



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
टेलीफोन ०७९२६३०५०६५- टेलीफैक्स ०७९२६३०५१३६



DIN: 20231064SW000000D5D9

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2845/2023-APPEAL 1/333-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-121/2023-24
 दिनांक Date : 25-10-2023 जारी करने की तारीख Date of Issue 30.10.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WS07/HG/216/2022-23 दिनांक: 27.07.2022 ,
 issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Doriane Infratech Pvt. Ltd., A/3, Sangath-11, Motera Stadium Road,
 Near Kalika Dham, Motera, Ahmedabad-380005

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 :

(i) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अठारह नीचे बताए गए मामलों के बारे में पुरोक्त
 धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अर्द्धन 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 गण्डागार या अन्य कारखाने में
 या किसी गण्डागार से दूसरे गण्डागार में माल ले जाते हुए मार्ग में, या किसी गण्डागार या गण्डार में बाहे
 वह किसी कारखाने में या किसी गण्डागार में छो 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.



- (ए) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग मुक्त कच्चे माल पर उत्पादन शुल्क के रिबेट के अर्थों 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.

- (क) यदि शुल्क का भुगतान किए बिना माल 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 टैपूटी क्रेडिट मांग की गई है और ऐसे आदेश जो इस धारा एवं नियम के न्यायिक आनुवंशिक, अपील के द्वारा पारित की रागव पर या बाद में दिला अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हैं।

- (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.

- (i) केन्द्रीय उत्पादन शुल्क (आपील) नियमवली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रत्यक्ष संख्या 4ए-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 ई. का मुख्यशीर्षक के अंतर्गत धारा 35-इ में निर्धारित की के भुगतान के समुचित के साथ टीआर-6 चालान की प्रती 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) विधिवत आवेदन के साथ जहाँ संलग्न रहम एक लाख रुपये या उससे कम हो जो रुपये 200/- कीस भुगतान की जाए और जहाँ संलग्न रहम 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 अपील न्यायाधिकरण के प्रति अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (i) 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिसर 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, Giridhar 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 कोई मूल आदेशों का सम्बन्ध होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि शिक्षा फंडी कार्य के खर्चों के लिए यथास्थिति अपील 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 excluding 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 निर्णय प्राधिकारी के आदेश में से प्रत्येक को एक प्रति पर ₹.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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपील न्यायाधिकरण (नियम) अधिनियम, 1982 में मिलते हैं।

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

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपील न्यायाधिकरण (रिटर्न), 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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गत सेनवेट क्रेडिट की राशि;
- सेनवेट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

→ यह पूर्व जमा 'संवित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व जमा 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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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

The present appeal have been filed by M/s. Doriane Infratech Pvt. Ltd., A-3, Sangath-11, Motera Stadium Road, Near Kalika Dham, Motera, Ahmedabad- 380005 (hereinafter referred to as "*the appellant*") against Order-in-Original No. CGST/WS07/HG/216/2022-23 dated 27.07.2022 (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*"). The appellant are holding PAN No. AADCD6525F.

2. Briefly stated, the facts of the case are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant during the F.Y 2014-15 had reflected an income of Rs. 60,25,445/- under the heads "Sales / Gross Receipts from Services" in the ITR) or "Total amount paid / credited under Section 194C, 194I, 194H, 194J" in Form 26AS filed before the Income Tax department 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

F.Y.	Value as per ITR/Form 26AS	Service tax rate	Service Tax liability
2014-15	60,25,445/-	12.36%	7,44,745/-

2.1 A Show Cause Notice No. CGST/AR-V/Div-VII/A'bad North/TPD/UR/44/2020-21 dated 27.09.2020 was issued proposing Service Tax demand amounting to Rs.7,44,745/- for the period F.Y 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. 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 were also proposed. The SCN also proposed recovery of unquantified amount of Service Tax for the period F.Y 2015-16 to F.Y 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the Service Tax demand amounting to Rs. 7,44,745/- was confirmed along with Interest. Penalty of Rs. 7,44,745/- under Section 78; Penalty of Rs. 10,000/- under Section 77(1)(a) and Section 77(1)(c) and penalty of Rs. 5,000/- was also imposed under Section 77(2) of the Finance Act, 1994.

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

- The appellant is a Private Limited Company and Shri Yogesh Kumar Gupta is the director of the firm. They are engaged in trading transactions which are



already covered in Negative List under Section 66-D of the Finance Act, 1994. Hence, no Service Tax Registration is required and no Service Tax was payable by them.

- Data for the financial year 2014-15 (as mentioned in Para-6 of the SCN i. e. 26AS and ITR for the relevant period) considered in SCN dated 27.09.2020 and confirmed in the OIO 27.07.2022 does not match with the data of 26AS and ITR of the appellant. Self-attested copies of 26AS and ITR of the appellant are submitted with the appeal. Therefore, quantification of tax demanded in SCN is completely baseless and did not have any relevance with the data of 26AS and ITR of the appellant.
- Further, Service Tax Department issued SCN dated 27.09.2020 on the basis of Third-Party Data received from Income Tax Department. The Service Tax department even not bothered to verify the data and to consider the arguments of the appellant. Even the personal hearing dates were communicated vide single letter dated 14.07.2022 and to the address which is sealed by bank. Hence, the appellant could not get the opportunity to defend their case.
- On the basis of above grounds, the appellants 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 granted 16.03.2023, 29.03.2023, 18.04.2023, 17.05.2023, 11.10.2023. However, nobody appeared on behalf of the appellant for personal hearing. Though enough opportunity was granted to the appellant, they failed to avail the same. I, therefore, proceed to decide the appeal on the basis of the documents available on record.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and 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.7,44,745/- against the appellant 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 2014-15.

6. It is observed that the entire demand has been raised on the basis of third party data. The appellant have earned income of Rs. 60,25,445/- in the F.Y. 2014-15. The department has alleged that the said income is taxable as was reflected under the head sale of service in their ITR /Form-26AS. The appellant, however, claim that they are engaged in trading of goods and by virtue of clause (e) of Section 66D of the F.A., 1994, the said service falls under negative list. Hence, they are not liable to discharge any service tax on the income earned through trading activity.

6.1 The appellant however have not submitted any documentary evidence to substantiate their claim that the activity carried out by them falls under 'trading of goods' covered under clause (e) of negative list. In the absence of the same I find that the exclusion provided under Section 66D is not applicable to them. It is a well



settled position of the law that a person who claims the exemption has to prove that he satisfies all the conditions. References can be made to the Hon'ble Supreme Court Constitutional Bench decision in the case of *CCE v. Harichand Shri Gopal* 2010 (260) E.L.T. 3 (S.C.); *Mysore Metal Industries v. CC, Bombay* 1988 (36) E.L.T. 369 (S.C.); *Moti Ram Tolaram v. Union of India* - 1999 (117) E.L.T. 749 (S.C.); *Collector v. Presto Industries* - 2001 (128) E.L.T. 321 and *Hotel Leela Ventures v. Commissioner* - 2009 (234) E.L.T. 389 (S.C.). It stands held in all the above decisions that onus to prove and show the satisfaction of the conditions of the Notification is on the person who claims the benefit of the same and every exemption Notification has to be read in strict sense. Reference can again be made to the latest decision of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company* - 2018 (361) E.L.T. 577 (S.C.) wherein it was held that burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption. In view of the above said law, I find that the appellant in the instant case is claiming that the disputed income earned is in relation to the trading activity and are claiming exclusion under negative list. Hence, the burden to prove that the activity carried out by them is 'trading activity' covered under clause (e) of the negative list, is on the appellant. In the absence of any documentary evidence like Balance Sheet, Profit & Loss account, invoices etc the said exclusion claimed by the appellant cannot be granted to them. I, therefore, find that the income reflected under 'sale of service' in their ITR is taxable.

6.2 In view of the above, I find that the appellant is liable to pay service tax amounting to Rs.7,44,745/-.

7. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable in the para supra.

8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in 2008 (231) E.L.T. 3 (S.C.), concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but failed to assess their tax liability correctly with intent to evade the taxes. The appellant though was rendering the taxable service, did not obtain service tax registration. This act thereby led to suppression of facts and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above.

9. As regards, the imposition of penalty of Rs.10,000/- & Rs.5,000/- under Section 77(1) and 77(2) is concerned, I find that the same are imposable as the appellant failed to obtain registration; failed to submit the data and documents called for by the Range officer and contravened the provisions of the service tax laws by not paying taxes and filing prescribed returns.

10. In view of the above discussion, I uphold the impugned order confirming the service tax demand of Rs.7,44,745/- alongwith interest.



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.


(राजेशचंद्र जैन)
आयुक्त (अपील)

Date: 25.10.2023

Attested


(रिषा नासर)

Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Dorlane Infratech Pvt. Ltd.,
A-3, Sangath-11,
Motera Stadium Road,
Near Kalika Dham, Motera,
Ahmedabad - 380005

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

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.



Appellant

Respondent



