



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:- 20231264SW0000444D0E

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/ STP /3839/2023 / 9239 - 113
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS- 002-APP -157/23-24 and 29.11.2023
(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	13.12.2023
(ङ)	Arising out of Order-In-Original No. 51/DC/D/VM/22-23 dated 31.1.2023 passed by The The Deputy Commissioner, CGST, Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Harshaben Rupeshkumar Gupta Shudha Dental Clinic, 20 Aksharnagar ComplexMandal Road, Viramgam Dist: Ahmedabad - 382150

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:

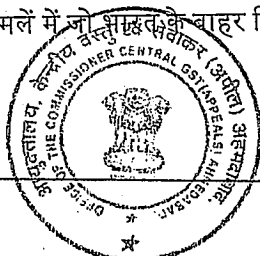
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 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, अपीलों 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 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 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।

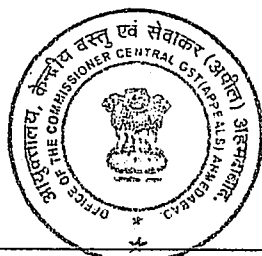
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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

M/s. Harshaben Rupeshkumar Gupta, Sudha Dental Clinic, 20, Aksharnagar Complex, Mandal Road, Viramgam, Ahmedabad -382150 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 51/DC/D/VM/2022-2023 dated 31-01-2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-III, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service but were not registered with the department.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, it was noticed that the appellant in the ITR/Form-26 AS has earned taxable income 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

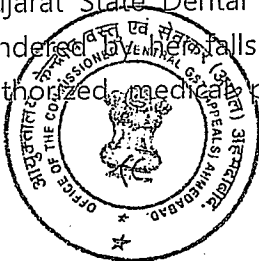
<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2016-17	11,88,290/-	15%	1,78,243/-

2.1 A Show Cause Notice (SCN) No.III/SCN/AC/Harshabengupta/207/21-22 dated 22.10.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs.1,78,243/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 70, Section 77(1) & 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.1,78,243/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each under Section 77(1) & 77(2) and penalty of Rs.1,78,243/-was also imposed under Section 78 of the F.A., 1994. Late fee under Section 70 was ordered.

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

- The appellant is a Dentist Doctor having clinical establishment in the name of SHUDHA DENTAL CLINIC at 20, Akshamagar Complex, Mandal Road, Viramgam. 382150. Dist :- Ahmedabad. The appellant is engaged in the Practice as Dental Practitioner as Medical and Healthcare service. The appellant in reply to notice dated 30-9-2020 and SCN dated 22-10-2021 has submitted the reply on 10-11-2021 with copy of required documents like ITR FORM, 26AS and COPY OF CERTIFICATE OF REGISTRATION -- FORM C under the Dentist Act, 1948 issued by Gujarat State Dental Council were also submitted to establish that the service rendered by her falls under " Health care services by clinical establishment, an authorized medical practitioner or para medics. But without considering the



CERTIFICATE of REGISTRATION as DENTIST, the Adjudicating Authority had mentioned all other documents in OIO and missed to mention certificate.

- The services provided by the appellant is exempt as per the Mega exemption Notification No. 25/2012 - dated 20.06.2012 " 2.(@) Health care services by a clinical establishment, an authorized medical practitioner or para-medics;". Therefore the appellant is neither liable for registration nor liable to pay any service tax on the services provided by her. Therefore, imposition of service tax of Rs.1,78,243/- and penalty of Rs. 1,78,243/- and penalty of Rs.10,000/- u/s 77(1) and Section 77(2) is not imposable.

4. Personal hearing in the matter was held on 23.11.2023. Shri Jayesh M. Shah, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He submitted that the appellant is a doctor and provides healthcare services. Hence, the services falls under the category of healthcare services which are exempted from Service tax. Therefore, he requested to set-aside the impugned order.

4.1 The appellant also made additional submissions vide letter dated 23.11.2023, reiterating the grounds of appeal and also submitted Certificate of Registration issued under the Dentist Act, 1948, Shops and Establishment Registration certification issued by Viramgam Nagarpalika, ITR, Form-26AS, Balance Sheet, Invoices.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, submissions made during personal hearing as well as the documents submitted by them. The issue to be decided in the present case is as to whether the service tax demand of Rs. 1,78,243/- confirmed alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2016-17.

5.1 In terms of Entry No-2 of Notification No.25/2012-ST, "*Health care services by a clinical establishment, an authorised medical practitioner or para-medics;*" are exempted from the levy of service tax. The term 'authorised medical practitioner' is defined in clause (d) of Para-2, which is reproduced below:-

d) "*authorised medical practitioner*" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

5.2 The adjudicating authority at para-23 of the impugned order has recorded that the appellant has provided copy of certificate recognizing her as a doctor, ITR, Form-26AS, Balance Sheet, P&L Account. However, the adjudicating authority on the findings that the appellant has not provided category-wise breakup of services provided in terms of Sr.No.2 of mega notification and in terms of D.O. letter No.334/13/2009-TRU, New Delhi dated 6th July, 2009, confirmed the demand.



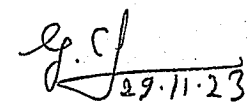
5.3 It is observed that Notification No. 25/2012-ST dated 20.06.2012 was issued after the aforesaid D.O. letter dated 6.7.2009, therefore the notification shall prevail. Further, I find that there is no condition in the notification which specifies for provision of break-up of services.

5.4 The appellant is a registered Dentist running Sudha Dental Clinic situated at 20, Aksharnagar Complex, Mandal Road, Viramgam, Ahmedabad -382150. She is a medical practitioner having qualification of B.D.S from Gujarat University. It is observed that in the balance sheet the appellant has shown an income of Rs.11,88,290/- towards Clinical Fee Income. She also submitted invoices raised to this effect. Based on these documents, I find that the appellant was providing healthcare services.

5.5 The healthcare service provided by clinical establishment is exempted. The Shops and Establishment Registration certification issued by Viramgam Nagarpalika clearly indicate that the premise of the appellant is registered as Sudha Dental Clinic. So far as it is proven that the appellant is an authorized medical practitioner and the income shown in the ITR/Balance Sheet pertains to said service, there should not be any ambiguity in granting the exemption. As no finding countering this aspect was recorded in the impugned order, I do not find any reason in denying the exemption to the appellant.

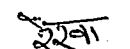
6. In light of above discussion and findings, I find that the service tax demand of Rs. 1,78,243/- is not sustainable on merits, as the services of authorized medical practitioners are exempted. I, therefore, set-aside the impugned order confirming the service tax demand of Rs.1,78,243/- alongwith interest and penalties and allow the appeal filed by the appellant.

7. 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.


(ज्ञानचंद जैन)
आयुक्त(अपील्स)

Date: 29.11.2023

Attested


(रेखा नायर)

Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Harshaben Rupeshkumar Gupta,
Sudha Dental Clinic,
20, Aksharnagar Complex,
Mandal Road, Viramgam,
Ahmedabad -382150

Appellant

The Deputy Commissioner
CGST, Division-III,
Ahmedabad North

Respondent

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.



