



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
Central GST, Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ : 079-26305065 टैलेफैक्स : 079 - 26305136

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क फाइल संख्या (File No.) : V2(ST)204/North/Appeals/ 2018-19  
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-78-19-20/222627022265  
दिनांक (Date): 30/08/2019 जारी करने की तारीख (Date of issue): 09/09/2019  
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित  
Passed by Shri Gopi Nath, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VI), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
Arising out of Order-In-Original No GST/D-VI/O&A/06/Shakti/AC/RJ/18-19 Dated:  
19/12/2018  
issued by: Assistant Commissioner-Central Excise (Div-VI), Ahmedabad North,

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s Shakti Developers**

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया 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

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।





(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) 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।

(d) 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 ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 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.

- (6) 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)

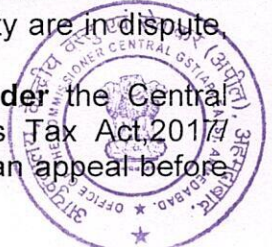
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017, may file an appeal before the appropriate authority.





## ORDER IN APPEAL

This appeal has been filed by M/s. Shakti Developers, B-6, Anand Complex, Near Sola Overbridge, Thaltej, Ahmedabad-380054 [for short – ‘appellant’] against Order-In-Original No. GST/D-VI/O&A/06/Shakti/AC/RJ/18-19 dated 19.12.2018 [for short – ‘impugned OIO’], passed by the Assistant Commissioner of Service Tax, Division-VI, CGST, Ahmedabad North Comm’rate [for short – ‘adjudicating authority’].

2. The facts of the case in brief are that on the basis of information, inquiry was initiated against the appellant on 03.03.2015 which revealed that the appellant is a partnership firm who is engaged in the activity of construction of residential and commercial complex; that they had taken service tax registration on 05.03.2013; that they opted VCES scheme for the period October-2011 to December-2012; that they failed to file the returns timely; that they did not discharge their service tax liability for the period 01.01.2013 to 31.03.2015 regularly; that they short paid the service tax on the residential complex as well as on the shops to the tune of Rs.12,61,819/- which resulted into issuance of Show Cause Notice [for short – ‘SCN’] proposing demand of the said amount alongwith interest and penalty; that further penalty was also proposed under Section 77(1)(b) for failure to maintain books of accounts and other documents, under Section 77(1)(e) for failure to issue invoice in accordance with the provisions of the Act or Rules, under Section 77(2) for failure to self-assess the tax correctly and for failure to file ST3 returns timely, under Section 78 for non-payment of service tax by willful suppression of the facts with intent to evade payment of service tax and under Section 70 of the Finance Act, 1994 for late filing of ST3 Returns. Sufficient opportunities of personal hearing were granted to the appellants for representing their case while adjudication of the SCN. However, the appellant neither filed any written submission nor availed any of the opportunities of personal hearing. The SCN was adjudicated and resulted into confirmation of demand and penalties vide the impugned order as proposed in the SCN.

3. Being aggrieved the appellant has filed this appeal on the following grounds :

- that the impugned OIO is bad, illegal, unlawful and against the principles of natural justice;
- that facts were not considered fully and properly the explanation furnished and the evidence produced by the appellant;
- that appellant should be allowed to produce additional evidence during the course of proceedings;
- that the appellant has given the bank statement, export sale ledger and profit and loss for duty draw but not considered;

4. Opportunities of Personal hearing in the case were granted as per the Section 35 of the Central Excise Act, 1944. However, the appellant did not avail the same.

5. I have gone through the facts of the case, records available and the grounds raised in the appeal. I find that the issue to be decided is whether the appellant is liable to pay service tax as has been held by the adjudicating authority or not.





6. From the case records it reveals that the appellant took the service tax registration on 05.03.2013. At that time, a scheme "Voluntary Compliance Encouragement Scheme, 2013" was introduced by the Government to pay all tax dues for the period 01.10.2007 to 31.12.2012 without legal proceedings. The appellant opted the said scheme for the period 01.10.2011 to 31.12.2012 and declared their tax dues. But they did not pay the full liability by the due date as declared by themselves under the scheme. However after investigation, it also came out that they still failed to pay the correct service tax for the period thereafter i.e. after 31.12.2012. They also filed some of the returns late and failed to file some returns. For all these acts on part of the appellant, SCN was issued to the appellant. Ample opportunities of personal hearing were granted to the appellant to represent their case and to file documents/evidence in support of their claim. But the appellant did not bother either to attend the hearing or to file any reply along with supporting documents/evidence towards the said SCN before the adjudicating authority. Thus, the adjudicating authority decided the SCN by way of the impugned OIO on the basis of available records. I find that the appellant has neither put forth any documents/evidence or argument before the adjudicating authority nor before this authority as to how they are not liable to pay the amount of service tax, interest or penalty as determined in the impugned OIO. However, the adjudicating authority has explained in detail why the appellants are liable to pay the service tax. The tax liability determined under the impugned OIO is based on the documents of the appellant only. I also did not find any convincing ground in their grounds of appeal mentioned under appeal memorandum. Moreover, appellant also failed to explain how the export sale ledger or duty draw is concerned with the construction of flats and shops as mentioned by them in their ground of appeal. Therefore none of the contentions raised by the appellant in their ground of appeal hold any ground.

7. I am therefore not inclined to interfere with the impugned OIO. Accordingly, the impugned OIO is upheld and the appeal of the appellant is rejected.

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

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

*R/Sall*  
( गोपीनाथ ) 30/8/25

आयुक्त (अपील्स)

Attested

*Dave*  
04/09/19  
(Jitendra Dave)  
Superintendent (Appeal),  
Central GST,  
Ahmedabad.

BY R.P.A.D. TO :

M/s. Shakti Developers,  
Paresh Patel,  
11, Ashwamegh Residency,  
Behind Sola Civil Hospital,  
Ahmedabad-380060.





Copy To:-

1. The Principal Chief Commissioner, Central Excise & GST, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, Central GST, Ahmedabad North Comm'rate.
3. The Dy./Asstt. Commissioner, Central GST, Division-VI, Ahmedabad North Comm'rate.
4. The Assistant Commissioner, System, Central GST, Ahmedabad.
- ✓ ~~5.~~ Guard File.
6. P.A. File.

*[Handwritten signature]*  
Principal