



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW00006656FB

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2243/2023 19/12-86
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-140/23-24 and 20.11.2023
(ग)	पासित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.12.2023
(ङ)	Arising out of Order-In-Original No. 291/AC/Demand/2022-23 dated 16.12.2022 passed by The The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Devshibhai Ranabhai Patel C/o. 11, Ankur Industrial Estate Near National Plastic, Ambica Nagar Road GIDC Odhav, Ahmedabad - 382415

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 मामलों में जो 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 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 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 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 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 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 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 रू 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. Devshibhai Ranabhai Patel, C/o. 11, Anukul Industrial Estate, Near National Plastic, Ambica Nagar Road, GIDC Odhav, Ahmedabad - 382415 (hereinafter referred to as "the appellant") against Order-in-Original No. 291/AC/DEMAND/22-23 dated 16.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AOYPP5197D. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 39,74,628/- during the FY 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued a Show Cause Notice No. AR-II/devshibhai ranabhai patel/Un-reg/2015-16 dated 09.06.2021 demanding Service Tax amounting to Rs. 5,76,322/- for the period FY 2015-16, under provisions of Section 73(1) 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) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 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 demand of Service Tax amounting to Rs. 5,76,322/- 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 FY 2015-16. Further, (i) Penalty of Rs. 5,76,322/- was 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) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant is engaged in manufacturing and selling of goods, namely Dress Materials, doing this business in the trade name of "Jamboree" they are registered with Gujarat State VAT Authority vide TIN: 24075109928 as well as with Central Sales Tax Authority vide No: 24575109928. They have filed VAT returns and discharged VAT liability according to the provisions of Gujarat VAT Act, 2003 during the concerned period. The Impugned Show Cause Notice (SCN) and OIO were issued without any further investigation, only on the basis of data provided by the Income Tax Department alleging that income of Rs. 39,74,628/- shown in the Income Tax Return (ITR) for the F.Y. 2015-16 is taxable under service tax which is not legal as per law. They have relied on the following case:
 - (i) M/s Amrisha Rameshchandra Shah Vs Union of India and others (TS-77-HC-2021 Bom ST),
 - (ii) Sharma Fabricators & Erectors Pvt. Ltd. [2017(5) G.S.T.L. 96 (Tri.- All.)],
 - (iii) Kush construction vs CGST NACIN 2019(24) GSTL 606 (Tri.- All.)
 - (iv) 2007(6) S.T.R. 181 (Tri. Bang.) Alpa management Consultant P. Ltd. Vs CST.
- The appellant submitted that the value in ITR is also shown in their VAT returns and for the same VAT/CST has also been paid, despite the same, the impugned Order has been issued and demand of service tax and penalties are confirmed. Appellant has purchased various kinds of Semi Lawn fabrics like cotton, terry cot, chiffon, georgette, etc. and from the above dress materials is manufactured. Process of converting fabric into dress materials amounts to manufacturing of goods because there is change of name, use and characteristics. They have sold their goods through electronic commerce operators like Ebay, Flipkart, Amazon, etc., which suggest that the appellant is engaged in trading activity which is subject to VAT and not liable for service tax.
- The appellant submitted that as per Negative list of services provided under Section 66D(e) of the Finance Act, 1994, Trading of goods is not subject to Service Tax. The invoices were raised for the value of goods sold. Hence, there is no question of demanding service tax, charging interest and imposing penalties on such value of goods.
- Further, they state that the income declared as sale of services instead of sale of goods in ITR was just a mistake made by the tax advisor through oversight and from the collaborative evidences, it can be verified that the appellant has not provided any service but has sold the goods. From the above facts it can be very well established that the



appellant was not liable to pay service tax. Hence, charging suppression and invoking extended period and levying service tax is not valid.

4. Personal hearing in the case was held on 08.10.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted that the appellant is a manufacturer of textiles material which is also mentioned in the ITR for the concerned period. By mistake, the income from sale of the material was shown under sale of services column of ITR. The appellant has also paid VAT. He also submitted Copy of VAT return, CA certificate and sample invoices & sales register and requested to set aside the impugned OIO. Further, due to change in the appellate authority, Personal hearing in the case was again held on 12.10.2023 but the appellant didn't attend the same.

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 service tax 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 FY 2015-16.

6. It is observed that main contention of the appellant is that they were engaged in sale of goods and not provided any services and therefore not required to pay any service tax. In the present case, as the appellant failed to furnish the required/supporting documents before the adjudicating authority and in absence of the same the adjudicating authority passed the impugned order ex-parte.

7. Now, as the written and verbal submission by the appellant has been made before me. As per documents submitted by the appellant, I find that the appellant was engaged in manufacturing and selling of Dress/textiles Materials and the Income shown in the ITR, of Rs. 39,74,628/- was received against the same. They have submitted that the amount was shown wrongly as the "sale of service" against the "sale of goods". In this regard they have also furnished an affidavit. Being the activity as sale, they are registered with the VAT authorities and filed their VAT-return and discharging their liability also. They have furnished the Inputs purchase invoice, sale invoices, P& L, ITR, form 26AS & VAT Return for F. Y. 15-16 in support of their claim. While going through the P& L, the opening stock of finished goods was also shown. From the above it is clear that they are engaged in the sale of goods and the



said activity of the appellant, i.e. trading of goods, falls under the Negative list of service as per Section 66D(e) of the Finance Act, 1994,

The trading activity includes the sale or purchase of the goods in which the ownership of the goods get change. Trading goods is the activity of buying, selling, or exchanging goods or services between people, firms, or countries. It can also mean the sale of goods by way of business to buyers, traders, or processors and the same is exempted from the service tax as per the Clause (e) of the Section 66D of Finance Act, 1994 specifies the Negative list of services i.e. the Services on which Service Tax is not applicable. Section 66D is been inserted in Finance Act, 1994 by Finance Act, 2012 and been notified to be effective from 1st July 2012 vide Notification No. 19/2012-ST dated 5 June 2012. Relevant portion of the above is reproduced as under:

66D. Negative list of services. - The negative list shall comprise of the following services, namely: -

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -
- (b).....,
- (c).....,
- (d).....,
- (e) trading of goods;

So once the activity falls within the meaning of any service provided in service tax negative list, the activity is out of service tax applicability. As they are engaged in sale/purchase i.e. trading activity.

The total turnover for the FY 2015-16 is as under:

Sr. No.	Particulars	Amount (in Rs.)	Remarks
1	Sale of dress material wrongly shown as Sale of Services	39,74,628/- /-	Exempted as per negative list [section 66D(e)] of Finance Act, 1994

From the submission, it appears that The value is earned from Sale of dress material i.e. Rs. 39,74,628/- during the subject period and while filing the Income Tax return it was wrongly shown by the filer/tax consultant of the appellant as Sale of Services instead of Sale of Goods. The appellant has filed affidavit in this regard and CA certificate confirming the same is also furnished.



8. In view of the above discussion, I am of the considered view that the activity carried out by the appellant not liable to pay Service Tax during the FY 2015-16. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

9. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax on the income received by the appellant during the FY 2015-16, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

G. C. J.

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 20.11.23

Attested

[Signature]

(Manish Kumar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Devshibhai Ranabhai Patel,
C/o. 11, Anukul Industrial Estate,
Near National Plastic, Ambica Nagar Road,
GIDC Odhav, Ahmedabad - 382415

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

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division I, Ahmedabad North



- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- ~~5) Guard File~~
6) PA file



