



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2448/2023 / 9249 - 53
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-133/23-24 and 31.10.2023
(ग)	पारित किया गया / Passed By	श्री ग्यानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	20.11.2023
(ङ)	Arising out of Order-In-Original No. 214/AC/Demand/2022-23 dated 25.11.2022 passed by The The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Pankajkumar Ratilal Patel, Shree Ambica Engineering, 19, Akshat Industrial Park, Near Naroda Railway Crossing Ahmedabad - 382330

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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.

(ख) 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 माल भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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 has been filed by M/s PankajKumar Ratilal Patel, Shree Ambica Engineering, 19, Akshat Industrial Park, Near Naroda Railway Crossing, Ahmedabad—382330 (hereinafter referred to as the "*the Appellant*") against Order in Original No. 214/AC/Demand/2022-23 dated 25.11.2022 issued on 25.11.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division I, Ahmedabad North (hereinafter referred to as "*adjudicating authority*").

2. Briefly stated, the facts of the case are that the Appellant were not registered with Service Tax department holding PAN No. AVLPP1827E. As per the information received from the Income Tax Department, it was noticed that the Appellant had earned substantial income from service provided during F.Y. 2015-16, however they failed to obtain Service Tax Registration and also failed to pay service tax on such income. The Appellant were called upon vide Letter/E-mail dated 28.01.2021 & 09.03.2021 to submit copies of relevant documents/clarifications for assessment for the said period, however, they neither submitted any required details/documents nor did offer any clarification/explanation regarding gross receipts from services rendered/income earned by them.
3. Subsequently, the Appellant were issued Show Cause Notice bearing No. AR-IV/TDP/SCN/PANKAJ/2021 dated 23.04.2021, wherein it was proposed to:
 - a) Demand and recover an amount of Rs. 1,91,641/- for the F.Y. 2015-16 under proviso to Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act 1994.
 - b) Impose penalty under the provisions of Section 77 (1) and 78 of the Act.
4. The SCN was adjudicated vide the impugned order wherein:
 - a) The demand of service tax amounting to Rs. 1,91,641/- was confirmed along with interest.
 - b) Penalty amounting to Rs. 1,91,641/- was imposed under 78 of the Act.
 - c) Penalty amounting to Rs. 10,000/- was imposed under 77(1) of the Act.
5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:
 - They were engaged in the manufacturing/trading of Engineering goods and providing Maintenance & Repairing services in F.Y. 2015-16. They have received the SCN on dated 23.11.2022 by hand delivery which was issued on dated 23.04.2021. The OIO has been passed on 25.11.2022 within 2 days of receipt of the SCN and the same was issued without following natural justice.



➤ The OIO needs to be based on the principal of natural justice. The OIO has not taken into consideration that the SCN has been issued merely based on the data from the income tax Department. No further investigation has been done by the Service Tax department and no opportunity was provided before the issuance of SCN.

➤ No investigation was done by the department and OIO is passed based on the basis of SCN which is issued merely based on third party data of Income tax Department. While raising the demand it was not proved by the adjudicating authority that the subject amount shown in ITR was received on account of providing of taxable service. Before raising demand on the differential value between ST-3 Return and Balance Sheet the adjudicating authority should reconcile figures by adopting proper methods. The appellant submitted that the letter/mail dated 28.01.2021 & 09.03.2021 regarding clarification were not even received by them and the demand raised only on the basis of the income shown in income tax returns/26AS is not proper.

➤ Further, they submitted that the SCN is based on the ITR and 26AS and the same are also within the Government record, alleging suppression is not proper. The SCN dated 23.04.2021 (delivered on 23.11.2022) issued for the period 01.04.2015 to 31.03.2016 is beyond the limit of five years provided under proviso to section 73 of the Act. Further, the due date of filing the ST-3 for the period from Apr to sep-2015 & Oct-2015 to Mar-2016 were 25th Oct-2015 and 29th Apr-2016 (Order 1/2016 dated 25.04.2016) respectively. The appellant submitted that as the date of serving SCN is 23.11.2022 and the same is beyond 5 years and thus demand for the F.Y. 2015-16 is time barred.

➤ Further, the appellant submitted that in absence of the mens rea to evade payment of service tax, invoking the extended period is not proper. They have relied on the Hon'ble Apex Court decision in Uniworth Textiles Ltd. v. CCE, Raipur reported in 2013 (288) E.L.T. 161 (S.C.), the judgment of Hon'ble Tribunal in case of Coastal Energy Pvt. Ltd. vs. Commissioner of Cus., C. Ex. & S. Tax, Guntur reported in 2014 (310) ELT (97) (Tri-Bang.)

➤ The appellant submitted that Demand raised in the SCN is based on income reported in ITR/TDS. Demand is barred by time limitation and hence extended period is not invocable. As the duty demand from them is in itself not sustainable in light of the above submission, no question for interest and penalty arises. They have relied on the following decision:

- (i) Hon'ble Supreme Court in the case of Pratibha Processors Vs Union of India- 1996(88) ELT 12(SC).
- (ii) CCE V. H.M.M.Ltd.-1995(76) ELT 497(SC).
- (iii) Coolade Beverages Ltd. V. CCE, Meerut-2004(172) ELT 451(All.)
- (iv) H. Guru Investment (North India) Pvt. Ltd. V. CEGAT-1998(104) ELT 8(SC).



➤ The appellant requested to be heard in person before the case is decided and prayed for Consideration of the above submissions and set aside the impugned order.

6. Personal Hearing in the case was held on 18.09.2023 & 11.10.2023. Shri Harshad Patel, Advocate, appeared on behalf of appellant for the hearing and reiterated the contents of the written submissions made in appeal memorandum and requested to allow the appeal. He also submitted that the adjudicating authority has not considered threshold exemption deduction in view of the taxable income being less than 10 Lakhs in the previous year. They also submitted that the SCN is time barred and requested to set aside the OIO. The Appellant submitted P & L Account , Ledger account , Form 26AS , Invoice wise details, sample invoices of purchase and sales, VAT Returns for F.Y.2014-15 & 2015-16. The detail of taxable service income is given as under:

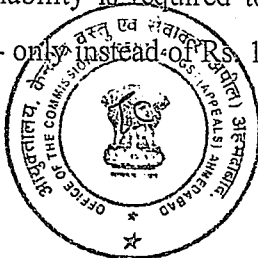
Table-1

year	Gross Amt. charged for maintenance & repaired Services as per P& L	Taxable Income
2014-15	9,69,980/-	Nil
2015-16	13,21,662/-	3,21,662/-
Total (after debiting the 10 lakhs from total amt.)		3,21,662/-

7. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 1,91,641/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

8. I find that the Appellant has not disputed the leviability of Service Tax on the taxable service during the impugned period.

9. Further, as per the submission, the total turnover of the appellant in the preceding F.Y. i.e. 2014-15 was below 10 lakhs (Rs. 9,69,980/-). As per the Notification No 33/2012-ST dated 20.06.2012, the appellant is entitled for the benefit of the exemption of threshold limit up to 10 Lakhs in the F.Y. 2015-16. After considering the facts & submissions, I am of the considered opinion that the appellant's liability is required to be restricted to charging service tax on the taxable value of Rs. 3,21,662/- only instead of Rs. 13,21,662/-. Interest and penalty also need to be decided accordingly.



10. Accordingly, I pass the following order in appeal-

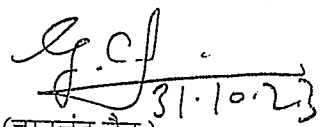
I. The demand of service tax is upheld only to the extent of chargeable on the taxable value of Rs. 3,21,662/- along with interest on the same.

II. Penalty is upheld equal to the tax upheld in point I above under section 78 of the Finance Act, 1994.

III. Penalty is reduced to Rs. 2500/- under section 77(I) of the Finance Act, 1994.

11. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.


(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Attested

Dated: 31.10.2023



(Manish Kumar)

Superintendent(Appeals)

CGST Ahmedabad.

BY RPAD/ SPEED POST

To

M/s PankajKumar Ratilal Patel,
Shree Ambica Engineering, 19,
Akshat Industrial Park,
Near Naroda Railway Crossing,
Ahmedabad— 382330.

Appellant

The Assistant Commissioner

CGST & Central Excise

Division I, Ahmedabad North.

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad North.
3. The Asstt. Commissioner, CGST, Division-I, Ahmedabad North.
4. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad North (for uploading the OIA).

5. Guard File.



