



सत्यमेव जयते

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- टेलिफैक्स 07926305136



DIN:20230264SW000072297C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1287/2021-APPEAL / 85HB - 10
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-162/2022-23
 दिनांक Date : 16-02-2023 जारी करने की तारीख Date of Issue 20.02.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 21-22/AC/D/2021-22/KMV दिनांक: 14.03.2022,
 issued by Assistant/Deputy Commissioner, Division-IV, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Vitthalbhai Girdharbhai Gohel,
Vachalo Vas, Sari, Tal: Sanand-382213

2. Respondent

The Assistant/Deputy Commissioner, CGST, Division-IV, Ahmedabad North
, 2nd Floor, Gokuldharm Arcade, Sarkhej-Sanand, Ahmedabad - 382210

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 :

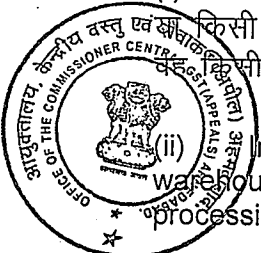
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतत 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।

(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 किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे 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 मामलों 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 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।

(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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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 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 :-

(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. 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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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

The present appeal has been filed by M/s. Vitthalbhai Girdharbhai Gohel, Vachalo Vas, Sari, Tal: Sanand – 382213 (hereinafter referred to as “the appellant”) against Order-in-Original No. 21-22/AC/D/2021-22/KMV dated 14.03.2022 issued on 15.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division IV, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. AOJPG6857L. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 & FY 2016-17, it was noticed that the appellant had earned an income of Rs. 15,50,655/- during the FY 2015-16 and Rs. 17,76,600/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” provided by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss Accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. V/27-114/Vitthalbhai/2020-21/UR dated 25.03.2021 demanding Service Tax amounting to Rs. 2,24,845/- for the period FY 2015-16, under the provision of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN dated 25.03.2021 also proposed recovery of unquantified demand for the period FY 2016-17 & FY 2017-18 (upto Jun-2017) under Section 73 of the Finance Act, 1994.

2.2 Another, Show Cause Notice No. V/27-40/SCN/Vitthalbhai/TPD/2021-22 dated 21.10.2021 demanding Service Tax amounting to Rs. 2,66,490/- for the period FY 2016-17, under the provision of Section 73 of the Finance Act, 1994 was issued to the appellant. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN dated 21.10.2021 also proposed recovery of unquantified demand for the period FY 2017-18 (upto Jun-2017) under Section 73 of the Finance Act, 1994.

2.3 Both the Show Cause Notices were adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,91,335/- was confirmed under Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the



Finance Act, 1994 for the period FY 2015-16 & FY 2016-17. Further (i) Penalty of Rs. 4,91,335/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to taking Service Tax Registration; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994 and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for failure to assess their correct tax liability and failure to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- They are engaged in the Business of Supply of Services of Sound, Mandap Decoration and Channel and also engaged in other agricultural and its auxiliary services under the Trade name of Khodiyar Sound and Decorators.
- They are engaged in the Business of Sound and Mandap and Channel Services and agriculture activities during the above mentioned year, but, from GST Act they are engaged only on Channel and Mandap Decoration, Sound related Services for which they have obtained GST Registration under the name and style M/s. Khodiyar Sound and Decorators.
- Their agricultural services falls under negative list of services as per the Section 66D of the Finance Act, 1994 and their other income from taxable services exempted under Notification No. 33/2012-ST dated 20.06.2012, as their aggregated value of taxable services not exceeding Ten Lakh rupees in any financial year.
- As they mentioned in their submission during the hearing with adjudicating authority, Turnover mentioned in ITR were comprise of both taxable and exempted services.
- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be set aside.

4. Personal hearing in the case was held on 08.02.2023. Shri Hiren N. Thakkar, Chartered Accountant and Shri Ujjawal Jain, Chartered Accountant, appeared on behalf of the appellant for personal hearing. They reiterated submission made in appeal memorandum. They submitted copies of invoices during the hearing. They stated that they would submit income tax data for the 2016-17 as additional submission.



4.1 The appellant, vide e-mails dated 09.02.2023 & 13.02.2023, have submitted Balance Sheet, Profit & Loss Account, Computation of Income and Income Tax Return filed for the FY 2015-16 & FY 2016-17. They also submitted Profit & Loss Account for the FY 2014-15 and also submitted affidavit, inter alia, stating that as they have not any taxable income in the FY 2014-15, they had not filed Income Tax Return for the FY 2014-15 and also confirming that their total receipts for the year is also below the limit for getting registration under Service Tax Law.

5. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 4,91,335/- against the appellant along with interest and penalties, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2015-16 & FY 2016-17.

6. It is observed that the adjudicating authority had confirmed the demand observing that the appellant has not provided any documentary evidence in respect of Rs. 8,38,005/ and Rs. 9,64,050 /- earned through sale of agriculture produce during FY 2015-16 & FY 2016-17 and they have not claimed the exemption of agricultural income in their Income Tax Returns for the subject period also. The relevant Para 18 of the impugned order reads as under:

"18. On perusal of the written submission dated 10.11.2021, it observed that, the said service provider is the Prop. of M/s. Khodiyar Sound & decorators placed at 96, Vachalovas, Sari, Opp- Khodiyar Mata mandir, Tal: Sanand and was engaged in the providing taxable service i.e. sound and channel service and also claim for providing exempted services i.e. agricultural services which falls under the negative list of service tax as per 66D. He has stated that, out of total income for Rs. 15,50,655/-, Rs. 8,38,005/ earned related agriculture produce and remaining Rs. 7,12,650/- earned from service related to sound and channel for FY 2015-16 and out of total income for Rs. 17,76,600/, Rs. 9,64,050/- earned related agriculture produce and remaining Rs.8,12,550/- earned from service related to sound and channel for FY 2016-17 and in respect of Agriculture income he has claimed for exemption under negative list of Section 66 D and in respect of income of taxable service he has claimed exemption under threshold limit provided under Notfn. No 33/2012-ST dated 20.06.2012. On verification of the documents provided i.e. copies of 7/12 form and form no 8 (Jamin Khatavahi) issued by Deputy Mamlatdar, Sanand it appears that, the subject Agriculture land are on the name of Sh. Gidhabhai Pudabhai and also holding other name as Shantilal Gidhabhai, Butabhai Gidhabhai and Viththalbhai Gidhabhai, thus, it appears that, subject Agriculture land are of his father name and his name also included in the said Agriculture land. Further, he has not provided any documentary evidence in respect of Rs. 8,38,005/ and Rs. 9,64,050 /- earned through sale of agriculture produce during FY 2015-16 & FY 2016-17 as claimed



under section 66 D of the finance Act, 1994. Moreover, I find that they have not claimed the exemption of agricultural income in their Income Tax Returns for the subject period also. I find that the said service provider did not provide a single document in support of their contention in their written submission dated 10.11.2021 or during the opportunity of personal hearing provided to them on 30.11.2021. They have vaguely stated in their written submission that service related to agricultural produce and for agricultural purpose like cultivation, farming labour to land, and renting vacant land. Thus, in absence of documentary evidence his claim for exemption from payment of Service tax for subject amount is not legal and justifiable and therefore, his claim of income from agriculture produce and exemption U/s. 66 D of the act is not tenable in the present case."

7. I also find that the main contention of the appellant are that their agricultural services falls under negative list of services as per the Section 66D of the Finance Act, 1994 and their other income from taxable services are exempted under Notification No. 33/2012-ST dated 20.06.2012, as their aggregated value of taxable services not exceeding Ten Lakh rupees in any financial year and that turnover mentioned in ITR were comprise of both taxable and exempted services. I find that the appellant have provided copies of invoices for sale of agriculture services for the FY 2015-16 & FY 2016-17 in support of their contention.

7.1 On verification of the aforesaid invoices, I find that the appellant sold the agriculture produce worth Rs. 8,38,005/- and during the FY 2015-16 and Rs. 9,64,050/- during the FY 2016-17. The said income has been made the appellant from the agriculture produce and falls under negative list of services under Section 66D of the Finance Act, 1994.

8. As regard the remaining income of Rs. 7,12,650/- for the FY 2015-16 and Rs. 8,12,550/- for the FY 2016-17, I find that the appellant is eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 as for the FY 2015-16, their total taxable value of service during the Financial Year 2014-15 was Rs. 4,98,530/-, i.e. below Rs. 10,00,000/- and also for the FY 2016-17, as their taxable value of service during the Financial Year 2015-16 was Rs. 7,12,650/-, i.e. below Rs. 10,00,000/-. In view of the above, I hold that the appellant is not liable to Service Tax for the income received by them during the FY 2015-16 & FY 2016-17.

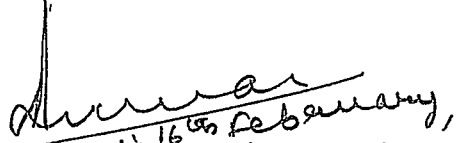
9. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of limitation raised by the appellant. When the demand fails, there does not arise any question of charging interest or imposing penalty in the case.



10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.


11. अपील कर्ता 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.


(Akhilesh Kumar) 16 Feb 2023..
Commissioner (Appeals)

Date : 16.02.2023

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,

M/s. Vitthalbhai Girdharbhai Gohel,

Vachalo Vas,

Sari, Tal: Sanand – 382213

Appellant

The Assistant Commissioner,
CGST, Division-IV,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division IV, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

✓ 5) Guard File

6) PA file

