



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: 20230964SW000000CABF

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1535/2023-APPEAL / 6021 - 28
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-102/2023-24
 दिनांक Date : 11-09-2023 जारी करने की तारीख Date of Issue 12.09.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 292/AC/DEMAND/22-23 दिनांक: 16.12.2022 , issued by The Assistant Commissioner, CGST Division-I, Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Dr. Nalin Himmatlal Shah, 1A, Bhagwat Bunglow, Silver Oak Club, R.C. Technical Road, S.G. Highway, Gota, Ahmedabad-380025

2. Respondent

The Assistant Commissioner, CGST Division-I, Ahmedabad North, Ground Floor, Jivabhai Mansion, Ashram Road, Ahmedabad-380009

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 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 दिनोंक 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.

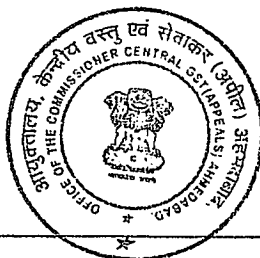
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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

Dr. Nalinbhai Himatlal Shah, 1A, Bhagwat Bunglow, Silver Oak Club, R. C. Technical Road, S. G. Highway, Gota, Ahmedabad -380025 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 292/AC/Demand/2022-23 dated 16.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant was not registered with the 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. 2015-16, it was noticed that the appellant in the ITR/Form-26 AS has shown taxable income on which no service tax was discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

Table-A

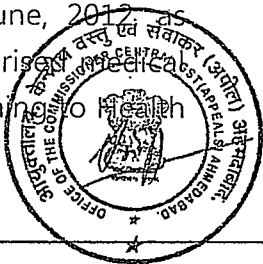
<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	35,76,983/-	14.5%	5,18,663/-

2.1 A Show Cause Notice (SCN) No.AR-II/Nalinbhai Himatlal Shah/Un-Reg/2015-16 dated 09.06.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.5,18,663/- 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 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.5,18,663/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each under Section 77(1)(a) & 77(1)(c) and penalty of Rs.5,18,663/- was also imposed under Section 78 of the F.A., 1994. Penalty under Section 77(2) was however dropped.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal alongwith the Miscellaneous Application seeking condonation of delay on the grounds elaborated below:-

- Service Tax amounting to Rs. 5,18,663/- on total income shown in ITR filed by the appellant towards providing service of "MEDICAL PROFESSION" is not sustainable.
- The Superintendent CGST & C Ex AR-II, Div-I, Ahmedabad North issued a letter on 23-11-2020 at Krishna Chambers Paita Road, Naroda Ahmedabad-380025, which has never been delivered to the Appellant.
- In terms of Notification No. 25/2012-Service Tax dated- 20th June, 2012 as amended Health care services by a clinical establishment, an authorised practitioner or para-medics; are exempted. Thus, the services pertaining to Health



Care Services by a clinical establishment, an medical practitioner or para-medics falls under the negative list of services and there arises no liability of Service Tax on such service. Since, in the instant case, there is no dispute about the fact that the service provided by the appellant was Medical Service as the Certificate of Practice of the Appellant has already been provided therefore, there arises no liability of Service Tax on such part of the amount charged by the appellant.

- The appellant had filed Return of Income for FY 2015-16 [AY 2016-17] wherein the nature of Business is shown as "MEDICAL PROFESSION" [screenshot of the relevant page of ITR is attached. When the information has been declared in ITR, suppression cannot be alleged. Therefore the notice is time barred.
- Penalty under Section 78 of the Finance Act, 1994 is not imposable as the appellant was engaged in the Medical Profession and medical profession which is covered under the negative list under the mega notification 25/2012, hence question of obtaining Service Tax Registration and imposing the penalty u/s 78 of the Service Tax Act does not arise.
- Since, the appellant has correctly discharged Service Tax liability by showing the correct taxable value in the statutory ST-3 returns, therefore, there arises no ground for imposition of penalty upon the appellant under Section 77 of the Finance Act, 1994 and hence, such penalty imposed by the adjudicating authority vide the impugned order is required to be set aside.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 16.12.2022 and same was claimed to be received by the appellant on 22.12.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 22.02.2023 after a delay of 2 days. The appellant in the Miscellaneous application stated that the delay was due to difficulties faced in making the pre-deposit for filing the appeal. They therefore requested to condone the delay of 2 days.

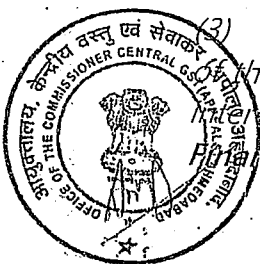
4.1 In terms of Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Relevant text of Section 85 is reproduced below:

SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals): —

[(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the ⁵[Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal.....in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [, made before the date on which the Finance Bill, 2012, receives the assent of the President]:



Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

*[(3A) An appeal shall be presented within **two months** from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :*

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

4.2 It is observed that the appeal in the present case was filed on 22.02.2023, after a delay of 2 days. Considering, the legal provisions under Section 85(3A) of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay of only one month provided he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. In the instant case delay of 2 days is noticed which is within the condonable period prescribed in Section 85(3A). So, considering the reasons for delay as sufficient cause, I allow the appeal after condoning the delay of 2 days.

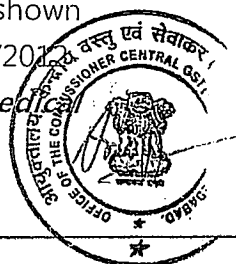
5. Personal hearing in the matter was held on 18.08.2023. Shri Darshan Parikh, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal. He submitted that the appellant is a Doctor providing Medical services which are exempt from service tax under mega exemption notification. Qualification certificate of the appellant is attached with the appeal. Therefore, he requested to set-aside the impugned order.

6. 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;

- a) The service tax demand of Rs.5,18,663/- 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?
- b) The notice dated 09.06.2021 issued to the appellant is barred by limitation or otherwise?

The demand pertains to the period F.Y. 2015-16.

6.1 On going through the certificate issued by Gujarat University, it is observed that the appellant is a registered Doctor having additional medical qualification as M.D. (Radio-Diagnosis). In their ITR-Return filed for the F.Y. 2015-16, they have mentioned the nature of business as Medical Profession and the income of Rs.35,76,983/- is shown towards Sale of Services. I find that in terms of Entry No-2 of Notification No.25/2012-ST, "Health care services by a clinical establishment, an authorised medical



practitioner or para-medics," are exempted from the levy of service tax. Further, the term authorised medical practitioner is defined in clause (d) of Para-2, which is reproduced below:-

d) *"authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;*

6.2 The appellant, I find is an authorized medical practitioner and is registered as M.D. (Doctor of Medicine) with the Gujarat Medical Council under Certificate bearing No. G-2852 dated 25.11.1985. Therefore, the health services provided by the appellant are squarely covered under Entry no.2 of the above notification, hence exempted. I therefore find that the demand of **Rs.5,18,663/-** shall not sustain on merits.

7. Further, the appellant have contended that the notice is hit by limitation. The appellant has not filed the ST-3 Return for said period therefore for counting the limitation of 5 years, due date of filing the return shall be considered. It is observed that the ST-3 return for 1st H.Y. (April, 2015 to September, 2015) was required to be filed by 25th October, 2015. Considering, 5yrs period from the due date of filing, the demand notice for 1st H.Y should have been issued latest by **24th October, 2020**. Similarly, for the period (October, 2015 to March, 2016) the due date of filing the return was extended from 25.04.2016 to 29.4.2016 vide Order No. 01/2016-ST. Thus, the notice should have been issued by **28.04.2021**. Whereas, the present notice was issued on 9.06.2021, i.e. beyond the period of limitation, hence, I find that the demand for both the period is hit by limitation and the entire notice is time barred.

8. In light of above discussion and findings, I find that the service tax demand of Rs.5,18,663/- is not sustainable either on merits or on limitation. I, therefore, set-aside the impugned order confirming the service tax demand of **Rs.5,18,663/-** alongwith interest and penalties and allow the appeal filed by the appellant.

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.

(शिव प्रताप सिंह)
आयुक्त(अपील)

Attested

(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad

Date: 11.9.2023



By RPAD / SPEED POST

To,

M/s. (Dr.) Nalinbhai Himatlal Shah,
1A, Bhagwat Bunglow,
Silver Oak Club, R. C. Technical Road,
S. G. Highway, Gota,
Ahmedabad -380025

Appellant

The Assistant Commissioner,
CGST, Division-I,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Principal 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. Guard File.

