



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- टेलिफैक्स07926305136



DIN: 20221264SW0000318344

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1275/2022-APPEAL / 6465 - 99
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-92/2022-23
दिनांक Date : 22-12-2022 जारी करने की तारीख Date of Issue 26.12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 33/AC/D/KMV/2021-22 दिनांक:
17.03.2022/23.02.2022, issued by Assistant/Deputy Commissioner, Division-III, CGST,
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Rahil Buildcon Pvt. Ltd.,
Bungalow No. 82, Green Park,
Gokuldham Township, Sanathal
Ahmedabad-382210

2. Respondent

The Assistant/Deputy Commissioner, 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 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 जाएँ और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाएँ।

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, अपील 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.

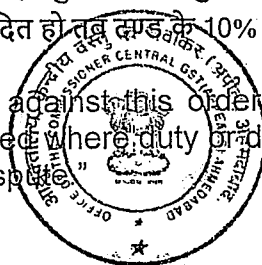
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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. Rahil Buildcon Pvt. Ltd., Bungalow No. 82, Green Park, Gokuldharm Township, Sanathal, Ahmedabad-382210 (hereinafter referred to as 'the appellant') against Order-in-Original No. 33/AC/D/KMV/2021-22 dated 17.03.2022/23.02.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST, Division-III, Ahmedabad North (hereinafter referred to as the "adjudicating authority")

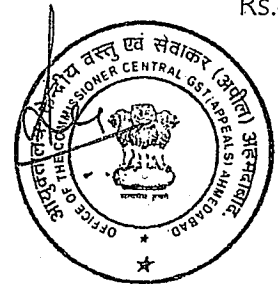
2. The facts of the case, in brief, are that on the basis of the data received from the CBDT for the F.Y. 2015-16 for unregistered service providers, it was observed that the appellant had declared income of Rs.80,00,000/- in their Income Tax Return (ITR) / Form 26AS filed for the F.Y. 2015-16. However, the appellant are neither registered nor had paid service tax on the said declared income. Therefore, letters and summons were issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16. The appellant neither provided any documents for non-payment of service tax on such receipts nor filed any reply to the notice.

2.1 A Show Cause Notice (SCN) No.III/SCN/DC/Rahil/40/2020-2021 dated 20.10.2020 was, therefore, issued to the appellant, proposing recovery of service tax amount of Rs.11,59,200/- alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994 respectively for the F.Y. 2015-16. Imposition of penalty under Section 77(1) as well as 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.11,59,200/- was confirmed alongwith interest. Penalty amounting to Rs.11,59,200/- u/s 78 and penalty of Rs. 10,000/- under Section 77 of the F.A,1994 was also imposed.

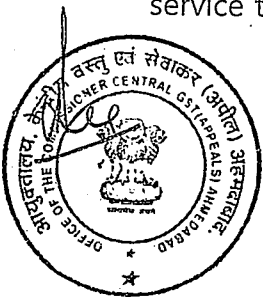
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

- The appellant had purchased single old residential house during F.Y. 2013-14 in Shikshaknagar Co-operating Housing Society, Near Maldhari Society, Bharatnagar, Bhavnagar. This house was subsequently demolished for new construction thereof. After getting the approval for construction on 07.1.2015, two new Blocks (1 & 2) were constructed on the vacant plot as per the approved plan. These two blocks were subsequently sold on 16.05.2015 for Rs.40 lacs each. The income of Rs.80 lacs reflected in the ITR is this amount,



which was received from the sale of these two independent residential houses during the material period.

- In terms of Notification No.25/2012-ST dated 20.06.2012, the single residential unit is exempted from payment of service tax vide Sr.no. 14(b) of the said notification. Hence, they are not liable to pay service tax. Even otherwise, the construction services are taxable @25% of the gross amount charged as per Notification No.26/2012-ST dated 20.06.2021. Further, they claim they are also eligible for the threshold exemption available in terms of Notification No.33/2012-ST dated 20.06.2012 as the turnover in F.Y. 2014-15 was nil. They also provided the audited accounts for the F.Y. 2015-16 showing F.Y. 2014-15 are incorporated as previous year. Thus, the demand after considering the threshold limit and abatement under Notification No.26/2012 shall get reduced to Rs.3,04,500/-
 - However, in their case they are eligible for exemption under Notification No.25/2012-ST dated 20.06.2012, as per Serial No. 14(b).
 - As the matter was very old and related documents were not available with the appellant, the same were not submitted before the adjudicating authority at the relevant time. However, now these documents are submitted to consider the same on principles of natural justice.
 - The SCN issued by invoking extended period of time is time barred as there is no suppression of facts with intent to evade payment of tax.
 - They claim that when there is no suppression of facts with intent to evade payment of tax, the demand is not sustainable not the imposition of penalty u/s 78 and u/s 77 sustainable.
4. Personal hearing in the matter was held on 20.12.2022. Shri Jayesh N. Mehta, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum as well as in written submission dated 19.12.2022. He stated that the amount received by the appellant are exempt vide Entry No.14 of Mega Exemption Notification No.25/2012-ST.
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 written submission dated 19.12.2022 as well as the submissions made at the time of personal hearing. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.11,59,200/- 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. 2015-16.

6. It is observed that the entire demand has been raised based on ITR data provided by Income Tax department. Board vide Instruction dated 26.10.2021 has directed the field formations that while analyzing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns. The show cause notice based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. Where such notices have already been issued, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. I find that in the instant case the appellant is not registered with the department and the adjudicating authority, without waiting for a justification from the appellant for non-payment of tax on the income declared in their ITR, has been pre-maturely decided the case ex-parte, which I find is bad in law.

6.1 The adjudicating authority has confirmed the entire demand based on the income declared in their Income Tax Returns / Form 26AS filed for the F.Y.2015-16. The appellant neither submitted any documents nor filed any defense reply before the adjudicating authority. Three personal hearing letters were issued to the appellant but they did not appear on any of these dates. Therefore, the demand was adjudicated ex-parte on the basis of the evidences available on record.

6.2 It is observed from the records that the appellant for the first time appeared before department in the appeal proceedings. The appellant have contended that they have been carrying out construction of residential units. It is also stated that the gross receipt of Rs.80,00,000/- shown in the ITR for the F.Y. 2015-16, pertained to the consideration by way of sale of two single residential houses, as detailed in appeal memorandum. They have claimed that the said activity is covered under Entry no. 14(b) of Exemption Notification No.25/2012-ST dated 20.06.2012. They have also claimed, as alternate contention, that in terms of Notification No.26/2012-ST dated 20.06.2021, the construction services are taxable @25% of the gross amount charged and that they are also eligible for the threshold exemption available in terms of Notification No.33/2012-ST dated 20.06.2012. In support of their above claim, they have, vide submission dated 19.12.2022, provided Sale/Purchase Deed dated 05.12.2013 of Single Residential House, Approved plan of Bhavnagar Municipal



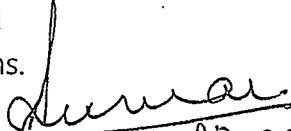
Corporation, Audited Annual Accounts for the F.Y. 2015-16, Sale Deed of Residential House-Block-1 & 2 and Ledger Accounts before me. I find that neither the claims of exemption nor the documents substantiating their claim were produced before the adjudicating authority.

6.3 Since the appellant have submitted the relevant documents, I find that it would be in the interest of natural justice that the matter is remanded back to the adjudicating authority, who shall decide the case afresh on merits after carrying out 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 to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.


7. In view of above discussion, I remand back the matter back to the adjudicating authority, who shall pass the order after examination of the documents and verification of the claim of the appellant.

8. 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.

9. 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.

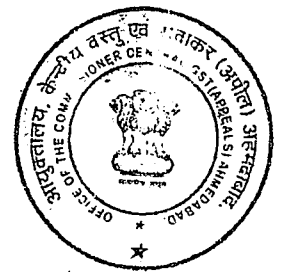

12th Dec 2022
(अखिलेश कुमीर)
आयुक्त (अपील्स)

Date: 12.2022

Attested

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

By RPAD/SPEED POST

To,
M/s. Rahil Buildcon Pvt. Ltd.,
Bungalow No. 82, Green Park,
Gokuldham Township,



Appellant

Sanathal, Ahmedabad-382210

Assistant Commissioner,
Central Tax, CGST & Central Excise,
Division-III, 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.

