



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- टेलिफैक्स 07926305136



DIN: 20231064SW000000EE13

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2455 /2023-APPEAL/6964-68
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-112/2023-24
 दिनांक Date : 29-09-2023 जारी करने की तारीख Date of Issue 03.10.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 246/AC/DEMAND/22-23 दिनांक:30.11.2022 , issued by The Assistant Commissioner, CGST Division-I, Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Jyoti Nandlal Panjawani, E-402, Satkar Avenue, Naroda Railway Crossing, Naroda, Ahmedabad - 382345

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 :

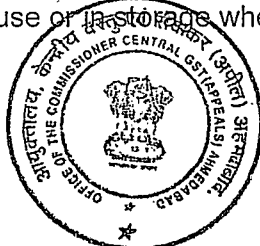
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(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 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 अनुसूचि-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।

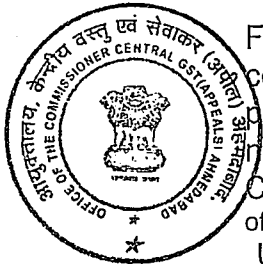
Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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. Jyoti Nandlal Panjwani, 299, Nayannagar, Krishnanagar, Sahijpur Bogha, Ahmedabad-382345 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 246/AC/Demand/2022-23 dated 30.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service but were 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-26AS has shown the service 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 the 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

F.Y.	Value as per ITR/Form-26AS	Service tax rate	Service Tax liability
2015-16	19,28,048/-	14.5%	2,79,567/-

2.1 A Show Cause Notice (SCN) No.STC/AR-1-15-16/UNREG/21-22/255 dated 23.04.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.2,79,567/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 78 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,79,567/- was confirmed alongwith interest. Penalty of Rs.2,79,567/- under Section 78 of the F.A., 1994 was also imposed.

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

- The appellant is engaged in the business of selling of textile fabrics i.e. sari and dress materials. The appellant purchases goods from the local vendors and selling it to the household customers on retail basis. Accordingly, the business of the appellant is of selling of goods and not providing any service.
- During the impugned period the appellant had earned income of Rs. 19,28,048/- of selling goods. The copy of the P&L account is submitted wherein the income of Rs.19,28,048/- is reflected as of sale of goods. There was no service income during the disputed period.
- The appellant is not engaged in the activity of providing any kind of service, hence registration under the provision of Finance Act, 1994 is not obtained..



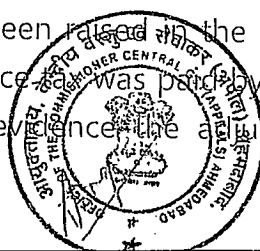
- The appellant in the Income Tax return for the F.Y. 2015-16 had inadvertently shown the income of Rs. 19,28,048/- from sale of service instead of showing it in the column sale of goods. The copy of Income Tax verification report for the A.Y. 2016-17 is submitted. The appellant has shown income from sale of goods in the ITR filed for the subsequent period. In support of the said contention, a copy of ITR filed for the period A.Y. 2017-18 is submitted.
- The Adjudicating Authority has erred in law and facts in determining the service tax liability on the basis of the Income Tax Return. The appellant has made a mistake in showing the business income under the head sale of service instead of sale of goods. The appellant is not engaged in providing any kind of service. The appellant has income from rent of Rs. 1,26,000/- which is below the threshold limit and hence not subject to the service tax liability.
- The Adjudicating Authority has not provided opportunity of being heard which is against the principles of natural justice and hence the Order-In-Original is bad in law which requires to be set aside.
- The penalty was imposed for not obtaining registration u/s 77(1)(a) of the Finance Act. The appellant is not required to obtain registration under the provision of Finance Act and hence the question of levy of penalty does not arise.
- The penalty u/s 78 @ 100% of the amount of service tax determined payable in but since the appellant is not liable to pay service tax and hence the question of levy of penalty also does not arise. Accordingly, it is requested to set aside penalty levied in the OIO.
- Interest u/s 75 (1) of the Finance Act which is also not payable by the appellant, because the appellant is not liable to pay any service tax amount and therefore the liability of interest does not arise.

5. Personal hearing in the matter was held on 28.08.2023. Shri N. N. Patel, Advocate appeared on behalf of the appellant. He reiterated the submissions made in the appeal. He submitted that the appellant is a housewife who was engaged in sale of sarees in an organised manner from home. However, while filing the ITR inadvertently the income from sale of goods was shown under sale of services. He referred to ITR for the next year, where it is correctly shown as sale of goods. He drew attention to the profit and loss account wherein the amount is shown as sale of goods. He therefore 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 the service tax demand of Rs.2,79,567/- 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. 2015-16.

7. It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT on which no service tax was paid by the appellant. As the appellant did not submit any documentary evidence to the adjudicating authority,



confirmed the demand. However, the appellant before the appellant authority has submitted the invoices/estimate raised for the period under consideration.

8. On going the Balance Sheet of the appellant for the F.Y. 2015-16, I find that they have shown the income of Rs.19,28,048/- under Sales Account (Sales VAT free) which pertains to the sale goods. However, inadvertently they mentioned it as sale of service in the ITR filed for said period. I find the claim of the appellant to be correct and justifiable.

8.1 In terms of Clause (44).of Section 65B, the term 'service' is defined as;

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—


- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

In terms of above definition, sale of goods is not covered under the definition of service. Thus, I find that the income earned from sale of goods shall remain outside the purview of the service tax hence not taxable. I find that the entire demand has been arrived on the basis of the income of Rs.19,28,048/- inadvertently reflected in the ITR as 'Sale of service' but was actually earned from sale of goods, hence cannot be considered as taxable income. When the income is not taxable, question of demanding tax on such income does not arise.

9. When the demand does not sustain, question of interest and penalties also does not arise. Accordingly, I find that the impugned order confirming the service tax demand of Rs.2,79,567/- alongwith interest and penalties is not sustainable on merits.

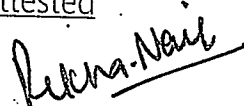
10. In view of the above discussion, I set-aside the impugned order and allow the appeal of the appellant.

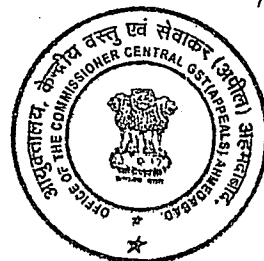
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 29.9.2023

Attested


(Rekha A. Nair)
Superintendent (Appeals)



CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Jyoti Nandlal Panjwani,
299, Nayannagar, Krishnanagar,
Sahijpur Bogha,
Ahmedabad-382345

Appellant

The Assistant Commissioner
CGST, Division-I,
Ahmedabad North

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.



