



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: 20230964SW0000696629

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1527/2023-APPEAL **16/6-26**

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-103 /2023-24**
दिनांक Date : **15-09-2023** जारी करने की तारीख Date of Issue **18.09.2023**

आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST/WT07/HG/733/2022-23** दिनांक: **29.12.2022** ,
issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. ITPRO Solutions Private Limited, B-1-15, Madhuvrund Society, Panchnath Mahadev Road, Ghatlodiya, Ahmedabad - 380061

2. Respondent

The Assistant Commissioner, CGST Division-VII, Ahmedabad North, 4th Floor, Shajanand Arcade, Nr. Helmet Circle, 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) 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 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 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.

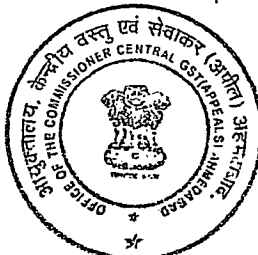
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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

M/s. ITPRO Solutions Pvt. Ltd., B-1-15, Madhuvrund Society, Panchnath Mahadev Raod, Ghatlodiya, Ahmedabad -380061 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/733/2022-23 dated 29.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant are engaged in providing Business Auxiliary Service, Information Technology Software service, Maintenance or Repair service, Manpower Recruitment /Supply Agency Service, Works Contract Service and were holding Service Tax Registration No.AADC14715JSD002. On the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant has declared less taxable value in the ST-3 Return as compared to the taxable income declared in the ITR/Form-26 AS. 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

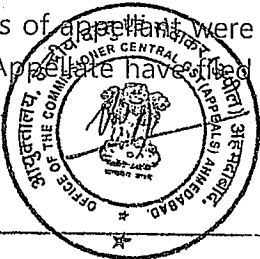
<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Value as per ST-3 Return</i>	<i>Differential value</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2014-15	21,15,155/-	13,80,262/-	7,34,893/-	12.36%	90,832/-

2.1 A Show Cause Notice (SCN) No. CGST/Div-VII/A'bad North/TPD/397/ITPRO/2021 dated 26.09.2020 was therefore, issued to the appellant proposing recovery of service tax amount of Rs.90,832/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 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.90,832/- was confirmed alongwith interest. Penalty of Rs.1,000/- each under Section 77(1)(c) & 77(2) and penalty of Rs.90,832/- was also imposed under Section 78 of the F.A., 1994.

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

- Appellate is private limited company. The company is rendering Business Auxiliary Services, Information Technology Software services, Maintenance or repair service, Manpower Recruitment/supply agency services, Work Contract services. During the year under consideration the appellant has carried out commercial activities and thus there is reasonable earning of taxable income. Books of appellant were audited by Auditors under the provisions of Company's Act. Appellate have filed service tax return showing the yearly income Rs. 13,80,262/-



- On verification of our records for the 2013-14 & 2014-15, it came to the notice that there was error in entering the data for Sales bifurcation in ITR for the F.Y. 2014-15. The sale of goods as per ITR is Rs.69,50,054/- while as per Books of Account is Rs.71,62,554/-. Further, the income in the ITR for the F.Y. 2014-15 included advance receipt of Rs.6,37,500/- on which Service tax was payable in the previous F.Y. 2013-14.
- Due to human error the figures of Sales of Services and Sales of Goods got inter mingled. The VAT annual Form also shows the actual sales of Rs.13,80,262/- which matches with the books as well as S.T-3. Though they tried to revise the ITR but could not do so after the end of A.Y. relevant to the F.Y.
- Such difference of Sales/Gross receipt would not amount to concealment of income or furnishing of inaccurate income. Appellate has submitted the explanation of such a difference Sales/Gross receipt as per I-Tax return Figures and Service Tax Return filed. The Adjudicating authority has passed the order without considering the documents submitted without providing any reasonable opportunity to the appellant. Thus, the order was passed without considering the explanation submitted by appellate.

4. Personal hearing in the matter was held on 14.08.2023. Shri Mukeshbhai M. Pampaniya, Consultant, appeared for personal hearing and reiterated the submissions made in the appeal as well as the written submission dated 11.08.2023. He submitted that the adjudicating authority has taken the income of Rs.21,15,155/- from the ITR and ST-3 value of Rs.13,80,262/- and confirmed the demand of Rs.90,832/- on the differential value. He submitted that the income in the ITR for the F.Y. 2014-15 includes advance receipt of Rs.6,37,500/- on which Service tax was payable in the previous F.Y. 2013-14. Wrong entry of Sales of services of Rs.2,12,500/- from the F.Y. 2013-14 in the ITR, 2014-15, wrong entry of goods and backend discount of Rs.30,725/- by software and human error in data, led to the difference of Rs.7,34,892/- occurred between ITR & ST-3 Return. They have submitted copy of P&L A/c, Ledger, ITR and requested to take the value for service tax purpose after re-conciliation and after allowing the threshold exemption, since the income of the previous year was below Rs.10 lacs and requested to set aside the impugned order.

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 during personal hearing. The issue to be decided in the present case is whether the service tax demand of Rs.90,832/- alongwith interest and penalties confirmed in the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise?

Demand pertains to the period F.Y. 2014-15.

I have gone through the Balance Sheet, P&L Account, VAT Returns, ITR & ST-3 Return. I find that the appellant during the F.Y. 2013-14 have shown following taxable income. Details of income are given below:-

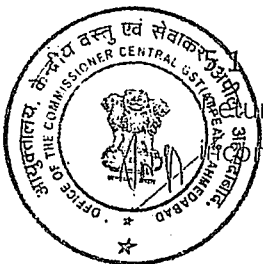


TABLE-A

F.Y.	Taxable Income as per B/S	Advance Receipt under Repair & Maintenance Income	Back End Income	Total Income	Income shown in ITR under Sale of Service
2013-14	2,12,500	6,37,500	0	8,50,000	2,12,500
2014-15	18,71,930	1,45,833	30725	20,48,488	21,15,155

5.2 The appellant claim that in the ITR field for the F.Y. 2014-15, they have shown the income of Rs.21,15,155/- which includes the (*income of Rs.6,37,500/- which pertains to advance received under Repair & Maintenance Income during the F.Y. 2013-14 plus taxable income of Rs. 2,12,500/- pertaining to the F.Y. 2013-14 but was inadvertently shown as income in the F.Y. 2014-15 plus Back End Income of Rs.30,725/- which they claim is the Goods Backend Discount minus Taxable Income of Rs.1,45,833/-*). Which brings to the differential value of Rs.7,34,892/- arrived in the SCN.

TABLE-B

Particulars	Amount
Advance Service Provision from F.Y. 2013-14	6,37,500/-
Current Year Advance Service Provision	-1,45,833/-
Wrongly Entered Service Sales From F.Y. 2013-14	2,12,500/-
Wrongly entered Goods Backend Discount F.Y. 2014-15	30,725/-
Total Difference	7,34,892/-

5.3 On going through the ITR & ST-3 Returns, I find that the appellant have earned shown the income of Rs.21,15,155/- in F.Y. 2014-15 whereas in the ST-3 Returns they have shown the gross taxable value of Rs.13,80,262/- hence, there is a variation of Rs. 7,34,893/-. Further, they claimed that in respect of the advance received in the F.Y. 2013-14 and F.Y. 2014-15, though the income were registered in the ITR for the respective year, the service tax liability on such advance has been discharged in the consecutive year. They claim that they have not filed ST-3 Return for the F.Y. 2013-14 as their income was below Rs.10 lacs hence they were not required to obtain Service Tax registration. They however submitted the ST-3 return for the F.Y. 2014-15, wherein they reflected the taxable value of Rs.13,80,262/-, which the department claim is less than the income reflected in the ITR. I find that during the F.Y.2014-15, in the balance sheet the appellant have shown the income of Rs.18,71,930/- from Repair & Maintenance service whereas in the STR-3 they have shown the income of Rs.13,80,262/-. So considering these values, I find that the appellant has mis-declared the taxable value amounting to the tune of Rs. 4,91,668/- (Rs.18,71,930/- minus Rs.13,80,262/-). On which their tax liability shall come to Rs.60,770/- (@12.36%).

6. Further, the appellant have claimed threshold limit exemption since the income of the previous year was below Rs.10 lacs. I find that the appellant in the F.Y. 2013-14 have earned taxable income of Rs.2,12,500/-, which I find is below the threshold limit exemption. Therefore, the appellant is eligible for the threshold limit exemption under Notification No.33/2012-ST dated 20.06.2012 which provides exemption to the 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. However, the appellant shall be eligible for exemption in the F.Y. 2014-15 till they cross



the limit of Rs.10 lakh in the given F.Y. I find that in the F.Y. 2014-15 they have earned the income of Rs.18,71,930/- and since they have already discharged the service tax liability on Rs.13,80,262/- I find that they are required to pay the service tax only on the value of Rs.4,91,668/- which comes to **Rs.60,770/-** alongwith interest.

7. As the appellant have suppressed the taxable value in the ST-3 Returns, I find that are also liable to pay a penalty equal to the tax so determined.

8. As regards the imposition of penalty under Section 77 (1) & 77(2), is concerned, I find that both the penalties were imposed for not submitting the documents when called for. For the same offence appellant cannot be penalized twice. I, therefore, uphold only the penalty of Rs.1000/- under Section 77(1)(c) and set-aside the penalty imposed under Section 77(2) of Act.

9. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of **Rs.60,770/-** alongwith interest and penalties to the extent discussed above.

10. 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)

Date: 9.2023

Attested

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

By RPAD/SPEED POST

To,
M/s. ITPRO Solutions Pvt. Ltd.,
B-1-15, Madhuvrund Society,
Panchnath Mahadev Raod, Ghatlodiya,
Ahmedabad -380061

Appellant

The Assistant Commissioner,
CGST, Division-VII, 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.

