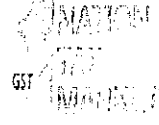




आयुक्त का कार्यालय),अपीलस(  
**Office of the Commissioner,**  
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
**Central GST, Appeal Commissionerate-**  
**Ahmedabad**



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015  
☎ 26305065-079 : टेलफैक्स 26305136 - 079 :  
Email- commrappl1-cexamd@nic.in

DIN-20220164SW000000E85E

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/411/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad / 534 70 5313
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-59/2021-22**  
दिनांक Date : **10.01.2022** जारी करने की तारीख Date of Issue : **11.01.2022**  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original Nos. **GST/D-VI/O&A/14/SHREE UMIYA/JRS/2020-21** dated **21.12.2020**, passed by the Assistant Commissioner, Central GST & Central Excise, Div-VI, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** Shree Umiya Developers, Jaldhara-II, 23, Basant Bahar Road, Bopal, Ahmedabad-380058.

**Respondent-** Assistant Commissioner, Central GST & Central Excise, Div-VI, Ahmedabad-North.

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 :**

(i) 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, 4<sup>th</sup> 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 गमलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(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 गान्य 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 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 पढ़ी 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 filed 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 'संबंधित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

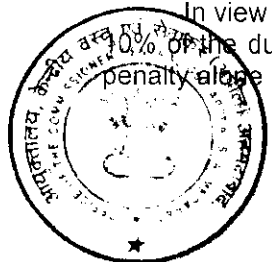
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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।

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**

1. This order arises out of an appeal filed by M/s. Shree Umiya Developers, Jaldhara-II, 23, Basant Bahar Road, Bopal, Ahmedabad-380058 (hereinafter referred to as '*appellant*') against Order in Original No. GST/D-VI/O&A/14/SHREE UMIYA/JRS/2020-21 dated 21.12.2020 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, (GST & Central Excise, Division-VI, Commissionerate:Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant was holding Service Tax Registration No. ACUFS7001FSD001 for providing taxable services namely 'Works Contract Services and GTA Services. Audit of the financial records of the appellant was undertaken by the departmental audit officers for the period from April, 2015 to June, 2017 and Final Audit Report No. 1304/2019-20 dated 08.05.2020 has been issued. Based on the audit observations, a Show Cause Notice No. 297/2019-20 dated 10.06.2020 was issued to the said appellant for demand of the Service Tax not paid/short paid, on account of wrong availment of benefit of Notification No. 33/2012-ST dated 20.06.2012.

2.1 The Show Cause Notice 297/2019-20 dated 10.06.2020 has been adjudicated by the adjudicating authority vide the impugned order, as briefly reproduced below:

- (i) He confirmed the demand of Service Tax of Rs. 84,000/- against the appellant and ordered to be recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, alongwith interest under Section 75 of the Finance Act, 1994.
- (ii) Penalty of Rs. 84,000/- has been imposed on the appellant under the provisions of Section 78(1) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred this appeal. The grounds of appeal are reproduced in following paragraphs.

3.1 The appellant has filed their original ST-3 return for the period from April, 2015 to September, 2015 and the facts that they are availing benefit of exemption Notification No. 33/2012-ST dated 20.06.2012 in respect of an amount of Rs. 10,00,000/-, have been declared in the said ST-3 return. Accordingly, the demand raised for the extended period is not sustainable on the grounds of limitation.

The adjudicating authority has not accepted the benefit of exemption



as per the Notification No. 33/2012-ST dated 20.06.2012, as no invoice/sale deed was executed in the F.Y. 2015-16. The adjudicating authority fails to accept that during F.Y. 2015-16, the appellant has booked sales of Rs. 1,08,94,524/- which is properly reflected in the Audited Profit and Loss Accounts submitted to their office and the appellant has already paid applicable Service Tax on the same sales amount.

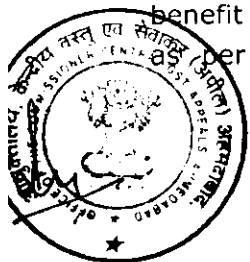
3.3 The adjudicating authority fails to consider only 40% value as taxable value for reconciliation purpose and raised wrong demand. Therefore, appellant also prays to restrict the demand confirmed by the adjudicating authority to that extent.

3.4 The appellant has produced the copy of invoices issued by them which were not submitted to the adjudicating authority due to reason submitted in statement of facts. As per the facts mentioned at Para-14 & Para-15 of the the statement of facts, appellant has submitted that neither their accountant nor their Chartered Accountant have knowledge about invoices issued to Members which were prepared by their Site Office Executive. However, after issuance of impugned order, the appellant has searched the past documents and found invoices issued to the members which have now been submitted.

4. The appellant was granted opportunity for personal hearing on 26.10.2021 through video conferencing. Shri Rupesh Mehta, Chartered Accountant, appeared for personal hearing as authorised representatives of the appellant. Here-iterated the submissions made in Appeal Memorandum. Further, he submitted copies of the invoices, as additional submission.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. It is observed that the issues to be decided in the present appeal are whether the impugned order confirming the demand of Service Tax amounting to Rs. 84,000/- against the appellant towards short payment of Service Tax by way of wrong availment of benefit of Notification No. 33/2012-ST dated 20.06.2012, by invoking the extended period of limitation under the proviso to Section 73 (1) of the Finance Act, 1994, alongwith interest and penalty under Section 78(1) of the Finance Act, 1994, is legally correct or otherwise?

6. It is observed from the case records that the appellant had availed the benefit of Basic Threshold Exemption of Rs. 10,00,000/- in the F.Y. 2015-16, under Notification No. 33/2012-ST dated 20.06.2012 and accordingly,



deducted the said amount from the gross income in their ledger before arriving at the net taxable value, on which the Service Tax was paid.

6.1 The adjudicating authority in the impugned order has observed that "the Notification No. 33/2012-ST dated 20.06.2012 is conditional and provides for benefit of the exemption only in those cases where invoices are issued during a financial year or actual sales during the financial year. From the available facts, I find that no invoice/sale deed was executed by the appellant in the F.Y. 2015-16. Accordingly, the appellant has failed to fulfill the mandatory requirement of issuing invoices for actual sales, as such it is quite clear that the said appellant was not eligible for the benefit of said exemption notification. Further, the appellant has not been able to provide evidence in the present case that any invoice was issued by them or any sale deed was executed by them in the F.Y. 2015-16. Hence, the benefit of the exemption of Rs. 10,00,000/- was not admissible to the appellant under the said notification and as such applicable Service Tax alongwith interest is recoverable from them."

6.2 As regards the contention of the adjudicating authority, it is pertinent to examine the provision of Notification No. 33/2012-ST dated 20.06.2012, which is reproduced below:

"G.S.R. (E).- In exercise of ....., the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

.....

3. For the purposes of determining aggregate value not exceeding ten lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, ....., shall not be taken into account.

Explanation.- For the purposes of this notification,-

(A) .....

(B) "**aggregate value**" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services



*which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."*

6.3 I find that the adjudicating authority has in the impugned order denied exemption on the grounds that *"the appellant has not been able to provide evidence that in the present case any invoice was issued by them or any sale deed was executed by them in the F.Y. 2015-16"*.

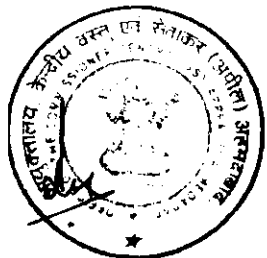
6.4 Further, I find that the appellant has now produced copy of Invoice No. 001/2015-16 dated 03.08.2015 and Invoice No. 002/2015-16 dated 14.09.2015, as an additional submission alongwith appeal memorandum, claiming that the same were not traceable earlier and hence, they were not able to produce the same either before the audit officers or the adjudicating authority.

6.5. It is pertinent to mention in this context that the demand has been made on the basis of audit of the records of the appellant and that the appellant has not submitted relevant records i.e. sales invoice or sale deed before the adjudicating authority, in support of their contention that the conditions as discussed above of the said Notification, have been fulfilled. The appellant has now produced copy of the invoices, as mentioned in above para-6.4 in support of their contention. Accordingly, I find that it would be in the interest of justice, to remand back the matter to the adjudicating authority to examine the contention of the appellant and for fresh consideration, after following the principles of natural justice. Further, the appellant is directed to produce all the relevant documents in support of their claims for exemption before the adjudicating authority so as to examine the matter on merits.

7. Further, as regards the contention of the appellant on the issue of limitation and invoking extended period on the ground of suppression of facts as well as the claim for abatement before arriving at the taxable value, I do not find it proper to examine the said issue at this juncture when the substantial issues in question are being remanded to the adjudicating authority. The appellant is free to raise this issue before the adjudicating authority.

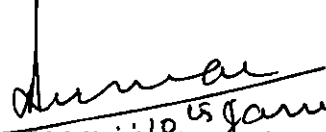
8. On careful consideration of the relevant legal provisions and submission made by the appellant, I pass the Order as per details given below:

- (i) As regards the demand of Service Tax amounting to Rs. 84,000/- confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994, I set aside the impugned order and remand the matter back to the adjudicating authority to examine the contention of the appellant and to decide it afresh, following the principles of natural justice.

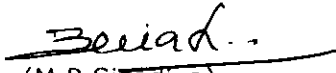


(ii) Further, the impugned order as regards the penalty imposed of Rs. 84,000/- under the provisions of Section 78 of the Finance Act, 1994 is also remanded back for fresh consideration by the adjudicating authority following the principles of natural justice.

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

  
(Akhilesh Kumar) 10 January, 2022..  
Commissioner (Appeals)  
Date: 10/JANUARY/2022

Attested

  
(M.P. Sisodiya)  
Superintendent (Appeals)  
Central Excise, Ahmedabad



By Regd. Post A. D

To,  
M/s. Shree Umiya Developers,  
Jaldhara-II, 23,  
BasantBahar Road,  
Bopal, Ahmedabad-380058

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate:Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-VI, Commissionerate:Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate:Ahmedabad-North.
5. Guard file
6. PA File