



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: 20221264SW0000018792

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/66/2022-APPEAL/6106-11
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-86/2022-23
 दिनांक Date : 19-12-2022 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. 15 & 16/JC/D/JS/2020-2021 दिनांक: 18.03.2021,
 issued by Joint Commissioner(In-situ), Division-III, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Babubhai Somabhai Patel,
2/13, Kunpur-I, Mandal,
Viragam, Ahmedabad-382150

2. Respondent

The Joint Commissioner(In-Situ), CGST, Division-III, Ahmedabad North , 2nd
Floor, Gokuldham Arcade, Sarkhej-Sanand Road - 382210

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 हों।

(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 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 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 अपीलो 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. Babubhai Somabhai Patel, 2/13, Kunpur-I, Mandal, Viramgam, Ahmedabad-382150 (hereinafter referred to as 'the appellant') against Order-in-Original No. 15 & 16/JC/D/JS/2020-2021 dated 18.03.2021 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner (in-situ), CGST, Division-III, Ahmedabad North (hereinafter referred to as the "adjudicating authority")

2. The facts of the case, in brief are, that the appellant are engaged in providing Construction Services other than Residential Complex, including Commercial/Industrial building or Civil Structures and is holding Service Tax Registration No.AFSP0189CSD001. On the basis of the data received from the CBDT for the F.Y. 2014-15, it was noticed that the appellant has short paid service tax amount of Rs.10,59,342/- on the income of Rs.85,70,724/- declared in their Income Tax Return (ITR) / Form 26AS filed for F.Y.2014-15, but not declared in their ST-3 Return for said period. Similarly, the ITR filed for F.Y. 2015-16 & F.Y. 2016-17 revealed that the appellant have short paid Service Tax to the tune of Rs.10,88,771 & Rs. 19,63,170/-, respectively.

2.1 Letters were subsequently issued to the appellant 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 for the F.Y. 2014-15 to 2016-17. However, neither any documents nor any reply was submitted by them.

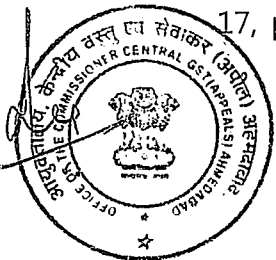
2.2 Following Show Cause Notices were, therefore, issued to the appellant, proposing the recovery of service tax demand alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 70 & 77(2) as well as penalty u/s 78 of the Finance Act, 1994 were also proposed.

Sr.No.	Period covered	SCN No. & Date	Service Tax Amount (in Rs.)
01	2014-15	III/SCN/DC/Babubhai/29/2019-20 04.12.2019 dtd	10,59,342/-
02	2015-16 to 2016-17	III/SCN/DC/Babubhai/58/2020-21 23.10.2020 dtd	30,51,941/-
		Total	41,11,283/-

2.3 The said SCNs were adjudicated vide the impugned order, wherein the service tax demand of Rs.41,11,283/- was confirmed alongwith interest. Late fee of Rs.81,000/- u/s 70 and penalty amounting to Rs.41,11,283/- 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 claim that the work done, during financial years 2014-15 to 2016-17, pertained to government orders entered for construction of well, which are



exempt under Mega Exemption Notification No. 25/2012 (Sr. No. 11 & 12). Therefore, they are not liable to make the payment of service tax.

- They also submitted that the demand and penalty of Rs.41,11,283/- is required to be deleted as it is made arbitrarily and without considering the facts of the case.

4. Personal hearing in the matter was held on 14.12.2022. Shri Niral Parikh, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also submitted copies of 26AS, ITR and sample copy of work order during hearing. He stated that he would submit the copies of remaining work orders within seven days.

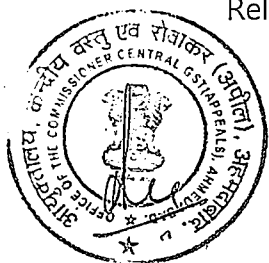
5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing and the documents submitted during hearing. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.41,11,283/-, 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. 2016-17.

6. On perusal of the SCNs, it is observed that the service tax liability of Rs.10,59,342/- for the F.Y. 2014-15, and service tax liability of Rs.30,51,941/- for the F.Y.2015-16 and F.Y. 2016-17, was ascertained on reconciliation of the income shown in the ST-3 Returns filed by the appellant vis a vis the income shown in their ITR filed with the Income Tax department. As the appellant failed to submit any documentary proof evidencing the nature of service rendered as exempted service, the adjudicating authority upheld the entire demand under Construction services under other than Residential Complex, including Commercial/Industrial building or Civil Structures. However, the appellant has now claimed that the service rendered during the disputed period were provided to the governmental bodies, hence, are exempted vide Entry no. 11 & 12 of Mega Notification No. 25/2012-ST.

6.1 It is observed that the appellant before the adjudicating authority had not raised the issue of exemption under Notification No.25/2012-ST. Hence, the benefit of exemption was not granted by the adjudicating authority. However, the appellant have now submitted a copy of Work Order dated 25.09.2014, entered for construction of Aganvadi Centre at various villages under Panchayat (R & B Sub-Division) Shihori, of Panchayat (R&B Palanpur Division), ITR>Returns, P&L Account, before me. I have gone through the copy of Work Order dated 25.09.2014, which appears to be a construction work carried out for Panchayat.

7. In terms of Serial No. 12 of Notification No. 25/2012-ST dated 20.06.2012, services provided to the government or local authority of governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original work meant for use other than commerce, industry or business or profession as well as any structure predominantly for use as an educational establishment are exempted. Relevant text of the said notification is reproduced below:-

12. *Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-*



- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

7.1 Further, Board vide Instruction dated 26-10-2021, has specifically instructed that where show cause notices are issued based on the difference in ITR-TDS data and service tax returns, then in all such cases adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee. As the appellant have submitted a Work Order dated 25.09.2014, entered for construction of Aganvadi Centre at various villages under Panchayat (R & B Sub-Division) Shihori of Panchayat (R&B Palanpur Division) during the hearing, I find some rationale in the claim made by the appellant, which however, needs through verification.

8. I, therefore, find it proper to remand the matter back to the adjudicating authority, who shall decide the case afresh on merits after carrying out proper verification of the documents submitted by the appellant. The appellant is also directed to submit all the relevant documents and details to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions, within 15 days. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

9. In view of above discussion, I remand back the matter back to the adjudicating authority for examination of the documents and verify the claim of the appellant and subsequently determine the tax liability.

10. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

11. 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.

dhruv
19 December,
(अखिलेश कुमार) 2022
आयुक्त (अपील्स)

Date: 19.12.2022

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



Appellant

By RPAD/SPEED POST

To,
M/s. Babubhai Somabhai Patel,

2/13, Kunpur-I, Mandal,
Viramgam,
Ahmedabad-382150

Joint Commissioner,
Central Tax, CGST & Central Excise,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.

