

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- टेलीफैक्स 07926305136



DIN:20230464SW000071717F

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/801/2022-APPEAL / 464-469

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-001/2023-24
 दिनांक Date : 17-04-2023 जारी करने की तारीख Date of Issue 19.04.2023

आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/133/2021-22
 दिनांक: 21.02.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Kanubhai Vithaldas Patel,
 5, Suvas Bungalow, New C G Road,
 Chandkheda, Ahmedabad-382424

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
 North, 4th 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) केंद्रीय 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।

(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 मामले 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मारा 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) उपरिलिखित 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 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 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.

- (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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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 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

M/s. Kanubhai Vithaldas Patel, 5, Suvas Bungalow, New C.G. Road, Chandkheda Ahmedabad-382424 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/133/2021-22, dated 21.02.2022, (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department.

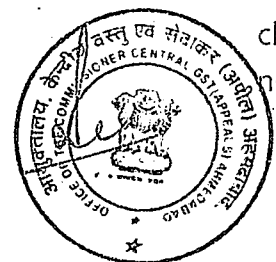
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to F.Y. 2017-18 (upto June 2017), it was noticed that the appellant had earned substantial income by providing taxable services. They had earned income of Rs. 10,66,410/- & Rs. 10,14,546/- during the F.Y. 2014-15 and F.Y. 2016-17 respectively, which they reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, on which no tax was paid. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15 to F.Y. 2017-18. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the income of Rs. 20,80,956/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs. 2,83,990/- for said period was accordingly worked out. However, the income data for the F.Y.2015-16 and F.Y. 2017-18 was not provided by the appellant.

2.1 Thereafter, a Show Cause Notice (SCN) No. CGST/AR-V/Div-VII/A'bad North/143/2020-2021 dated 29.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs.2,83,990/- not paid on the value of income received during the F.Y. 2014-15 & F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a), 77(1) (c), 77(2) and under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,82,886/- was confirmed alongwith interest on the taxable services valued at Rs. 12,94,489/- provided for the period from April, 2014 to July, 2017 after granting abatement. Penalty of Rs. 10,000/- each were imposed under Section 77(1)(a), 77(1) (c) and 77(2). Penalty of Rs. 1,82,886/- was also imposed under Section 78.

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

- The appellant is a small time transporter having no transport vehicle of his own. They book small consignments of transporting food grains from Kalupur to Mansa and use transport vehicles like TATA 407, 709 & Eicher for which they charge Rs. 70/- to Rs. 130/- per consignment. As the consignment notes have not exceeded the threshold limit of Rs. 750/- and the transportation of pulses,



grains are covered under negative list, no service tax is liable to be paid in terms of Entry No. 21 (a) of the Mega Notification No. 25/2012-ST dated 20.06.2012. However, the adjudicating authority has not considered above facts while confirming the demand.

- When the service tax demand is not sustainable, demand of interest and imposition of penalties also does not arise.

4. Personal hearing in the matter was held on 29.03.2023. Shri M. K. Kothari, Consultant, appeared on behalf of the appellant. He reiterated submissions made in the appeal memorandum.

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. The issue to be decided in the present case is as to whether the service tax demand of Rs. 1,82,886/- confirmed alongwith interest and penalties 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. 2014-15 to F.Y. 2017-18 (upto June, 2017).

6. It is observed that the entire demand has been raised based on the income data shared by CBDT, on which no service tax was paid by the appellant. The appellant have claimed that they are engaged in small transport business and since transport cost of one trip is less than Rs. 1500 and goods transported by them being food grains, they are eligible for exemption vide Notification No. 25/2012-ST. The adjudicating authority has, however, observed that the appellant vide letter dated 09.10.2020 have informed that they were engaged in Renting of Crane, Transportation of Goods by Road and Loading & Unloading services. The details of income reflected in the books of accounts also mentions that they have earned commission income and freight income. On the freight income earned, the appellant could not produce the sales invoices or LR, to substantiate their claim that the freight charged was below Rs. 1500 hence the claim seeking exemption was not accepted by the adjudicating authority. He however granted the abatement of 70% on the value of freight in terms of Notification No. 26/2012-ST as amended vide Notification No. 08/2015 dated 01.03.2015 and confirmed the service tax liability on remaining 30% of the value. On the commission income, the adjudicating authority held that such income was earned when the appellant had transported goods through vehicles of different agencies, hence has held it taxable as covered under Business Auxiliary Service. The value based exemption was denied to the appellant as the appellant could not produce the documents for the F.Y. 2013-14, hence, the SSI exemption for the F.Y. 2014-15 was denied to them.

6.1 The appellant have claimed that the consignment notes issued by them to single consignee was below Rs. 750/- or consignment transported in a single goods carriage was below Rs. 1500/- and the goods transported being food grain & pulses, they are eligible for exemption under Notification No. 25/2012-ST, which they claim was not considered by the adjudicating authority. I do not agree with this contention as from the

facts narrated at Para-6 above, it is clear that the adjudicating authority while denying the exemption did consider the eligibility of the appellant for claiming exemption under various notifications. It is observed that in terms of Entry No. 21 of Notification No.



25/2012-ST, services provided by a GTA by way of transportation are exempted, only if it falls under the categories specified therein. Relevant text of the notification is reproduced below.

21. *Services provided by a goods transport agency by way of transportation of -*

(a) *fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;*

(b) *goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or*

(c) *goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;*

The appellant to claim the above exemption has submitted the ITR, Balance Sheet, detailed description list of consignments transported and the name of their clients/customer, alongwith the appeal memorandum. On going through the detailed list of consignments transported, I find that the appellant have not only transported food grains, but have also transported medicines, footwear, garments & others. They also failed to submit the Lorry Receipt or the consignment notes or invoices to substantiate their above claim of exemption. I, therefore, find that the blanket exemption claimed by the appellant cannot be granted without production of any documentary evidence like consignment notes or lorry receipts which could establish that the goods transported were falling under clause (a) or the consignment notes were below the amount prescribed at clause (b) & (c) of Entry No. 21. Further, I find that the appellant is also silent on the commission income received under Business Auxiliary Service.

6.2 Considering the above facts, I find that the appellant neither could justify the exemption claimed nor justify the non-payment of service tax on the taxable income earned during the disputed period. I, therefore, find no reason to interfere with the findings of the adjudicating authority and thus uphold the demand of Rs. 1,82,886/- alongwith interest.

7. Similarly, I also find that the imposition of penalty under Section 78 of the F.A., 1994 is also justifiable, as it provides penalty for suppressing the facts. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering the taxable services but they never bothered to obtain service tax registration, discharge their tax liability or file statutory returns. Hence, such non-payment of service tax undoubtedly brings out the willful misstatement and fraud with intent to evade payment of tax. If any of the circumstances referred under Section 73(1) of the F.A., 1994 are established the person liable to pay tax would also be liable to pay a penalty equal to the duty /tax so determined. Thus, I find that imposition of penalty under Section 78 of the Finance Act, 1994 is justified.

8. Regarding imposition of penalty under Section 77 (1) (a), 77(1) (c), 77(2), I find that in terms of Section 77(1) (a) & (c) of the Finance Act, 1994, the appellant were liable



to pay service tax and was required to take registration in accordance with the provisions of Section 69 and were required to furnish the data and submit the documents as called for by the Central Excise Officers. As they failed to take registration and submit the requisite information as called for they shall be liable to penalty under Section 77(1). Further, in terms of Section 77(2) of Finance Act, 1994, penalty can be imposed for contravention of any of the provisions of Service Tax Act or any rules made there under for which no penalty is separately provided. This penalty may extend upto ten thousand rupees. Since, penalty under Section 78 as well as under Section 77(1) is already imposed, I find that imposing penalty under Section 77(2) for the same offence would be harsh on the appellant, hence, I set-aside the penalty imposed under Section 77(2) of Financial Act, 1994.

9. In view of the above discussions and findings, I uphold the demand of Rs. 1,82,886/- alongwith interest and penalties imposed under Section 77(1) & under Section 78. I, however, set-aside the penalty imposed under Section 77(2) of the F.A., 1994.

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.

[Signature]
(अखिलेश कुमार)
17 April, 2023
आयुक्त (अपील्स)

Date: 17.04.2023

Attested

[Signature]
(Rekha A. Nair)

Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Kanubhai Vithaldas Patel,
5, Suvas Bungalow, New C.G. Road,
Chandkheda
Ahmedabad-382424

Appellant

Deputy Commissioner,
CGST & Central Excise-Division-VII,
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.

