service Tax dated 20.06.2012, the appellant is not liable to register themselves under Service tax till the taxable turnover reaches upto 9 lacs and they are also not liable to pay service tax in FY 2016-17.
- Imposition of penalty under Section 77(1), 77(2) and Section 70 is not sustainable as the appellant was not required to obtain service tax registration or furnish service tax returns.
- Extended period cannot be invoked in the given case. The appellant submits that the order was issued on 28-06-2023 for the disputed period FY 2016-17 and therefore, demand for the disputed period is barred by limitation and the extended period of limitation ought not to have been invoked. The appellant was filing the income tax returns & TDS was also deducted on his income for the aforesaid period, and ST-3 were filed regularly for the period specified in the OIO and therefore by no stretch of imagination it can be said that the appellant had not declared his income to the government authorities.
- Penalty under Section 78 is also not imposable as there is not suppression of facts involved.

5. Personal Hearing in the case was held on 16.05.2024. Ms. Nisha Vora, Chartered Accountant, appeared for personal hearing. She informed that due to COVID, the appellant could not attend P.H.. Moreover no submission could be made. The order was passed ex-parte. The appellant gave room on rent for less than 1000 rupees and had AC and non AC restaurants. She claimed they have registers which are voluminous hence the



matter may be remanded to the adjudicating authority as the order was ex-parte and hence could not make their submissions.

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.2,33,060/-** 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 The appellant claim that from the total income of Rs.13,72,549, the income of Rs.1,81,186/- is from Banquet sales is which is taxable; income of Rs.12,87,764/- is earned from renting of room in Hotel Marvel Inn which is exempted vide entry No.18 & 19 of Notification 25/2012 - ST dated 20.06.2012. Further, the income of Rs.13,788/- is Dividend income hence not taxable. They only submitted copy of ITR filed for the F.Y. 2016-17 and stated that they have registers which are voluminous.

6.2 On going through the ITR and the Room Rent Income Ledger, it is observed that the appellant has earned total income of Rs.12,87,764/-. The appellant claim that this income is exempted vide entry no. 18 & 19 of Notification No. 25/20 12 - ST dated 20.06.2012. To examine their claim relevant text of the notification is re-produced below;

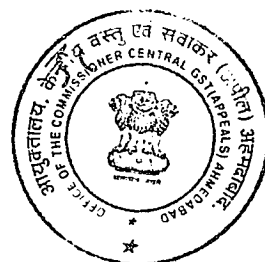
Notification No. 25/20 12 - ST

*18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;*

*19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;*

6.3 In terms of Entry No.18 above, renting of rooms in hotel, inn, guest house etc is exempted provided the declared tariff of a unit of accommodation is below rupees one thousand per day or equivalent. From, the ledgers submitted, it is observed that most of the bills are below Rs.1000/- however in some the amount is above Rs.1000/-. As the appellant has not submitted a reconciliation statement to this effect, it may not be possible to examine the amount for which such exemption is applicable.

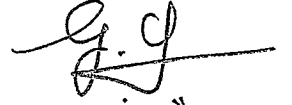
6.4 Further, in terms of Entry No.19, the service provided in relation to serving of food or beverages by a restaurant / eating joint/mess that does not have the facility of air conditioning or central air-heating in any part of the establishment is exempted. However, the appellant could not provide any documents like P&L account, Invoices/bills raised, ledgers in respect of sales from banquet, restaurant etc hence their claim of exemption could not be established.



6.5 However, in the interest of natural justice, I, remand the matter back to the adjudicating authority to examine the voluminous documents. The appellant is also directed to submit a reconciliation statement bifurcating the nature of income and also submit all the relevant supporting documents like P&L account, Ledgers, invoices/bill in justification of their claim seeking exemption to the adjudicating authority, without further delay.

7. The impugned order is therefore set-aside and appeal is allowed by way of remand.

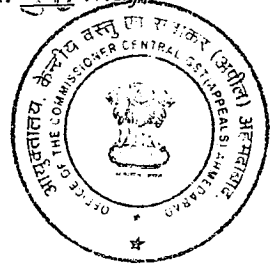
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.



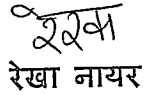
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 21<sup>st</sup> May, 2024



सत्यापित/Attested :



रेखा नायर

अधीक्षक (अपील्स),

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D

To,

M/s. Hotel Marvel Inn,

T.B. Three Road,

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.

