



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: 20221164SW000000FCCC

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2741/2021-APPEAL / 4551 - 4555

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-55/2022-23
दिनांक Date : 07-11-2022 जारी करने की तारीख Date of Issue 09.11.2022

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

ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VIII/ST/DC/48/2021-22
दिनांक: 21.09.2021, issued by Deputy Commissioner, CGST, Division-VII, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Amin Associates,
Surmala 3, Vijay Park Society,
Opp. Municipal Market, Navrangpura,
Ahmedabad-380009

2. Respondent

The Deputy Commissioner, CGST, Division-VII, 4th Floor, Shajanand
Arcade, Nr. Helmet Circle, 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 :

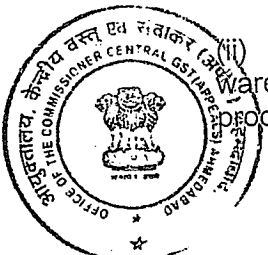
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 प्रक्रिया के दौरान हुई हो।

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.



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 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 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. Amin Associates, Surmala 3, Vijay Park Society, Opp. Municipal Market, Navrangpura, Ahmedabad – 380009 (hereinafter referred to as “the appellant”) against Order-in-Original Number CGST/A’bad North/Div-VII/ST/DC/48/2021-22 dated 21.09.2021 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST & Central Excise, Division VII, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the fact of the case is that the appellant is holding PAN No. AAGFA2999C. On scrutiny of the data received from the CBDT for the Financial Years 2015-16 & 2016-17, it was noticed that the appellant had earned an income of Rs. 25,12,246/- during the FY 2015-16 and an income of Rs. 14,80,036/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” 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, etc. 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-1/Div-VII/A’bad-North/Unreg-15-16/35/20-21 dated 17.12.2020 demanding Service Tax amounting to Rs. 5,86,281/- for the period FY 2015-16 & FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest and imposition of penalty. The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,61,507/- 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. Further (i) Penalty of Rs. 2,61,507/- 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 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal. The appellant in their appeal memorandum and in their additional written submission submitted during the course of personal hearing, inter alia, submitted the following grounds:

- The appellant is engaged in the construction of school, office, individual residential bungalow and projects provided by the Trust and national monuments. The appellant is eligible for the basic exemption of a small service provider. The appellant has already provided details of the contract receipt along with the nature of work.

As per the Notification No. 33/2012-ST dated 20.06.2012, taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service



tax leviable thereon under Section 66B of the Finance Act, 1994. In the FY 2014-15, the gross value of taxable service is Rs. 4,64,735/- and after considering the abatement of original and repairing work, the taxable value is Rs. 1,86,553/-. In the FY 2015-16, the gross value of taxable service is Rs. 8,40,456/- and after considering the abatement of original and repairing work, the taxable value is Rs. 3,42,209/-. In the FY 2016-17, the gross value of taxable service is Rs. 6,05,266/- and after considering the abatement of original and repairing work, the taxable value is Rs. 2,32,585/-. In the above years after taking the exemption of construction of residential houses and construction of historical monument, the gross taxable value does not exceed Rs. 10,00,000/- Therefore, the appellant is eligible for exemption Notification No. 33/2012-ST dated 20.06.2012.

- In support of their above stand, the appellant relied on Ashok Kumar Mishra vs. CCE & ST [(2018) Tax Pub (ST) 0298 (CESTAT-All); (2018) 082 ITPJ (S) 0193]. Applying the above judgment, the appellant is eligible for small service provider exemption after considering exemption and abatement. Hence, there is no liability for service tax arise.
- The appellant further submitted that the liability of the service tax does not arise for the service provided to construction of individual residential bungalow. By plain reading of Sr. No. 14(b) of the mega exemption Notification No. 25/2012-ST dated 20.06.2012, it said that a single residential unit otherwise than as a part of a residential complex. The work done by the appellant are for single residential bungalow and within all well-known societies, where all the bungalows are independent. Therefore, the said work is exempted under Sr. No. 14(b) of mega Notification No. 25/2012-ST dated 20.06.2012.
- The appellant is engaged in construction of Shreyas Foundation, which is an educational school as per Sr. No.12A (b) of, the mega exemption Notification No. 25/2012-ST dated 20.06.2012, a structure meant predominantly for use as an educational or under a contract which had been entered into prior to the 1st March, 2015 is exempt from the service tax. The appellant is submitted the letter stating that the work executed prior to 01.03.2015.
- The appellant further submitted that the liability of the service tax does not arise for the construction service provided to Sabarmati Ashram Preservation and Memorial Trust, Sabarmati Ashram is known as Gandhi Ashram. It is a monument and to maintain it renovation and some changes are required. Such renovation works are performed in massage gallery, prathana bhumi, parab, hradaykunj, library, magan nivas, dada nu ghar, shop where the khadi and Ghandhi related items are sold, parkshit lay, toilet, ramlal quarter. Moreover, the landscaping work like change in flooring where there is kacha floor, leveling work, etc. Therefore, the work provided to Sabarmati Ashram Preservation and Memorial Trust is exempt as per Sr. No. 12(b) of the mega exemption Notification No. 25/2012-ST dated 20.06.2012.



- The appellant has provided service to 'The Serenity Trust' where the work is performed in 'oxygen park' related to toilet block, drinking water, road, etc. The appellant has received the letter from the trust prior to 01.03.2015 and submitted along with submission. The appellant has provided service to Anand S Sarabhai Charity Trust where the work is performed for trust admin department. The appellant has provided service to Samunnati Trust where the work is performed for trust admin department. The letters for the same are also submitted by them. From the above it is said that all works are done for trust and non-profit organization, any services provided to non-profit organization and trust is out of purview of the service tax.
- The appellant has provided service of renovation of clinic to Dr. Seema Patel and the same is exempted under a structure meant predominantly for use as a clinical or under a contract which had been entered into prior to the 1st March, 2015 as per Sr. No. 12A(b) of the mega exemption Notification no.25/2012-ST dated 20.06.2012. From the above points, it said that the appellant is providing services to Sabarmati ashram, educational institute, clinic, trust, individual bungalow, etc. which are trust and non-profit organization or educational institute or monument and therefore it is out of purview of service tax. Hence the applicability of service tax does not arise.
- The SCN is issued for the period 2015-16 and 2016-17 with the ascertained amount. But the department without issuing another SCN, added the period of 2017-18 to the order. Therefore, the order is invalid and required to be quashed.
- The SCN fails to assert classification under a particular head, hence, levy and collection of tax on the basis of specified taxable service have not been at all considered as well as the criteria of basic exemption limit. Thus, show cause notice is without application of mind and completely mechanical. The appellant has relied on following judicial pronouncement:
 - a. Commissioner of C.Ex. Bangalore Vs. Brindavan Beverages (P) Ltd. – 2007 (213) ELT 487 (SC)
 - b. Mahadev Trading Company Vs. Union of India – 2020-TIOL-1683-HC-AHM-GST
 - c. Sahibabad Printers Vs. Additional Commissioner CGST (Appeals) and 2 others – 2020-TIOL-2164-HC-ALL-GST
 - d. Principal Commissioner Vs. Shubham Electricals – 2016 (42) STR J312 (Del.)
 - e. Back Office IT Solutins Private Limited Vs. Union of India in W.P © 5766/2019 & CM APPL. 25101/2019
- From the above it is said that the SCN is issued without applying legal procedure and mechanical manner. SCN is not specific on the contrary lack of details. Here also SCN failed to establish under which service head the appellant is liable to pay service tax. Therefore, SCN is vague and liable to be quashed.

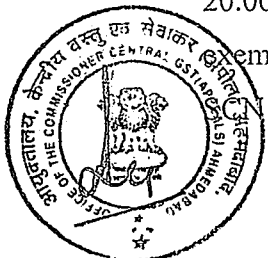


- They have filed all income tax returns within the time. There malafied intention cannot be attributed to the appellant. Therefore, the demand for an extended periods is hit by limitations.
- There is no (a) fraud; or (b) collusion; or (c) willful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax. Therefore, penalty under Section 78 should not be imposed. The appellant is relied on following judicial pronouncement:
 - a. Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I – 2007 (216) E.L.T. 177 (S.C.)
 - b. CCE, Tiruchirapalli Vs Shri Suthan Promoters – 2010-T10L-623-HC-MAD-ST
 - c. RAC Steels Vs. CCE, Salem – 2010-T10L-484- CESTAT-MAD
 - d. Rajarani Exports Vs. CCE, Salem – (2010) 18 STR 777
- The appellant has not charged service tax from the service receivers as the appellant was under bona-fide belief that no service tax is payable. The appellant has not collected service tax from the service receivers and therefore provision of Section 67(2) will be applicable and benefit of cum duty valuation is admissible and therefore taxable value is required to be recomputed.

4. Personal hearing in the case was held on 20.10.2022. Ms. Priyanka Amin, Chartered Accountant, appeared on behalf of the appellant for personal hearing. She reiterated submission made in appeal memorandum and in the written submission submitted during the personal hearing.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum as well as in the additional written submission and documents available on record. The dispute involved in the present appeal relates to the confirmation of demand for service tax on the income received by the appellant for providing taxable services. The confirmation of demand pertains to the period FY 2015-16 to FY 2017-18 (up to Jun-2017). The adjudicating authority had confirmed the demand considering the service provided by the appellant to be covered under the category of Construction Service and denying the exemption benefit as sought for by the appellant in their reply to the show cause notice on various grounds.

6. I also find that main contention of the appellant is that the construction service related to school, individual residential bungalow and projects provided by the Trust and national monuments, etc., which are exempted from Service Tax vide Notification No. 25/2012-ST dated 20.06.2012 and the remaining amount not exceeding the threshold limit of Rs. 10,00,000/- and exempted under Notification No. 33/2012-ST dated 20.06.2012. They also contended that the demand is issued for the period 2015-16 and 2016-17 with the ascertained amount, however in the



the said show cause notice dated 26-6-1997 is not sustainable. We therefore, allow the appeal. The appellant shall be entitled for consequential relief, as per law."

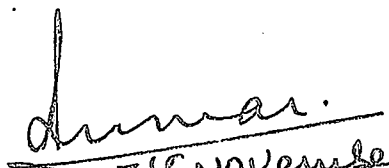
8.2 In view of the above, I find that the impugned order is not sustainable for the FY 2017-18 (up to Jun-2017).

9. As regard the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 admissible to the appellant or not, I find that the total value of service provided during the Financial Year 2014-15 was Rs. 21,03,765/- & during the Financial Year 2015-16 was Rs. 25,12,246/- as provided by the appellant, which is relevant for the exemption under Notification No. No. 33/2012-ST dated 20.06.2012 for the FY 2015-16 & FY 2016-17. Since this is dependent upon the value of taxable services provided during each financial year, this aspect also needs to be examined during the remand proceedings. Hence, it is also directed to adjudicating authority to check the eligibility of the same after considering the amount if any exempted from whole of service tax leviable thereon under Section 66B of the Finance Act, 1994.


10. As regard the contention of the appellant that they have not charged service tax from the service receivers and therefore provision of Section 67(2) will be applicable and benefit of cum duty valuation is admissible and therefore taxable value is required to be recomputed, the same may also be examined by the adjudicating authority and give appropriate finding on the same.

11. In view of the above discussion, I set aside the impugned order and remand the case to the adjudicating authority to decide the case as per directions given above.

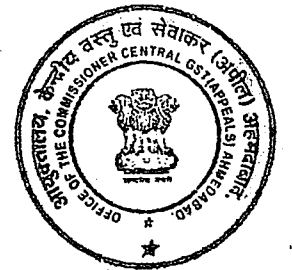
12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


7 November 2021
(Akhilesh Kumar)
Commissioner (Appeals)

Attested


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

Date : 07.11.2022



By RPAD / SPEED POST

To,
M/s. Amin Associates,

Appellant

Surmala 3, Vijay Park Society,
Opp. Municipal Market,
Navrangpura,
Ahmedabad – 380009

Respondent

The Deputy Commissioner,
Central GST,
Division-VII, Ahmedabad North

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

