

सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केन्द्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलीफैक्स 07926305136



DIN:20230464SW000052095B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1283/2022-APPEAL / 139-143
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-221/2022-23
दिनांक Date : 31-03-2023 जारी करने की तारीख Date of Issue 03.04.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 110/ADC/GB/2021-22 दिनांक: 29.03.2022, issued by
Additional Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Sijcon Consultants Pvt. Ltd.,
25, Raopura Society, Navrangpura,
Blh Memnagar Fire Station,
Ahmedabad-380009

2. Respondent

The Additional Commissioner, CGST, Ahmedabad North, Custom House,
1st Floor, Navrangpura, Ahmedabad - 380009

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 :

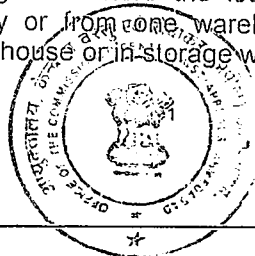
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 दिनांक से तीन महीने 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 वालान 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.

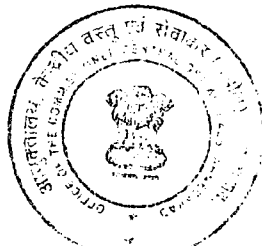
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अपीलिय 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.

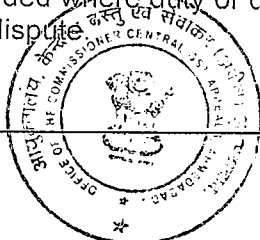
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Sijcon Consultants Pvt. Ltd., 25, Raopura Society, Navrangpura, B/h Memnagar Fire Station, Ahmedabad – 380009 (hereinafter referred to as “the appellant”) against Order-in-Original No. 110/ADC/GB/2021-22 dated 29.03.2022 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Central GST& Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AADCS2389GST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 10,09,62,356/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

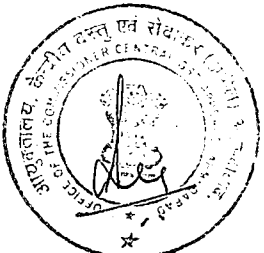
2.1 Subsequently, the appellant were issued Show Cause Notice No. STC/15-128/OA/2020 dated 21.10.2020 demanding Service Tax amounting to Rs. 1,46,39,542/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(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 2016-17 & 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. 40,53,118/- 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 2015-16. The adjudicating authority has dropped the remaining demand of Service Tax. Further, (i) Penalty of Rs. 40,53,118/- was 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)(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.



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

- The appellant is registered under Service Tax having Registration No. AADCS2389GST001 and are engaged in the business of providing taxable services.
- The appellant submitted the reconciliation, wherein there is no such short payment of service tax. While doing the reconciliation of income with books of accounts, the department has not taken into factual details. Without considering the factual details, the department has raised the demand which is not justifiable at all. The appellant in support of their arguments relies on the following case laws:
 - a) Regional Manager, Tobacco Board Vs. Commr. of C.Ex., Mysore - 2013 (31) STR 673 (Tri. - Bang.)
 - b) Anvil Capital Management (P) Ltd. Vs. Commr. of ST, Mumbai - 2010 (20) STR 789 (Tri. - Mumbai)
 - c) Commissioner of ST, Ahmedabad Vs. Purni Ads. Pvt. Ltd. - 2010 (19) STR 242 (Tri. - Ahmd.)
 - d) Sify Technologies Ltd.Vs. Commr. of ST, Chennai - 2009 (16) STR 63 (Tri. - Chennai)
 - e) Bhogilal Chhagulal & Sons Vs. Commr. of ST, Ahmedabad - 2013 (30) STR 62 (Tri. - Ahmd.)
- The show cause notice covers the period of 01.04.2015 to 31.03.2016. The show cause notice has been issued on 21.10.2020. The appellant is filing service tax returns and income tax returns regularly from time to time, therefore, the extended period of limitation cannot be invoked in the present case. Thus, the demand is time barred.
- The appellant submit that even if any contravention of provisions the same was solely on account of their bonafide belief and such bonafide belief was based on the reasons stated above. The contraventions, if any, were not with the intention to willfully evade payment of service tax. They have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company Vs. CCE - 1995 (78) EL T 401 (SC) and CCE Vs. Chemphar Drugs and Liniments - 1989 (40) EL T 276 (SC),
- Without prejudice to the above submissions, the appellant submitted that it is a settled principle of law that if a dispute is arising out of interpretation of the provisions of



statute or exemption notification, no penalty can be levied. If at all it is held that the service tax is payable as demanded by the Show Cause Notice, then also it can be said that it is a dispute arising out of interpretation of the provisions of the law and not because of any intentional avoidance of tax. The appellant place reliance on the following case laws in this regard:

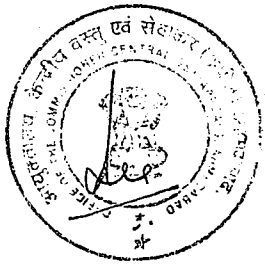
- a) Bharat Wagon Engg. Co. Ltd. Vs. Commissioner of C. Ex., Patna - _ (146) ELT 118 (Tri. - Kolkata)
- b) Goenka Woollen Mills Ltd. Vs. Commissioner of C. Ex., Shillong - 2001 (135) ELT 873 (Tri. - Kolkata)
- c) Bhilwara Spinners Ltd. Vs. Commissioner of Central Excise, Jaipur - 2001 (129) ELT 458 (Tri. - Del.)

- 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.

4. Personal hearing in the case was held on 29.03.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum and in additional written submission made during hearing.

4.1 The appellant in their additional written submission dated 29.03.2023, inter alia, reiterated the submissions made in appeal memorandum and also submitted copy of Final Audit Report No. CE/ST-1311/2020-21 dated 24.05.2021 in respect of audit of financial records conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad for the period from April-2015 to June-2017; Form 26AS for the FY 2015-16; Reconciliation statement for total income as shown in Balance Sheet and income on which Service Tax paid for the FY 2015-16; copies of ST-3 Returns filed for the FY 2015-16.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum as well as in additional written submission 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 2015-16.




of Rs. 7,30,09,993/- (Rs. 6,82,46,169/- shown as income in their ST3 Returns + Rs. 47,63.824/- being service tax element) and confirmed the demand of service tax on the amount of Rs. 2,79,52,543/- (Rs. 10,09,62,536/- – Rs. 7,30,09,993/-) observing that the details have not been tallied with reconciled figures furnished by the appellant and the appellant have not provided any documents in support of their reconciliation statement. However, the adjudicating authority has failed to ask the necessary documents for verification, which is required to be done as per aforesaid Instruction dated 26.10.2021.

8. On verification of the FAR dated 24.05.2021, I find that the Audit observed short payment of Service Tax amounting to Rs. 46,943/- on reconciliation of Books of Account with ST-3 Returns and having agreed with the objection, the appellant made voluntarily payment of Service Tax of Rs. 46,943/- along with interest of Rs. 37,360/- and penalty of Rs. 7,041/- vide DRC-03 dated 19.04.2021. I also find that the present show cause notice has also been issued on the basis of difference of value of service amounting to Rs. 10,09,62,356/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax Returns filed by the appellant for the FY 2015-16. Thus, when the audit of the financial records of the appellant has already been conducted for the period under dispute and the appellant had paid short payment of service tax along with interest and penalty, as enumerated above, the present show cause notice is not legally sustainable and is deemed to be concluded. The impugned order confirming the demand of service tax on the basis of present show cause notice is also required to be set aside.


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

10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

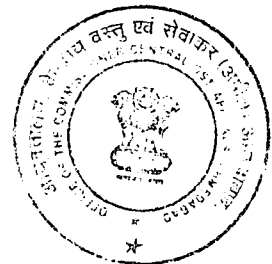
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar) 31st March, 2023.
Commissioner (Appeals)

Attested


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

Date : 31.03.2023



By RPAD / SPEED POST

To,

M/s. Sijcon Consultants Pvt. Ltd.,
25, Raopura Society, Navrangpura,
B/h Memnagar Fire Station,
Ahmedabad – 380009.

Appellant

The Additional Commissioner,
CGST & Central Excise,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST & C. Excise, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) Guard File

6) PA file

