



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:20230364SW0000111CA7

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2230/2022-APPEAL / 9493-93
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-186/2022-23
दिनांक Date : 09-03-2023 जारी करने की तारीख Date of Issue 15.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/HG/347/2022-23 दिनांक: 29.08.2022,
issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Jitendrakumar Gagabhai Desai,
C/101, Suryodaya Complex Part-I, Sattadhar Cross Roads,
Ghatlodia, Ahmedabad-380061

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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 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 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 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 दिनोंक 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.

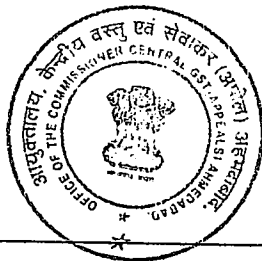
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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

M/s. Jitendrakumar Gagabhai Desai, C/101, Suryodaya Complex Part-I, Sattadhar Cross Roads, Ghatlodia, Ahmedabad-380 061 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT-07/HG/347/2022-23 dated 29.08.2022 (in short the '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

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), it was noticed that the appellant had earned substantial income which was reflected as "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" and 'Sales of Service' in their I.T Return filed with the Income Tax Department. The appellant, though was rendering taxable services, they neither obtained registration nor paid service tax thereon. Letters were, therefore, 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. They, however, could not provide the reasons for non-payment of tax on such income. Therefore, the value of 'Sales of services' or 'Value of TDS' declared by the appellant in the ITR was considered as the taxable income and accordingly, the total service tax liability of Rs.5,62,776/- was worked out for said period.

2.1 A Show Cause Notice (SCN) No. CGST/A'bad-North/Div-VII/SR-III/TPD/Unreg15-16/2020-21 dated 21.12.2020 was issued to the appellant proposing recovery of service tax demand of Rs.5,62,776/- not paid on the differential value of income received during the F.Y. 2015-16 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Sections 77(1), Section 77(2) and 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.5,62,776/- was confirmed alongwith interest. Penalty of Rs.10,000/- and Rs.5000/- was imposed under Section 77 (1) & 77(2) respectively. Penalty equivalent to tax confirmed 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 SCN and the impugned order both are not clear as for which services the tax has been demanded and confirmed, hence, both the notice & impugned order are vague. Further, the SCN is issued proposing demand for the F.Y.2015-16 & 2016-17, whereas in the OIO, the adjudicating authority has set-aside the demand for F.Y.2015-16 & 2016-17 and made the appellant liable to pay service tax demand for the F.Y.2014-15, a period which was never covered in the SCN. Reliance placed on decisions passed in the case of Saci Allied Products- 2005(7) SCC 159; Gas Authority- 2008(232) ELT 7 (SC).
- How the service tax demand of Rs.5,62,776/-for the F.Y. 2014-15 was determined is also not forthcoming as no justification was given in the findings. The impugned



order is a non-speaking order. Reliance placed on Aspinwall & Co. Ltd-2010(10) TMI-321-CESTA-Banglore; Anil Products Ltd-2010(2) TMI 662 –Guj High Court.

- In terms of Notification No.30/2012 dated 20.06.2012, under Manpower Supply service, the liability to pay service tax is on recipient of service and not on service provider. As most of the manpower for security services were provided to Body Corporates, the liability to tax lies on the recipient. Further, as the value of service rendered is less than the threshold limit prescribed, they were under the bonafide belief that the tax is not payable.
- Suppression, willfull mis-statement, fraud is not established in the present case. Hence, the demand invoking extended period is not sustainable therefore the notice is time barred as was issued beyond the normal period of limitation. Reliance placed on Board's Circular No.312/28/97-CX dated 22.04.1997 and judicial pronouncement made in the case of Tamil Nadu Housing Board-1994 (74) ELT 9 (SC).
- When the demand is not sustainable, penalties under 78, 77(1) & 77(2) is also not imposable. Interest is also not required to be paid when there is no levy.

4. Personal hearing in the matter was held on 15.02.2023 in virtual mode. Shri Rohan Thakkar, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also stated that he would be submitting additional written submission in the case.

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 and the submissions made at the time of personal hearing. As no additional written submission was made till date, I proceed to decide the case based on the available documents and the submissions made in the appeal memorandum. The issue to be decided in the present appeal is whether the service tax demand of Rs.5,62,776/- 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. 2015-16 & F.Y.2016-17.

6. The appellant in the appeal memorandum have vehemently argued that the adjudicating authority has travelled beyond the scope of SCN because the notice proposes the demand for the F.Y. 2015-16 to F.Y. 2016-17, whereas the adjudicating authority has confirmed the demand for the F.Y. 2014-15. On going through the impugned order, it is observed that the adjudicating authority at Para-22 of the impugned order have set-aside the demand for the F.Y. 2015-16 to F.Y. 2017-18 stating that the same could not be ascertained at the time of issuance of SCN. He, therefore, confirmed the demand of Rs.5,62,776/- pertaining to the F.Y. 2014-15. But, on going through the SCN, I find that the demand of Rs.5,62,776/- has been raised for the F.Y. 2015-16 to F.Y. 2017-18 and not for the F.Y.2014-15, as observed by the adjudicating authority. Such errors are not merely typographical error but reflect non-application of law by the adjudicating authority in deciding the case. The adjudicating authority, by



confirming the demand for a period which was not in the SCN, has travelled beyond the scope of SCN and passed a vague order which, I find is legally not sustainable.

7. Further, it is also noticed that the adjudicating authority vide letter dated 01.08.2022 has granted three dates of hearing and as the appellant did not appear he has decided the notice ex-parte. I find that the adjudicating authority in a most ingenious manner, paid lip service to the intent of being given sufficient opportunity to be heard by fixing three alternative dates in the same intimation. Normally, an inconvenience on the day specified is to be followed by a fresh intimation taking into consideration the circumstances in which deferment is sought. The spirit of the principles of natural justice has thus been disregarded in an unwanted manner as the completion of proceedings was without affording sufficient opportunity to the appellant. In light of above discussion, I find that the impugned order passed was vague and in gross violation of natural justice

8. Further, it is also observed that the entire demand has been raised based on ITR data provided by Income Tax Department. The appellant are not registered with the department. Since no documents were submitted to the department, the income reflected by the appellant in the ITR filed during the F.Y. 2015-16 & F.Y.2016-17 was considered as a taxable income. The appellant before the adjudicating authority has not filed any defense reply nor did they appear for personal hearing. However, in the present appeal, they have claimed that they have rendered services as Manpower Supply Agency and since most of the services were rendered to Body Corporate, in terms of Notification No.30/2012-ST dated 20.06.2012, they are not liable to tax as liability to pay service tax shall be on the recipient of such service. Further, they have also claimed threshold limit exemption and claim that considering the receipts within the threshold limit, no tax liability shall arise. However, on going through the records, it is noticed that the appellant to substantiate the nature of service rendered and to claim the above exemptions have not submitted any documentary evidences like invoice, contracts or ledgers accounts. They also failed to produce their financial records to prove that the income earned is below the threshold limits. It is a well settled position of the law that a person who claims the exemption has to prove that he satisfies all the conditions of the Notification so as to be eligible to the benefit of the same.

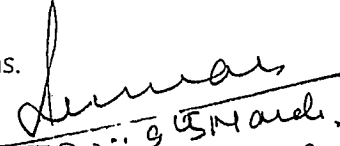
9. Board, vide Instruction dated 26.10.2021, has directed that where the show cause notice were issued based on the third party data, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. The appellant are contending that they have rendered Manpower Supply Service to Body Corporates hence, are claiming exemption under Notification No.30/2012-ST. However, they failed to produce any documents to substantiate their claim. I, therefore, in the interest of justice, remand back the case to the adjudicating authority to decide the case afresh and for passing the speaking order in view of submission made by the appellant and keeping in mind the CBIC Instruction dated 26.10.2021 as well as the observations made above. The appellant is also directed to submit all the relevant documents and details to the adjudicating authority, 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. Consequently, I remand back the matter back to the adjudicating authority who, shall



pass the order after examination of the documents and verification of the claim of the appellant.

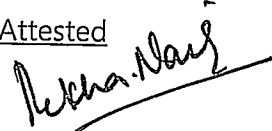
10. In light of above discussion, I set-aside the impugned order confirming the service tax demand of Rs.5,62,776/- alongwith interest and penalties and allow the appeal filed by the appellant by way of remand.

11. 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.


Anurag
(अखिलेश कुमार) 2023.
आयुक्त(अपील्स)

Date: 09.03.2023

Attested



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



By RPAD/SPEED POST

To,
M/s. Jitendrakumar Gagabhai Desai,
C/101, Suryodaya Complex Part-I,
Sattadhar Cross Roads, Ghatlodia,
Ahmedabad-380 061

Appellant

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

Respondent

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. Guard File.

