



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:- 20231264SW000000F1BE

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2228/2023 / 9572-76
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-141/23-24 and 20.11.2023
(ग)	पारित 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. GST-06/D-VI/O&A/436/YADAV/AM/2022-23 dated 23.12.2022 passed by The The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Yadav Jayantibhai Hirabhai E-205, Dev Exotica Near Pleasure Club, Ghuma Gam Ahmedabad - 380058

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 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 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 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 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."



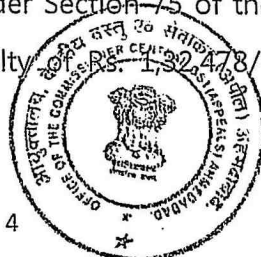
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Yadav Jayantibhai Hirabhai, E-205, Dev Exotica, Near Pleasure Club, Ghuma Gam, Ahmedabad - 380058 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/436/YADAV/AM/2022-23 dated 23.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, 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. AAQPY1342R. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned an income of Rs. 10,71,830/- during the FY 2014-15, 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. CGST-06/04-633/O&A/Yadav/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 1,32,478/- for the period FY 2014-15, 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; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77(1), and Section 78 of the Finance Act, 1994.

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. 1,32,478/- 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 2014-15. Further, (i) Penalty Rs. 1,32,478/- was imposed on the



appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Confirmed late fee of Rs. 40,000/- under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 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 construction services of a single residential unit otherwise than as a part of a residential complex, being small service provider by virtue of Notification no. 33/2012-ST dated 20/06/2012, the appellant were not required to get registered with the service tax department.
- They have provided construction services to few individuals in way of construction of single residential unit during the year 2014-15 and earned Rs. 4,28,630/- which has been claimed as exempted services by virtue of Entry 14 (b) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.
- Further, the appellant have earned Commission income of Rs. 6,43,200/- which is taxable service but well within the threshold exemption limit, hence, the appellant is not liable to pay service tax as mentioned in such Show Cause Notice.
- The appellant have carried out labour work in construction of residential unit and invoice raised on service recipients based on the area of construction. The appellant himself has done labour work while constructing residential unit. The appellant claiming exemption in relation to services provided by way of labour work undertaken in construction of residential unit by virtue of Entry 14(b) of Mega Exemption Notification No. 25/2012-ST.
- They have submitted copy of Construction Labour Income ledger for the FY. 2014-15 and copies of Invoices issued in relation to labour work services



provided in relation to construction of single residential unit along with appeal memorandum.

- The adjudicating authority has done gross error by considering labour work service performed by appellant himself as supply of manpower service in the impugned order. From the definition of Supply of Manpower as per Rule 2(1)(g) of the Service Tax Rules, 1994, it is clear that if person supplies manpower to another person to work under his (means service recipient's) superintendence or control, while in the present matter the appellant himself has done construction labour work and not supplied any manpower to service recipients and invoices raised based on the construction work done on Sq. Ft. basis and not based on number persons deployed then it cannot be considered as supply of manpower.
- Further, the appellant have earned Commission Income of Rs. 6,43,200/- during the Financial Year 2014-15 towards sale of Flats in the "Maher Homes" Scheme from the Vishwanath Realtor (Prop. Dushyant Manishanker Pandya). They have submitted copy of Commission Income Ledger, copy of Debtor's Ledger, copy of Brokerage (Commission) Invoice and copy of cheque through which commission amount received along with the appeal memorandum.
- They have also submitted copy of Income Tax Return and copy of Profit & Loss Account for the FY 2014-15 along with the appeal memorandum.
- During the preceding year, i.e. FY 2013-14 appellant had received total income of Rs. 4,69,250/- which suggest that total taxable value of services is not exceeding Rs. 10,00,000/-, hence, the appellant is eligible for small service provider exemption for the F.Y. 2014-15 as per Notification No. 33/2012-ST dated 20/06/2012. They have also submitted copy of Income Tax Return and copy of Profit & Loss Account for the FY 2013-14 along with the appeal memorandum.



- During the FY 2014-15, the appellant have provided total taxable value of services of Rs. 6,43,200/- only which is not exceeding Rs. 10,00,000/-, therefore, the appellant is not liable to pay service tax, interest and penalty as demanded in the impugned order.
 - The SCN is merely based on the comparison of data received from the Income Tax Department for the Income Tax Returns and Form 26AS. There is no investigation is conducted and the department has conveniently preferred to issue SCNs rather than conducting enquiry in the matter. Thus, the SCN issued by the department is not sustainable. In this regard, they relied upon the following case laws:
 - a) M/s. Amrish Rameshchandra Shah Vs. Union of India and others (TS-77-HC-2021- Bom-ST)
 - b) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) G.S.T.L. 96 (Tri. - All.)]
 - c) Kush Constructions Vs. CGST NACIN 2019 (24) GSTL 606 (Tri. - All.)
 - d) Alpa Management Consultants P. Ltd. Vs. CST [2007 (6) STR 181 (Tri.-Bang.)]
 - SCN has been issued and demand has been confirmed by invoking the extended period under Section 73(1) of the Finance Act, 1994. However, 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 11.09.2023. 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 provided construction service of individual residential house for an amount of Rs. 4,28,630/-, invoices of the same are placed in file. This service is exempted from service tax. However, the adjudicating authority has treated this as labour supply service wrongly. He drawn attention to the rate per sqare feet quoted in the invoices, which will not be possible in case of labour supply. The remaining income is less than



10 lakhs and the turnover in preceding F.Y. 2013-14 was also less than 10 lakhs. Therefore, he requested for threshold exemption and set aside the impugned order.

Further, due to change in the appellate authority, Personal hearing in the case was again held on 11.10.2023 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 2014-15.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. As the appellant failed to provide the details/documents, the adjudicating authority decided the case ex-parte. Further, as per their submission before me, it appears that the appellant has provided construction services of a single residential unit to its various clients and get payment on per sqr ft basis. They have submitted the income ledger and copies of the invoices in support of their claim. They have claimed exemption for the same as per Notification no 25/2012 dated 20.06.2012[14(b)]. The relevant portion is produced as under:

Notification No. 25/2012-Service Tax

New Delhi, the 20 th June, 2012

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994)(hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E),dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1.....,

2 to 13.....,

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a);



(b) a single residential unit otherwise than as a part of a residential complex;

7. Further, the appellant have also earned Commission Income of Rs. 6,43,200/- during the Financial Year 2014-15 on sale of Flats in the "Maher Homes" Scheme. They have submitted copy of Commission Income Ledger, copy of Brokerage (Commission) Invoice and copy of cheque through which commission amount received in support of their claim. As the total income from this taxable service is Rs. 6,43,200/- which is less than 10 lakhs threshold limit. The turnover in the preceding year was also below 10 lakhs. They have furnished the ITR for the f. Y. 2013-14 in support of their claim. Hence, the appellant appears to be eligible for small service provider exemption for the F.Y. 2014-15 as per Notification No. 33/2012-ST dated 20/06/2012. After considering the facts & submissions, I am of the considered opinion that, the contention of the appellant are sustainable.

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 2014-15. 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, in respect of income received by the appellant during the FY 2014-15, 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.

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Attested

Date :



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



By RPAD / SPEED POST

To,

M/s. Yadav Jayantibhai Hirabhai,
E-205, Dev Exotica,
Near Pleasure Club, Ghuma Gam,
Ahmedabad - 380058

Appellant

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA file

