



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: 20221264SW000001010D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/215/2022-APPEAL / 6123 - 27
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-81/2022-23
 दिनांक Date : 15-12-2022 जारी करने की तारीख Date of Issue 20.12.2022
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 03/AC/Dem/2021-22/NBS दिनांक: 21.04.2021,
 issued by Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Shri Shree Balaji Services,
61, Shreya Society, Dholka Road,
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, 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.



(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.

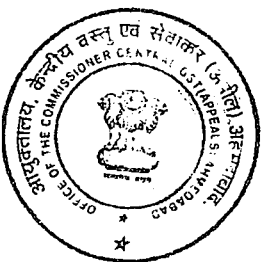
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अनुसूचि-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 को 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. Shree Balaji Service, 61, Shreya Society, Dholka Road, Bavla, Ahmedabad - 382220 (hereinafter referred to as "the appellant") against Order-in-Original No. 03/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 were engaged in providing "Manpower Recruitment / Supply Agency Services" and were holding Service Tax Registration No. AGXPV0279R1Z5. On scrutiny of the data received from the CBDT for the Financial Year 2014-15, it was noticed that there is difference of value of service of Rs. 2,59,874/- 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 has 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/15-20/Shree Balaji Services/2019-20 dated 15.10.2019 demanding Service Tax amounting to Rs. 32,121/- 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.

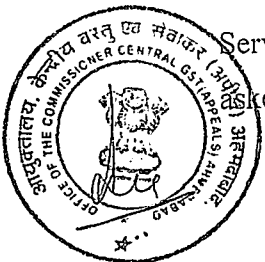
2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority ex-parte and the demand of Service Tax amounting to Rs. 32,121/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further, Penalty of Rs. 32,121/- 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 were in Business of Supply of Man Power in the Trade name of Shree Balaji Services and registered with Service Tax Registration No. AGXPV0279RSD001 w.e.f. 05.06.2012. They have discharged their Service Tax Liability with due care since registration. They are liable to pay Service Tax on 25% of Taxable Value of Services rendered under Reverse Charge Mechanism for the FY 2014-15.



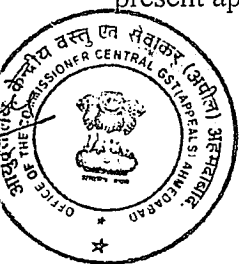
- They received Show Cause Notice dated 15.10.2019 regarding difference between Value of Services from ITR and Gross Value in Service Tax Return provided. They approached the Service Tax Department in response to the said notice with the Service Tax Challan already paid for Rs. 19,641/- dated 26.10.2015. However, they had been asked to wait for Personal Hearing. Due to COVID- 19 issue in the family of their consultant, they were not able to attend the personal hearing.
 - As they were in the Business of Man Power Supply which is falling under Reverse Charge Mechanism and the Taxable Value is 25% only, hence they were liable to service tax of Rs. 8,030/- on differential value of service of Rs. 2,59,874/-, instead of Rs. 32,121/-, as confirmed in the impugned order.
 - Further, they have already paid Service Tax amount of Rs. 18,041/- and Interest of Rs. 1,600/- on 26.10.2015 vide Challan No. 00548. Thus, they have paid Service Tax in excess of Rs. 10011/- for the FY 2014-15. They also submitted the copy of the said challan.
 - 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 14.12.2022. Shri Hitesh Thakkar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.
5. 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 Rs. 32,121/- 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. I find that the appellant have in their appeal memorandum contended that as they were in the business of Man Power Supply and their service falling under Reverse Charge Mechanism, the applicable taxable value is 25% only. Hence, they were liable to pay service tax amount of Rs. 8,030/- on differential value of service of Rs. 2,59,874/-, instead of Rs. 32,121/- as confirmed in the impugned order. They have further contended that they have already paid Service Tax amount of Rs. 18,041/- and Interest of Rs. 1,600/- on 26.10.2015 vide Challan No. 00548. They also submitted that they approached the Service Tax Department in response to the SCN with the Service Tax Challan already paid for Rs. 19,641/- dated 26.10.2015. However, they had been asked to wait for the personal hearing, which they could not attend due to COVID reasons.



7. 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. 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 also find that the appellant have already paid the required Service Tax on differential value of service of Rs. 2,59,874/-. It is further contended that instead of Rs. 32,121/- as confirmed in the impugned order, they have already paid applicable Service Tax of Rs. 18,041/- and Interest of Rs. 1,600/- on 26.10.2015 vide Challan No. 00548. They also submitted that they had approached the Service Tax Department in response to the SCN with the Service Tax Challan already paid for Rs. 19,641/- dated 26.10.2015. However, their claim was not taken into cognizance.

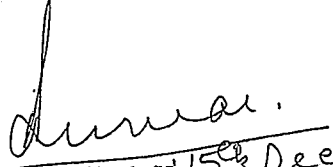
9. After considering the facts of the present appeal, I find that the appellant had not made any written submission before the adjudicating authority. Further, since the appellant did not attend the personal hearing before the adjudicating authority, no oral submission was made by them in their defense. 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. Further, the appellant has also not disputed the differential taxable value, as appearing in the SCN. Hence, the only issue remaining to be decided is applicability of Notification No. 30/2012-ST dated 20.06.2012 regarding liability of appellant under reverse charge mechanism. The appellant has already paid the amount of Service Tax along with interest on 26.10.2015, i.e. before issuance of SCN. 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.



10. 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.


11. 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) 15th Decemb.
Commissioner (Appeals) 2022

Date : 15.12.2022

Attested


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



By RPAD / SPEED POST

To,
M/s. Shree Balaji Service,
61, Shreya Society, Dholka Road,
Bavla, Ahmedabad – 382220

Appellant

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

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

