



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: 20230964SW000000D4ED

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1538/2023-APPEAL / 6753- 57

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-106 /2023-24
 दिनांक Date : 18-09-2023 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/712/2022-23 दिनांक:12.12.2022 ,
 issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
 M/s. Geetaben Budhichand Parekh, F/39/555 Sagar Apartments, Near Bhavsar
 Hostel, Nawa Wadaj, Ahmedabad - 380012

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 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 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.

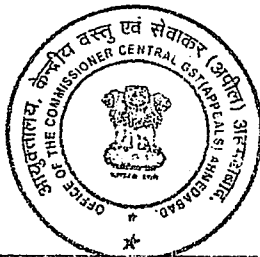
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

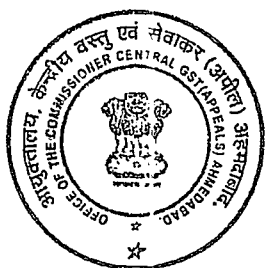
Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील को मांगले 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. Geetaben Budhichand Parekh, F/39/555-Sagar Apartments, Nr. Bhavsar Hostel, Nawa Wadaj, Ahmedabad-380012 (hereinafter referred to as "the appellant") have filed the present appeal against Order-in-Original No. CGST/WT07/HG/712/2022-23 dated 12.12.2022 (hereinafter referred to as "the 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 were holding PAN No. AHFPP7264H and were engaged in providing taxable service. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16 & 2016-17, it was noticed that the appellant had earned substantial income 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)". As per the data provided by the Income Tax department, it appeared that the appellant had earned substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. Letters were issued to the appellant to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department. The details of income shown are as under:-

<i>F.Y.</i>	<i>Value of sale of services(ITR/Form-26AS)</i>	<i>Service Tax rate</i>	<i>Service Tax payable</i>
2015-16	21,53,891	14.5%	3,12,314
2016-17	20,94,755	15%	3,14,213
		Total	6,26,527

2.1 The appellant were therefore issued Show Cause Notice (SCN) No. CGST/A'bad North/Div-VII/AR-IV/TPD/UR-REG/15/16/2020-21 dated 23.12.2.2020 demanding Service Tax amounting to Rs. 6,26,527/- for the period F.Y 2015-16 to 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994.

2.2 The aforesaid SCN was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 6,26,527/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 for the period from F.Y 2014-15. Further (i) Penalty of Rs. 6,26,527/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) and Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 5,000/- was also imposed on the appellant under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the grounds elaborated below:



- The appellant is a proprietor of M/s. Nandini Exports, a firm engaged in Export of Goods & Small Service Provider. They were regularly filing ITR, however for the relevant period they inadvertently showed sale of service instead of sale & export of goods.
- Documents called for were not submitted as the same were not available at the relevant time. Since the appellant was not providing any taxable service, service tax cannot be levied on the income which is not taxable in nature.
- The income earned is below the threshold limit and therefore in terms of Notification No.33/2012-ST, they are not required to obtain registration.
- When there is no demand question of imposing penalties also does not arise. Thus, they requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

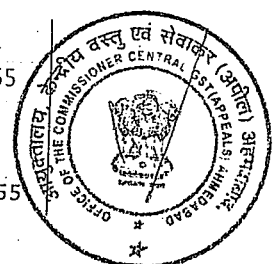
4. Personal hearing in the case was held on 14.08.2023. Shri Hardik H. Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum as well as in the additional submission dated 14.8.2023 and the supporting documents submitted at the time of personal hearing. He stated that the appellant did not provide any service to anybody. However, the export sales income and FDR income was erroneously shown as income from sale of service in the ITR. The proof of export in the form of inwards remittance certificate and copies of shipping bills, bank statements, profit & loss account, balance sheet etc are enclosed with additional submission. He submitted that the adjudicating authority has confirmed the demand without any investigation or verification of nature of service, which is not valid as per law. He therefore requested set-aside the demand.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum, additional submissions and the documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Rs.6,26,527/- along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise.

The demand pertains to the period F.Y 2015-16 & F.Y 2016-17.

6. The appellant claim that they are in the business of export of goods and that the income earned from sale of goods was inadvertently shown under sale of services in the ITR which led to such demand. They have submitted the reconciliation of the income received during the relevant period.

F.Y. 2015-16		F.Y. 2016-17	
Export Sales Income	6,11,229	Export Sales Income	20,94,755
Commission Income	2,28,000		
FDR Maturity	13,14,662		
TOTAL	21,53,891	TOTAL	20,94,755



6.1 I have gone through the reconciliation statement, Balance Sheets, Proof of Exports, Bank Statements submitted as proof of FDR Maturity & Foreign Remittance. I find that the income of Rs.6,11,229/- and Rs.20,94,755/- have been reflected in the Foreign Export Income Ledger of the Balance Sheet for the F.Y. 2015-16 & F.Y. 2016-17. They also submitted shipping bills as proof evidencing export of machineries and the Bank statement evidencing the receipt of such remittance. However, this income was inadvertently shown under 'sale of services' in their ITR filed for the A.Y. 2015-16 & A.Y. 2016-17, by their Chartered Accountant. Further they also submitted bank statement as a proof evidencing the receipt of Rs.13,14,662/- in the F.Y. 2015-16 towards FDR maturity. Thus, I find that on above incomes they are not liable to pay service tax as the same were not towards provision of any taxable service.

6.2 Further, as regards the income of Rs.2,28,000/- earned as Commission Income, they claim that as the aggregate value of taxable services was not exceeding Rs.10 Lakh rupees they were not liable to pay tax. I find that the appellant is eligible for the exemption extended 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. The appellant also submitted a copy of Balance Sheet for the F.Y. 2014-15 according to which The income from Exports is shown as Rs.43,77,979/- and FDR Interest is shown as Rs.99,107/-. I find that the appellant have not earned any taxable income in the F.Y. 2014-15 and since the commission income earned in the F.Y. 2015-16 is Rs.2,28,000/- which is below the threshold limit, therefore, they shall be eligible for threshold limit exemption in the F.Y. 2015-16. They therefore shall not be required to pay service tax on such commission income considering the threshold limit, which otherwise is a taxable income.

6.3 In terms of above findings, I find that the demand of Rs. 6,26,527/- confirmed in the impugned order on the value of sale of service is not sustainable on merits. When the demand is not sustainable, question of upholding interest and penalties also does not arise.

7. In view of the above findings, I set-aside the impugned order and allow the appeal of the appellant.

8. 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.

Shiv
10-9-23
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 10.09.2023

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



By RPAD/SPEED POST

To,

M/s. Geetaben Budhichand Parekh,
F/39/555-Sagar Apartments,
Nr. Bhavsar Hostel, Nawa Wadaj,
Ahmedabad-380012

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.

