



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:- 20231264SW000000E480

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2237/2023 / 70-74
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-152/23-24 and 28.11.2023
(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/508/SHITAL/AM/2022-23 dated 20.1.2023 passed by The The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shital Ashokbhai Shah Moksha, Plot No. 29, Sector-B1 Sterling City, Bopal 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 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 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 और 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 अपीलो 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. M/s. Shital Ashokbhai Shah, Moksha Plot 29, Sector B1, Sterling City, Bopal, Ahmedabad, Gujarat - 380058. (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/ O&A/ 508/ SHITAL/ AM/2022-23 dated 20.01.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. ACIPS7860A. They are engaged in the business of acting, directing and producing the film & bearing Service Tax Registration No ACIPS7860ASD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2016-17, it was noticed that the appellant had earned an income of Rs. 14,09,435/- during the FY 2016-17, which was reflected under the heads "Sales of services" (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit copies of relevant documents for assessment for the above said period. The appellant submitted their detailed submission to the department in this regard in which they claimed that total income from sale of service was 15,66,435/- instead of Rs. 14,09,435/-. As the total turnover during F.y. 2015-16 (preceding F.Y.) was below 10 lakhs, they were eligible to take benefit of the threshold exemption as per Notification 33/2012-S. Tax dtd. 20.06.2012. After availing above benefit (deducting 10 lakhs from the total 15,66,435/-) they have paid the applicable service tax amounting Rs. 84,965/- on Rs. 5,66,435/- vide CIN 05102472607201720230.

2.1 Subsequently, the appellant was issued Show Cause Notice No. GST-06/04-1320/Shital/2021-22/5088 dated 12.10.2021 demanding Service Tax amounting to Rs. 2,11,415/- for the period FY 2016-17, under proviso to Sub-Section (1) of Section 73 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 76, Section 77 and Section 78 of the Finance Act, 1994. The appellant submitted their detailed reply of the above SCN vide their letter dated 18.04.2022.

2.2 The Show Cause Notice was adjudicated, vide the impugned order by the adjudicating authority granted the threshold limit exemption as claimed by the appellant and the demand of Service Tax amounting to Rs. 61,415/- 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 from FY 2016-17. Further (i) Penalty of Rs. 61,415/- was also 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.

The adjudicating authority dropped the demand of Service Tax Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand Only) along with the interests under proviso to section 73(I) of the



Finance Act, 1994 read with section 75 of the Finance Act, 1994. The adjudicating authority also refrained from imposition of penalty on the appellant under section 76 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 the business of acting, directing and producing the film and have been registered with Service Tax department w.e.f. August-2013. The appellant states that the SCN as well as OIO is issued without following any process of investigation and lack any factual aspect. The jurisdictional service tax department issued a letter dated 20.9.2021 seeking explanation regarding non payment of service tax during F. Y. 2016-17 on their sale of service income Rs. 14,09,435/-. They submitted their reply vide letter dated 28.09.2021 stating that the total income from sale of service was 15,66,435/- instead of Rs. 14,09,435/-. As the total turnover during F.y. 2015-16 (preceding F.Y.) was below 10 lakhs, they were eligible to take benefit of the threshold exemption as per Notification 33/2012-S. Tax dtd. 20.06.2012. After availing above benefit (deducting 10 lakhs from the total 15,66,435/-) they have paid the applicable service tax amounting Rs. 84,965/- on Rs. 5,66,435/- vide CIN 05102472607201720230. They have paid the above amount on 26.07.2017.
- The appellant states that despite of above, the jurisdictional officer issued Show Cause notice dated 12.10.2021. In reply to SCN they have explained all the details with evidences and before the adjudicating authority. The adjudicating authority considered the threshold exemption but did not considered the tax paid by them.
- The appellant submitted that just by finding the difference in the ST-3 figures and the Balance sheet figures does not mean that the assessee has short paid service tax. The adjudication of said matter has not been conducted properly. They relied on the case of COMMISSIONER OF SERVICE TAX, AHMEDABAD VERSUS PURI ADS. PVT. LTD. [2010(19) S.T.R. 242 (Tri. - Ahmd.)]. Further they also relied on the case of a SHARMA FABRICATORS & ERECTORS PVT. LTD. Versus C.C. E. ALLAHABAD 2017 (5) G.S.T.L. 96 (Tri. - All.)
- The appellant stated that Demand in the entire OIO is based on differential between income reported in 26AS / Income tax return and ST-3 Return. The OIO does not discuss why the tax of 16-17 paid on 26.07.2017 & shown in ST3 of Apr-Jun 17 is not considered as payment of tax against the demand. Despite of income reconciliation of 2017-18 has been submitted at jurisdictional as well as adjudication authority, the OIO is silent on the grounds of rejection of this argument.
- Further to prove that the income declared in ST3 of Apr-Jun 17 does not pertain



to 2017-18, they have furnished the copy of ITR for F. Y. 2017-18 which shows only Rs. 60,000/- as service income. This income pertains to GST period i.e. Post Jul-17. Which they have been declared in GSTR-3B and paid through DRC-03 dated 08.08.2019.

- The appellant submitted that in the law or any provisions, there has not been any restriction for declaring the previous period income in subsequent period. Hence, they did a better job to declare the income at least in the subsequent period and neither suppressed any income nor they had any intention to avoid tax. Therefore, tax shall not be demanded and penalty u/s 77 and 78 shall not be imposed. In the light of above discussion, the appellant requested that the Impugned OIO for F.Y. 2016-17 invoking proviso to section 73(1) should be rejected and accordingly entire demand raised along with Interest & penalty should be quashed entirety.

- 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.

4. Personal hearing in the case was held on 22.09.2023. Shri Nitesh Jain, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal. He submitted that the appellant have already paid the tax under the demand and had filed the return also. He requested to allow their appeal and set aside the impugned order.

Further, due to change in the appellate authority, Personal hearing in the case was again held on 10.10.2023. Shri Nitesh Jain and Pravin Maheshwari, both Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal and requested to allow the appeal and set aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing 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 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2016-17 based on the Income Tax Returns filed by the appellant. The value of "Sales of Services" provided by the Income Tax Department is considered in the SCN for raising the demand against the appellant. Further, in their reply the taxable Amount was claimed as Rs. 15,66,435/- instead of Rs. 14,09,435/-.



7. In the present case, I find that letter was issued to the appellant by the jurisdictional Range officer seeking details and documents, which were provided/ submitted by them vide letter dated 28.09.2021. The appellant also provided the self- attested copy of ST-3 returns filed by them for the F.Y. 2016-17. No taxable income and service tax liability was shown in the said returns. further, they submitted that the total income from "Sale of Service" for the F.Y. 2016-17 was Rs. 15,66,435/- and as in the preceding year their Income was under 10 Lakhs, after availing the benefit of Threshold limit they have paid service tax Rs. 84,965/- on dated 26.07.2017, on the value Rs. 5,66,435/-. The same has been shown this in their successive ST-3 filed for the period April-17-June-2017. Further, as per their submission, they paid their service tax on 26.07.2017 which was required to be paid by the 31.03.2017. As the payment of S. tax Rs. 84,965/- was being made on 26.07.2017 instead of 31.03.2017 i.e. 117 days delay, interest was also required to be paid but the same was not paid. The same is required to be recovered in terms of Section 75 of the Finance Act, 1994. The relevant portion from the same is extracted below:

75.1[Interest on delayed payment of service tax]

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest 2[3[at such rate not below ten percent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette] for the period] by which such crediting of the tax or any part thereof is delayed.

Further, they have also submitted that as per ITR filed for the F.Y. 2017-18, the income from "Sale of Service" was Rs. 60,000/- which was declared in the GSTR-3B for Feb-Mar-2018 and tax on the same has also been paid.

8. It is observed that the main contentions of the appellant in the appeal memorandum is that they have declared their taxable income for the F. Y. 2016-17 late i.e. in their ST-3 filed for the period Apr-June 2017-18 and made payment of S. tax Rs. 84,965/- on 26.07.2017. The appellant has requested to consider the same against the demand raised for the F. Y. 2016-17. For the confirmation of the same the appellant has submitted the copies ITR for F.Y. 2016-17 & 2017-18, ST-3 Returns for the F.Y. 2016-17 and for the period Apr-June-2017. Except above, the appellant submitted the P&L Account for F.Y 16-17 & 17-18 also.

On going through the above submission it appears that the 'appellant' in the present case, has filed Nil ST-3 returns for the F.Y.2016-17 & shown Rs. 15,66,435/- as taxable income in the ST-3 for the period Apr to June-2017 and made the payment of service tax Rs. 84,965/- on 26.07.2017 in respect of F.Y. 2016-17.

9. The appellant is claiming that as per documentary evidences, the taxable income Rs. 15,66,435/- shown in the ST-3 for the period Apr to June-2017 may be considered relevant to F.Y. 2016-17 as no such income is shown in the ITR for the F.Y. 2017-18. Therefore, the payment of service tax Rs. 84,965/- made on 26.07.2017, also appears relevant to F.Y. 2016-17. However, being late payment, the same was required to be paid along with interest. Hence interest is recoverable.



10. Further, I find that the appellant failed to file their ST-3 returns properly and correctly assess their Service Tax liability under Finance Act, 1994 & Service tax Rules, 1994. Thus contravened the provisions under Section 70 of the Finance Act, 1994 and therefore the adjudicating authority correctly held them liable for penalty under Section 77 of the Act.

11. Further since they declared the liability voluntarily in the successive return and paid the tax suo moto, penalty under section 78 of the Finance Act, 1994 is not sustainable.

12. In view of above, the impugned OIO is upheld except for the penalty under section 78 of the Finance Act, 1994.

13. 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. Y. J.
28-11-23

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 28.11.2023

Attested

K

Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s Shital Ashokbhai Shah,
Moksha Plot 29, Sector B1,
Sterling City, Bopal, Ahmedabad, Gujarat - 380058

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



Appellant

Respondent

Copy to :

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

