



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: 20221264SW0000613038

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/805/2022-APPEAL / 5728 - 33
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-75/2022-23
दिनांक Date : 08-12-2022 जारी करने की तारीख Date of Issue 12:12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/100/2021-22
दिनांक: 03.01.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII,
Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Shah Shrutiben Bhumishkumar,
41A, Kirti Society, Ramnagar,
Sabarmati, Ahmedabad-380005

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 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 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 :

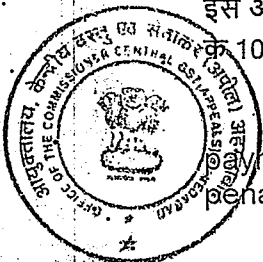
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Shah Shrutiben Bhumishkumar, 41A, Kirti Society, Ramnagar, Sabarmati, Ahmedabad- 380005 (hereinafter referred to as 'the appellant') against Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/100/2021-22 dated 03.01.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST, Division-VII, Ahmedabad North (hereinafter referred to as the "adjudicating authority")

2. The appellant are engaged in providing taxable services but have not taken service tax registration. On the basis of the data received from the CBDT, it was noticed that the appellants have earned service income on which service tax liability was not discharged. Letters were issued to them to explain the reasons for non-payment of tax and to provide documents like ITR, Form 26AS, VAT/Sales Tax returns, Annual Bank Account, Contracts /Agreement entered for provision of service, Balance Sheet, P&L A/c, ST-3 returns, etc. However, neither any documents nor any reply was submitted by them. Therefore, the service tax liability was ascertained on the basis of the value of 'Sales of services under Sales/Gross Receipts' from the services as provided by the CBDT for the F.Y. 2014-2015. It was also noticed that the appellant had not obtained the service tax registration for the taxable services provided by them in the F.Y.2014-15, 2015-16, 2016-17 to 2017-18 (upto June, 2017).

2.1 Therefore, a Show Cause Notice (SCN) No. CGST/AR-V/Div-VII/A'bad-North/TPD UT/99/2020-21 dated 27.09.2020, was issued to the appellant proposing the recovery of service tax demand of Rs.1,96,327/- not paid in the F.Y. 2014-15 and service tax not paid in the F.Y. 2015-16 to 2017-18 (upto June, 2017) (to be ascertained in future); alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 77 (1) & (2) & penalty u/s 78 of the Finance Act, 1994 was also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.4,57,899/- was confirmed alongwith interest. Penalty of Rs.10,000/- each u/s 77(1) & (2) and equivalent penalty of Rs.4,57,899/- u/s 78 was also imposed.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

- The appellant is providing information technology services to the clients outside India and are receiving the payment in foreign currency through Paypal. Thus, the services rendered are export of service which is not taxable. Reliance placed on the decision passed by Apex Court in the case of Faquir Chand Gulati-2008(12) STR 401 (SC). So when the demand of service tax is not sustainable, interest liability also does not arise.
- Penalty under Section 77(1) & 77(2) of the F.A., 1944 is not imposable when there is no service tax liability to discharge. The appellant is rendering services by way of exports and hence not required to file returns.
- Penalty under Section 78 is also not imposable as the appellant has not suppressed any material facts with intent to evade tax, infact they were under the bonafide belief that the services are exported hence not taxable. Reliance placed



in the judgment of Apex Court passed in the case of Pahwa Chemicals-2005(189) ELT 257 (SC).

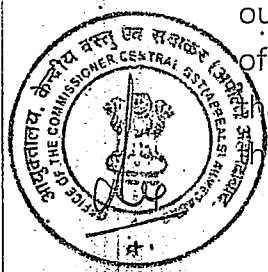
- The turnover in the F.Y.2013-14 was Rs.4 lacs, hence by virtue of Notification No.33/2012-ST dated 20.06.2012 they are eligible for the benefit of threshold exemption.

4. Personal hearing in the matter was held on 02.12.2022. Shri Sunil Sanghvi, Chartered Accountant, appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum. He also stated that he would submit the relevant document from Paypal, as additional written submission.

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 by the appellant at the time of personal hearing. The issue to be decided in the present case is as to whether the demand of Rs.4,57,899/-, 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. 2014-2015 to F.Y. 2017-2018 (upto June, 2017).

6. It is observed that the adjudicating authority has confirmed the demand on the sole argument that the appellant does not fulfil the criteria formulated under Rule 6A of the Service Tax Rules, 1994 and the Export of Service Rules, 2005, for treating the service as export of service. He observed that the appellant is located in the taxable territory i.e. in India. The recipient of service (i.e. UPWORK a mediator Company), through whom the appellant received all work related orders, is located outside India. As no invoices were provided, he could not ascertain the place of provision of service and also whether the service provided is to the clients situated outside India or not. The service of Management, Maintenance and Repair is not a service specified in the negative list spelt out in Section 66D of the Act. Therefore, he held that the income earned by the appellant towards the Management, Maintenance and Repair services is taxable and as the income earned is not below the threshold limit of Rs.10 Lacs, the appellant is not eligible for the benefit of Notification No.33/2012-ST dated 20.06.2012 as claimed by them.

7. It is observed, in this regard that the demand has been confirmed against the appellant for the income earned, for providing Management, Maintenance and Repair services during the F.Y. 2014-15 to 2016-17. The adjudicating authority, while giving the findings that the service provided was not export of services, has vehemently relied on the provisions of Export of Service Rules, 2005 and clause (1) of Rule 6A of the Service tax Rules, 1994. It is observed that the 'Export of Service Rules, 2005' were superseded vide 'Place of Provision of Services Rules, 2012' vide Notification No. 28/2012-S.T., dated 20-6-2012. As the period of dispute covers the F.Y. 2014-2015 to F.Y. 2017-2018 (upto June, 2017), I find that the provisions of Export of Service Rules, 2005, cannot be made applicable to the instant case. To decide whether the service rendered was to a recipient outside India, the adjudicating authority should have referred to provisions of the 'Place of Provision of Services Rules, 2012', which I find was not done, so to that extent, I find that the impugned order is legally not sustainable as it has been passed on the basis of the legal provisions, which is not existing for the period of demand.



8. Further, it is also observed that the appellant has failed to submit any contract and invoices either before the adjudicating authority or before the appellant authority to substantiate their claim that the services rendered was to a recipient located outside India and that the nature of service was of 'Information Technology Services'. In the absence of all such documentary evidences, the appellant cannot claim the benefit of export of service as all these documentary evidences are necessary which shall decide the place of provision of service.

9. The appellant have also claimed that in the F.Y.2013-14, their turnover was Rs.4 lacs hence they are eligible for the benefit of threshold exemption in terms of Notification No.33/2012-ST dated 20.06.2012. The appellant, however, has failed to produce the relevant documents either before the adjudicating or before me to establish their above claim. Therefore, such claim made by the appellant cannot be entertained. Larger Bench of Hon'ble Supreme Court in the case of *Harichand Shri Gopal - 2010 (260) E.L.T. 3 (S.C.)*, has observed that it is settled law that the person availing the exemption notification shall satisfy all the conditions prescribed in the notification and failure to do so would disentitle him from the exemption.

10. I, therefore, find it proper to remand the matter to the adjudicating authority, who will extend opportunity to the appellant to submit necessary documents to satisfy whether the service rendered are eligible to be considered as export of service in terms of provisions of 'Place of Provision of Services Rules, 2012'.

11. In view of the above discussion, I, remand the matter to the adjudicating authority, with a direction to re-examine the issue as discussed at Para- 6 to 8 and pass a speaking order.

12. Accordingly, the impugned order is set aside and appeal is allowed by way of remand.

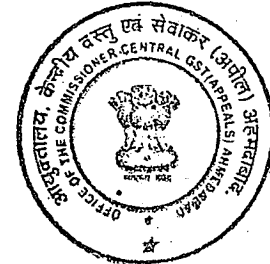
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Akhilesh Kumar)

Commissioner (Appeals)

Date: 12.2022



Attested

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

By RPAD/SPEED POST

To,
M/s. Shah Shrutiben Bhumishkumar,
41A, Kirti Society, Ramnagar,
Sabarmati,

Appellant

Ahmedabad- 380005

The Deputy 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, CGST, Division-III, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.

(For uploading the OIA)

5. Guard File.



