



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:20230364SW0000000A57

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2230/2022-APPEAL/9158 -62
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-189/2022-23  
 दिनांक Date : 10-03-2023 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/RAJ/70/2022-23 दिनांक: 28.04.2022,  
 issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Dashrathbhai Purshottamdas Patel,  
 A/2, Bhagwati Apartments, Opp. Kamal Society,  
 Nr. Subhash Chowk, Memnagar,  
 Ahmedabad-380052

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad  
 North, 4<sup>th</sup> 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, 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 :

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

(a) 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 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 .

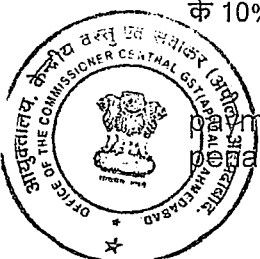
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

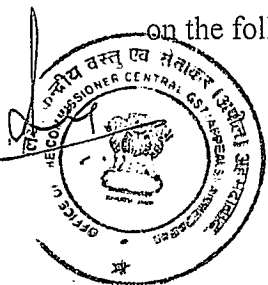
The present appeal has been filed by M/s. Dashrathbhai Purshottamdas Patel, A/2, Bhagwati Apartments, Opp. Kamal Society, Nr. Subhash Chowk, Memnagar, Ahmedabad – 380052 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/RAJ/70/2022-23 dated 28.04.2022 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST, Division VII, 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. AJEPP9852C. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 17,15,500/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” 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. CGST/AR-II/Div-VII/A'bad North/TPD/1/20-21 dated 27.09.2020 demanding Service Tax amounting to Rs. 2,12,036/- for the period FY 2014-15, under proviso to Sub-Section (1) 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 also proposed recovery of un-quantified amount of Service Tax for the period FY 2015-16 to FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 98,751/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15 and remaining demand of Service Tax was dropped. Further (i) Penalty of Rs. 98,751/- 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) and 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 not submitting documents to the department, when called for.

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



- They requested to reconsider the facts of the case and adjudicate the matter again based on their submissions, which has been grossly neglected in the impugned order.
- The appellant is not subject to service tax as he has not crossed the threshold limits of service tax for provision of his services.
- The data as reflected in Income Tax is erroneous for not having the breakup bifurcation of Sales of Goods and Sale of Services by the appellant, due to a gross error committed by the accountant and tax consultant of the appellant.
- The appellant had always disclosed a Major Amount on Expenditure side of Profit and Loss Account towards "Materials Purchases", which is self explanatory to the case that appellant is dealing in both Materials and Services of Electrical Products. The break-up of Sales and Service is as under:

(Amount in Rs.)

<b>Sales Account</b>	17,15,500/-
- Electric Material Sales	9,16,550/-
- Labour Income – Electrical Contracts	7,98,950/-

- The accountant and tax consultant of the appellant has erred in Income Tax and has reflected whole of the Sale of Materials as well as Services under the single umbrella of Sale of Services under "*Sale/Gross Receipts From Services*" in ITR, which is not the fact as evident from above table.
- The adjudicating authority has erred as the threshold limit of applicability of Service Tax is not surpassed and adjudicating authority has applied Service Tax on the amount which is not applicable to Service Tax at all.
- The adjudicating authority has imposed a penalty of Rs.10,000/- under Section 77(2) for contravention of provisions made there under, but they again submitted that the fact that there is no contravention of the provisions as the appellant has not surpassed the Threshold Limit of Service Tax and so there does not arise any Service Tax Liability and consequently there is no contravention of provisions and hence penalty can not be imposed on them.
- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

On going through the appeal memorandum, it is noticed that the impugned order was issued on 28.04.2022 and received by the appellant on 28.04.2022. However, the present appeal,



in terms of Section 85 of the Finance Act, 1994 was filed on 26.07.2022, i.e. after a delay of 29 days from the last date of filing of appeal. The appellant have also filed an Application seeking condonation of delay vide letter dated 10.08.2022 stating that in the preamble of the impugned order, the time period mentioned to file the appeal is 3 months from the date of communication of order.

4.1 Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the dates of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine in as much as the appellant is not registered with department, I condone the delay of 29 days and take up the appeal for decision on merits.

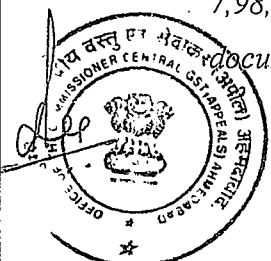
5. Personal hearing in the case was held on 06.03.2023. Shri Amit Pavagadhi, Authorized person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He submitted ITR-V for FY 2012-13 and FY 2013-14; Computation of Income, Balance Sheet and Profit & Loss Account for the FY 2013-14 during the course of hearing.

6. I have carefully gone through the facts of the case, grounds of appeal, 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 against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

7. I find that while adjudicating the case, the adjudicating authority has already dropped the demand of service tax on the value of sale of goods shown by the appellant in their Profit & Loss Account for the FY 2014-15. I also find that the adjudicating authority had confirmed the demand of service tax for the FY 2014-15 on the taxable value / labour income of Rs. 7,98,950/- observing that the appellant have not submitted any document for FY 2013-14. Therefore, income of FY 2013-14 cannot be ascertained to give benefit of SSI exemption or the period FY 2014-15. The adjudicating authority, while confirming the demand of service tax, held as under:

"17.1 ..... .."

Therefore, I hold that assessee is liable to pay Service Tax on labour income of Rs. 7,98,950/- for the period of FY 2014-15. Further, assessee had not submitted any document of FY 2013-14. Therefore income can't be ascertain to give benefit of SSI



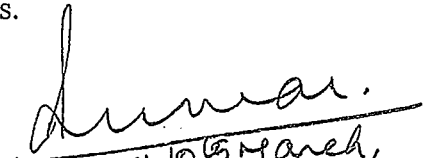
*exemption for the period 2014-15. Assess has not submitted any documents for the further period. But since taxable value of services of assessee for the FY 2014-15 was Rs. 7,98,950/- noticee is eligible for the benefit of 10 lakh by virtue of Noti. No. 33/2012-ST similarly total taxable services rendered by noticee amount so Rs. 7,99,950/- for the period FY 2015-16, therefore the noticee is eligible for the benefit of Rs. 10 lakh by virtue of Noti. No. 33/2012-ST for the FY 2016-17”*

8. I find that the main contention of the appellant is that the adjudicating authority has erred in not granting benefit of value based exemption as the threshold limit of applicability of Service Tax is not surpassed by them and adjudicating authority has applied Service Tax on the amount which is not applicable to Service Tax. I find that the benefit of threshold limit of exemption for the FY 2014-15, as per the Notification No. 33/2012-ST dated 20.06.2012, is dependent upon the value of taxable services provided during the FY 2013-14. I also find that the appellant have submitted Profit & Loss Account for the FY 2013-14 during the course of hearing, which shows Rs. 16,54,300/- in the head of “Labour Income”. Since, the labour income of the appellant in preceding year i.e. FY 2013-14 was more than Rs. 10 lakh, the appellant is not eligible for benefit of threshold limit of exemption for the FY 2014-15. Thus, I find that the impugned order passed by the adjudicating authority confirming service tax on the taxable value / labour income of Rs. 7,98,950/- denying threshold limit of exemption is legal and proper.


9. In view of the above discussion, I uphold the order passed by the adjudicating authority and reject the appeal filed by the appellant.

10. 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.

  
10 March,  
(Akhilesh Kumar) 2023.  
Commissioner (Appeals)

Attested

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

Date : 10.03.2023



**By RPAD / SPEED POST**

To,  
M/s. Dashrathbhai Purshottamdas Patel,  
A/2, Bhagwati Apartments,  
Opp. Kamla Society,  
Nr. Subhash Chowk, Memnagar,

Appellant

Ahmedabad – 380058

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

Respondent

Copy to :

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

- ✓ 5) Guard File
- 6) PA file

