आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. 07926305065- टेलेफैक्स07926305136

DIN:20230264SW0000313713

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1817/2022-APPEAL /6393 - 8402

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-153/2022-23**
दिनाँक Date : **07-02-2023** जारी करने की तारीख Date of Issue **16.02.2023**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **GST/D-VI/O&A/216/QED/AM/2021-22** दिनाँक: **31.03.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s QED Clinical Services Pvt. Ltd.,
   Saptak B-209, West Gate, Near YMCA Club,
   S.G. Highway Makarba,
   Ahmedabad-380054

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North , 7th Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura, Ahmedabad - 380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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 पूवोक्त 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(ii) 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.

(क) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

(c) 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.

(1) 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 दिनाँक 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 मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.

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. Registar 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 ओदश 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 हैं।

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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) 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.

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. QED Clinical Services India Pvt. Ltd., Saptak B-209, West Gate, Near YMCA Club, S.G. Highway, Makarba, Ahmedabad-380054 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.GST-06/D-VI/O&A/216/QED/AM/2021-22 dated 31.03.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were holding Service Tax Registration No.AAACQ273ONS1001.

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. 2014-15 to F.Y. 2016-17, it was noticed that the 'Sales/Gross Receipts' from services declared in ITR of the appellant were not tallying with the 'Gross Value of Service' declared in their ST-3 Returns. The differential taxable value amounting to Rs.22,68,305/- was declared less in their ST-3 Return for F.Y. 2014-15 to F.Y. 2016-17 as compared to the income declared in their Income Tax Return (ITR) / Form 26AS filed under the Income Tax Act. Letters were subsequently issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16 & F.Y. 2016-17. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts.

2.1 Therefore, a Show Cause Notice (SCN) No.GST-06/04-495/O&A/QED/2020-2021 dated 28.09.2020 was issued to the appellant proposing recovery of service tax demand of Rs.3,10,767/- not paid on the differential value of income amounting to Rs.22,68,305/- received during the F.Y. 2014-15 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 76, 77 and penalty under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.22,90,330/- was confirmed alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77 and equivalent penalty of Rs.22,90,330/- was also imposed under Section 78.

3. 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 clinical research project management services and majority of the services are rendered to clients located outside India. They had entered into an agreement with QED Clinical Services Ltd., U.K. for proposals, contracts and marketing materials development support for which they lend their team. They also had agreement with LLC, USA for provision of Consulting Services. Thus, the services qualifies as Export of Service as all six conditions of Rule 6A of the Service tax Rules are fulfilled. However, the proper officer has considered the difference in revenue as domestic sales, which is not correct as the services were exported and EEFC account statement reflects the proof of exports which were not taken under consideration.

- Though there was under reporting of revenue for 3yrs but was only to the tune of Rs.4,49,261/- and not Rs.1,54,65,389/- as ordered in the impugned order.

- The service tax liability on domestic services has been discharged and the value not reported in the ST-3 Returns pertains to the export of service which should not be considered as loss of revenue. Further, the difference in reporting is also because the invoices goes for approval of the foreign client and once approved by them are recognized in Book of Accounts, hence there was difference in revenue in ITR and ST-3 Returns.

- The sales offered in Service tax returns for 2016-17 was not considered and instead total revenue for 2016-17 was considered as Gross Receipts. In fact, the deficit of sales in 2014-15 & 2015-16 were adjusted in 2016-17 to an extent. The Domestic Invoices of Rs.9,55,600, FIRC and invoice-wise receipts, sample invoices and audited balance sheets are attached as evidence.

- The notice was issued on the premise which was vacated by the appellant three years ago and not on the address updated on the GST Portal hence they could not provide all the required documents called for. Also, they were required to obtain documents FIRC for disputed period from HDFC and Kotak Mahendra Bank, which took some time.

- Invocation of extended period is against principles of natural justice.

- They prayed to set-aside the demand, interest and penalties.

4. Personal hearing in the matter was held on 17.1.2023. Shri Saharsh Gandhi, Chartered Accountant, and Shri Ali S.Bohra, Director of the appellant firm, appeared on

behalf of the appellant. Shri Saharsh Gandhi reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.22,90,330/- confirmed in 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. 2014-15 to F.Y. 2016-17.

6. It is observed that the SCN was issued to the appellant proposing service tax demand amounting to Rs.3,10,767/- covering F.Y. 2014-15 to F.Y. 2015-16. Para-4 of the SCN mentions that Gross Receipts from Services from ITR for the F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017) has not been disclosed by the Income Tax Department and further, as the appellant had also failed to provide the required information to the department, the assessable value for the F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017), therefore, could not be quantified. Thus, in terms of Para 2.8 of the Master Circular No. 1053/2/2017-CX., dated 10-3-2017, the service tax liability for the said period which could not be quantified in the SCN was kept open for recovery. The adjudicating authority has thereafter confirmed the demand of Rs.22,90,330/- after incorporating the tax liability of Rs.19,79,563/- arrived for the F.Y.2016-17 on the basis of Audited Balance Sheet submitted by the appellant. For the F.Y. 2017-18, no quantification has been done.

7. It is observed that the appellant is registered with the department and the entire demand has been raised based on ITR data provided by Income Tax Department. The adjudicating authority has confirmed the demand of Rs.22,90,330/- on the findings that the appellant has not fulfilled the conditions no. (c) to (f) of Rule 5A of the Service Tax Rules, 1994. Further, as the appellant failed to produce the proof of export like copy of Invoices, Foreign Inward Remittance Certificate issued by Bank, to establish that the services rendered were exported to their foreign clients, the benefit of export of services was not extended. The adjudicating authority has, therefore, held that the income earned by the appellant for rendering the clinical research project management services is taxable, as the same does not fall either under negative list or under Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

8. I find that the Board vide Instruction dated 26.10.2021 has directed the field formations that while analyzing ITR-TDS data received from Income Tax Department, a

reconciliation statement has to be sought from the taxpayer for the difference and that whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns. The show cause notice based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. Where such notices have already been issued, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee.

8.1 I find that the demand in the instant case has been raised merely on the basis of the sales of the services under Sales/Gross Receipts from services (Value of ITR) or the Value of TDS, which in no way corroborate the allegation that the respondent was actually rendering taxable service. Further, neither re-conciliation of financial statements nor proper appreciation of facts was done by the adjudicating authority. The Balance Sheets produced before the adjudicating authority clearly reflect the earnings in foreign currency on account of Clinical Trials and Consultancy Services rendered by the appellant, which was never rebutted. Further, the appellant has filed ST-3 Returns for all the financial years in question including that of F.Y. 2016-17. But the figures declared in ST-3 Returns for the F.Y. 2016-17 have not been considered while arriving at taxable value. I, therefore, find that the adjudicating authority has confirmed the demand without following the Boards' Instruction dated 26.10.2021. The adjudicating authority is expected to pass a judicious order after proper appreciation of facts and submission of the appellant, which in this case was not followed. It has led to violation of the principles of natural justice by way of passing of non-speaking order.

9. The appellant have claimed that they could not submit the documents before the adjudicating authority, as it took some time to collect relevant documents like FIRC from HDFC and Kotak Mahindra Banks. However, in the present appeal, they have produced sample copies of Remittance Transaction Advice, Tax Invoices and Audited Balance Sheet for the F.Y. 2014-15, 2015-16 & 2016-17, as evidence to establish their claim that the services were exported to foreign clients. Now, since the appellant have submitted the relevant documents, which were not submitted earlier before the adjudicating authority, I find that in the interest of natural justice, it would be proper that the matter is remanded back to the adjudicating authority, who shall decide the case afresh on merits after carrying out verification of the documents submitted by the appellant. The appellant is also directed to submit all the relevant documents /details, copy of contracts to the adjudicating authority, including those submitted in the appeal

proceedings, in support of their contentions, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

10. In view of above discussion, I remand back the matter back to the adjudicating authority to pass the order after examination of the documents and verification of the claim of the appellant.

11. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

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.

(अखिलेश कुमार) 28 February, 2023..
आयुक्त (अपील्स)

Date: 2.2023

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. QED Clinical Services India Pvt. Ltd., - **Appellant**
Saptak B-209, West Gate,
Near YMCA Club, S.G. Highway, Makarba,
Ahmedabad-380054

The Assistant Commissioner, - **Respondent**
Central Tax, CGST & Central Excise,
Division-VI, Ahmedabad North
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.