



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: 20231064SW0000111A6C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1505 /2023-APPEAL /१००९ - ०९
- ख अपील आदेश, संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-115/2023-24
दिनांक Date : 25-09-2023 जारी करने की तारीख Date of Issue 05.10.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 322/AC/DEMAND/22-23 दिनांक: 21.12.2022 , issued by The Assistant Commissioner, CGST Division-I, Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Rameshbhai Haribhai Gondaliya, 61, Shyam Park Society, B/h Noble School, Krishnanagar, Ahmedabad - 382346

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 :

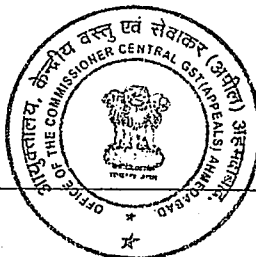
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) 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 प्रकिया 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 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 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 अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपये 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.

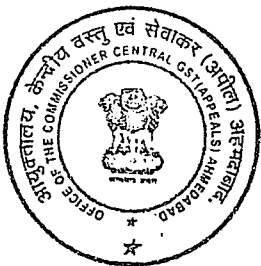
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Rameshbhai Haribhai Gondaliya, 61, Shyam Park Society, B/h Noble School, Krishnanagar, Ahmedabad- 382346 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 322/AC/Demand/2022-23 dated 21.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North Commissionerate (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 based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. The appellant has neither obtained Service Tax Registration nor paid service tax on such income. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2015-16 and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" of the Income Tax Act, 1961, was considered as a taxable value..

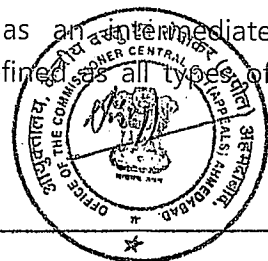
<i>Sr. No.</i>	<i>F.Y.</i>	<i>Value from ITR or Value of Form 26AS</i>	<i>Service Tax rate</i>	<i>Service Tax Payable</i>
01.	2015-2016	10,13,683/-	14.5%	1,46,985/-

2.1 A Show Cause Notices (SCN) bearing No. IV/TPD/SCN/RAMESHBHAI/2021 dated 23.04.2021 was issued to the appellant proposing recovery of service tax of Rs.1,46,985/- along with interest, not paid on the value of income received during the F.Y.2015-16 under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the total service tax demand of Rs. 1,46,985/- was confirmed alongwith interest on the income received during the F.Y. 2015-16. Penalty of 10,000/- was imposed under Section 77. Penalty of Rs. 1,46,985/- was also imposed under Section 78 of the Finance Act.

4. 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 in business of embroidery in textile sector. The income of Rs.10,94,110/- shown in the ITR pertains to income from above activity which is exempted vide Entry No.30 of mega Notification No.25/2012-ST dated 20.06.2012.
- The textile processing is exempted when carried out as an intermediate production process as a job work. The word 'textile' is defined as all types of



cloth or woven fabric. Further, Section XI of the CEA, 2012-13 has given a heading namely "Textiles and Textiles Articles", as the excise law identifies textiles and textile articles separately but does not include textile articles. The job work carried out on any fabric or semi-finished garment is textile processing and therefore exempted. The sales made by the appellant were in respect of the job work of embroidery. However, these facts were not examined by the adjudicating authority hence the demand is not sustainable on merits.

5. Personal hearing in the appeal matter was held on 28.08.2023. Shri Dhaval M. Limbani, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the submission made in appeal memorandum and handed over the written submission with agreement for purchase of machines and bank statement of the appellant. He submitted that the appellant provided job work services for textiles which are exempted under the mega exemption notification. He requested to allow one weeks time for submission of additional documents and requested to set-aside the impugned order.

6. 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.1,46,985/- 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.

6.1 The appellant claim that they are in the business of embroidery in textile sector and that the income reflected in the ITR pertains to job-work of embroidery done on textile. They have submitted the copy of ITR, Balance Sheet and sample invoices to justify their above claim.

6.2 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT and on the differential income on which no service tax was paid by the appellant. They did not file any reply to the SCN nor did they appear for personal hearing before the adjudicating authority, therefore the case was decided ex-parte. However, the appellant before the Appellate Authority has submitted the copy of invoices demonstrating the nature of job-work provided. On going through the documents, I find that the appellant was carrying out all types of computerized embroidery work on dupatta, patiyala dress and other textile fabrics. The invoices raised were also for the embroidery work done on textile fabrics. In the Balance sheet also this income is reflected as Labour embroidery.

6.3 The above job-work carried out by the appellant is in relation to textile processing which is exempted vide Mega Notification No. 25/2012-ST dated 20.06.2012. Relevant text of Clause (30) of Notification No. 25/2012-ST is re-produced below for reference;

30. Carrying out an intermediate production process as job work in relation to -



- (a) *agriculture, printing or textile processing;*
- (b) *cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);*
- (c) *any goods on which appropriate duty is payable by the principal manufacturer; or*
- (d) *processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;*

6.4 The appellant were carrying out computerized embroidery which is an intermediate production process and a job work in relation to textiles. I find that such intermediate process carried out by the appellant is squarely covered under Clause (30) (a) of the mega notification. I, therefore, extend the benefit of above exemption to the appellant. Considering the invoices, Balance Sheet and the ITR submitted by the appellant, I find, the service tax demand of Rs.1,46,985/- confirmed alongwith interest and penalties on the job work income for carrying out the intermediate production process in relation to textile processing is not sustainable on merits.

7. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of Rs.1,46,985/- alongwith interest and penalties and allow the appeal filed by the appellant.

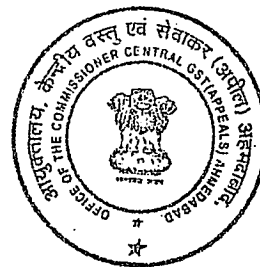
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

Shiv Pratap Singh
25-9-23
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 25.9.2023

Attested

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



By RPAD/SPEED POST

To,
M/s. Rameshbhai Haribhai Gondaliya,

Appellant

61, Shyam Park Society,
B/h Noble School, Krishnanagar,
Ahmedabad- 382346

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.



