



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: 20221264SW000000AF2

### स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/216/2022-APPEAL / 53111 - 118
- ख अपील आदेश संख्या Order-in-Appeal Nos. AHM-EXCUS-002-APP-72/2022-23  
दिनांक Date : 06-12-2022 जारी करने की तारीख Date of Issue 08.12.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 01/AC/Dem/2021-22 दिनांक: 21.04.2021, issued by  
Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

#### 1. Appellant

**Shri Khumansinh Bhagvanbhai Gohil,**  
**Village Rajodá, Near Bavla,**  
**Ahmedabad-382220**

#### 2. Respondent

**The Deputy/ Assistant Commissioner, CGST, Division-V, Ahmedabad**  
**North, 2nd 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 :

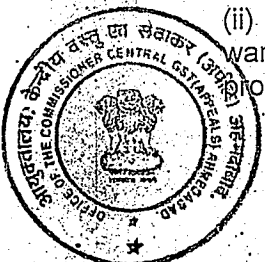
भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(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 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 करी 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 Shri Khumansinh Bhagvanbhai Gohil, Village Rajoda, Near Bavla, Ahmedabad – 382220 (hereinafter referred to as “the appellant”) against Order-in-Original Number 01/AC/Dem/2021-22/NBS dated 21.04.2021 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division V, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. AEXPG8824RST001. On scrutiny of the data received from CBDT for the Financial Year 2014-15, it was noticed that there is difference of value of service of Rs. 56,15,176/- 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 2014-15. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant was 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 was issued a Show Cause Notice No. V/15-21/Khumansinh Gohil/2019-20 dated 15.10.2019 demanding Service Tax amounting to Rs. 6,94,035/- 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 penalty under Section 78 of the Finance Act, 1994. The Show Cause Notice was ex-parte adjudicated vide the impugned order by the adjudicating authority and the demand of Service Tax amounting to Rs. 6,94,035/- 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. Further, Penalty of Rs. 6,94,035/- was also imposed on the appellant under Section 78 of the Finance Act, 1994.

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

- They are in the business of Supply of Man Power and registered with Service Tax vide Registration No. AEXPG8824RST001 and have discharged Service Tax liability with due care since registration.
- They are in the business of Man Power Supply service and the same falls under Reverse Charge Mechanism and the taxable value is 25% only during the relevant period, hence they were liable to Service Tax of Rs. 2,05,460/- on the gross value of service provided amounting to Rs. 66,49,183/- during the FY 2014-15, out of which they have already paid Service Tax of Rs. 2,01,283/-. They submit the copies of ST-3 returns, copies of Challan, copies of calculation sheet & copies of sample bills.



- Due to Covid-19 issue in the family of their consultant, they were not able to attend the personal hearing.
- They requested to set aside the impugned order.

4. Personal hearing in the case was held on 02.12.2022. Shri Hiren Thakkar, Chartered Accountant. and Shri Ujjawal Jain, Authorised person, appeared on behalf of the appellant for personal hearing. He submitted a written submission during the personal hearing. He reiterated submission made in appeal memorandum as well as in the written submission made during personal hearing.

4.1 The appellant in their additional submission dated 02.12.2022, inter alia made the following submission:

- The adjudicating authority has made ex-party order and confirmed demand of service tax on the entire value instead of applying Notification No. 30/2012-ST, which were applicable to Manpower recruitment / supply agency service. The appellant has obtained service tax number under the category of "Manpower recruitment / supply agency service" and filled all his return under the same service by availing benefit of Notification No. 30/2012-ST.
- The appellant submitted the invoice wise sales summary details for the year 2014-15; all challans paid along with summary sheet; and reconciliation statement for sales as per books of accounts and sales shown in the service tax return.
- With regard to the difference of Rs. 2,96,201/- in the income shown in the Books of Account and income / amount credited as reflected in Form 26AS, the appellant submitted that the said Rs. 2,96,201/- is on account of Bonus invoice and reimbursement of expenses invoice issued by them. They understand that "Service Tax is not liable on "Reimbursement of Expenses" and hence they have not paid the Service Tax on the same.
- As regard the difference of Rs. 57,077/- in Service Tax paid and Service Tax payable shown in their reconciliation statement, the appellant submitted that in the FY 2012-13, M/s. Finar Limited was paying full Service Tax @ 12.36% and not applying Reverse Charge Mechanism on 75% of the total value. As they known that this was not in accordance with the provisions of Service Tax but as they received the full amount of Service Tax from M/s. Finar Limited, they as a genuine assessee paid all Service Tax collected from M/s. Finar Limited. The Service Tax department carried out audit of M/s. Finar Limited and make them liable for the RCM on the services provided by the appellant on 75% value and M/s. Finar Limited had paid all Service Tax dues arise out of



invoices issued by the appellant and deduct the same amount from the appellant, as they had paid excess amount of Service Tax in FY 2012-13, so the difference of Rs. 57,077/- is on account of Service Tax paid by M/s. Finar Limited in their Service Tax audit for the year 2012-13. Whatever amount raised by Service Tax audit team from M/s. Finar Limited in respect of appellant, has been recovered by M/s. Finar Limited from the appellant and the appellant have taken ITC of the said amount for the year 2012-13, while filing Service Tax Return for the FY 2014-15 (2<sup>nd</sup> Half Year Return).

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 submission dated 02.12.2022 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 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.

6. It is observed from the case records that the appellant were engaged in providing Manpower Supply Service, and they were required to pay Service Tax on 25% of the gross amount received by them under reverse charge mechanism as per Notification No. 30/2012-ST.

7. It is further observed that the SCN in question has been issued to the appellant, based on data received from the CBDT for FY 2014-15, and its comparison with the value of services provided in the ST-3 Returns. It is also observed that the appellant is registered with Service Tax department under the service category of "Manpower recruitment / supply agency service". It is also observed that the appellant had filed their Service Tax return for the period FY 2014-15 and paid Service Tax under the said category of service by availing benefit of Notification No. 30/2012-ST dated 20.06.2012. As per the said notification, the appellant is required to discharge their Service Tax on 25% of the value of the services during the period in question. However, I find that while issuing the present SCN, the Service Tax has been demanded on the entire difference of the amount of value of service and value on which the service tax was paid by the appellant without considering the service category and without verifying the eligibility of the applicable notification, as mentioned supra. The same has been confirmed in the impugned order. Thus, I find that the SCN has been issued to the appellant without appreciation of facts available on record and the quantification of demand made in the SCN and in the impugned order is not legally tenable.

8. I further find that the appellant have in their appeal memorandum and in additional submission dated 02.12.2022 made during the personal hearing, given reconciliation statement and other documents in support of their case. After considering the facts of the present appeal, I find that the appellant had not made any written submission before the adjudicating authority. Further, since the appellant did not attend the personal hearing before the adjudicating authority, no oral submission was made by them in their defense. I find that the SCN as well as the impugned order did not contest the nature of service provided by the appellant in their ST-3

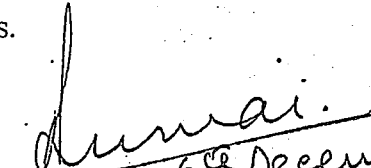


returns as well as applicability of notification claimed in ST-3. Hence, the matter requires only reconciliation of figures / documents submitted by the appellant and to arrive at correct assessment. The appellant has not submitted any documents before the adjudicating authority. Therefore, I am of the considered view that it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submission of the appellant, made in the course of the present appeal and thereafter, adjudicate the matter.

9. In view of the above discussion, keeping all the issues open, I remand the matter back to the adjudicating authority to reconsider the issue afresh and pass a speaking order after following the principles of natural justice. The appellants are also directed to submit all the relevant documents to the adjudicating authority within 15 days of receipt of this order.


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.

  
"6<sup>th</sup> December 2022"  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date : 06.12.2022

Attested

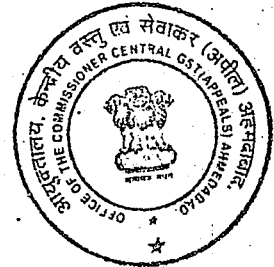
  
(R. C. Muniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

To,

Shri Khumansinh Bhagvanbhai Gohil,  
Village Rajoda, Near Bavla,  
Ahmedabad - 382220

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



Appellant

Respondent

Copy to :

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

- ~~5) Guard File~~
- 6) PA file

