



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:- 20240164SW0000222DB1

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3570/2023 / 647-51
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-169/23-24 and 26.12.2023
(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	04.01.2024
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/353/SNEHAL/AM/2022-23 dated 28.11.2022 passed by The The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Harsh Industries Proprietor Snehal Jayantilal Modi 24/281, Rameshwar Flat Sola, Ahmedabad - 380013

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:-

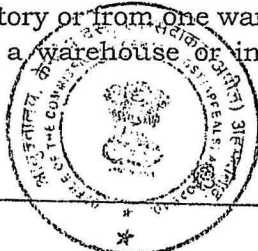
#### Revision application to Government of India:

(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, 4<sup>th</sup> 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 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)।

- (13) खंड (Section) 11D के तहत निर्धारित राशि;
- (14) लिया गलत सेनवैट क्रेडिट की राशि;
- (15) 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:

- (xiii) amount determined under Section 11 D;
- (xiv) amount of erroneous Cenvat Credit taken;
- (xv) 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**

M/s. Snehal Jayantila Modi, Proprietor of M/s. Harsh Industries, 24/281, Rameshwar Flat, Sola, Ahmedabad-380013 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST-06/D-VI/O&A/353/Snehal/AM/2022-23 dated 28.11.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, 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. 2015-16, 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>
2015-16	1,04,12,068/-	14.5%	14,52,686/-

2.1 A Show Cause Notice (SCN) No. CGST-06/04-989/O&A/Snehal/2020-21 dated 24.03.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs.14,52,686/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 70, Section 77 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.14,52,686/- was confirmed alongwith interest. Penalty of Rs. 10,000/- under Section 77 and penalty of Rs. 14,52,686/- was imposed under Section 78 of the F.A., 1994. Late fee of Rs.40,000/- was also imposed under Section 70.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal alongwith Miscellaneous Application seeking condonation of delay, on the grounds elaborated below:-

- The appellant is engaged in manufacture of goods and is registered under Gujarat Value Added Tax Act, 2003. Further, the turnover is less than 1.5 Crore and thus eligible for exemption from paying duties under Central Excise. As on the entire turnover VAT has been discharged there shall be service tax liability on such income. Copy of VAT return, P&L Account for the F.Y. 2015-16 is submitted as proof.





- Service tax cannot be demanded merely based on Income Tax Returns or Form 26AS filed without establishing the nature of service. Reliance placed on citation Faquir Chand Gulati Vs Uppal Agencies Pvt. Ltd- 2008(12) STR 401 (SC).
- The notice does not bring out the fraud, collusion or willful misstatement or suppression of facts or intent to evade service tax. The appellant has submitted the requisite information as when demanded hence department cannot allege suppression to invoke extended period of limitation.
- The demand if any should be treated as inclusive of service tax in terms of Section 67(2) of the F.A., 1994.
- When the original demand is not sustainable, the liability of interest and penalties imposed are not sustainable in law as reasonable cause for such failure established.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 28.11.2022 and same was claimed to be received by the appellant on 28.12.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 27.03.2023 after a delay of 29 days. The appellant in the Miscellaneous application stated that the appellant was out of India when the order was delivered hence the appeal could not be filed within two months from the date of communication as he could not sign the appeal paper physically, hence the delay. They claim that the delay was not intentional and was beyond their control and therefore requested to condone the delay which is within the condonable period.

4.1 In terms of Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Relevant text of Section 85 is reproduced below:

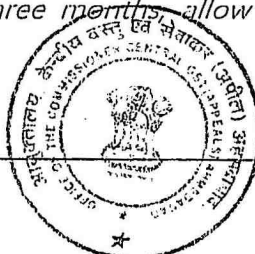
***SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals).***

*[(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the <sup>5</sup>[Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]*

*(2) Every appeal.....in the prescribed manner.*

*(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [made before the date on which the Finance Bill, 2012, receives the assent of the President]:*

*Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.*



*[(3A) An appeal shall be presented within **two months** from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :*

***Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]*

**4.2** It is observed that the appeal in the present case was filed on 27.3.2023, after a delay of 29 days. Considering, the legal provisions under Section 85(3A) of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay of only one month provided he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. In the instant case delay of 29 days which is within the condonable period prescribed in Section 85(3A). Considering the fact, I regard their bonafide belief as sufficient cause and allow the appeal after condoning the delay of 29 days.

**5.** Personal hearing in the matter was held on 07.12.2023. Shri Dhairya Soni, Chartered Accountant appeared for personal hearing on behalf of the appellant and reiterated the submissions made in the appeal. He stated that the appellant manufactured plastic and rubber goods and does not provide any services. However, by mistake, in the ITR for the F.Y. 2015-16, they have declared the turnover as sale of services while it was actually sale of goods. He also requested two days time to submit C.A. certificate as corroborative evidence.

**5.1** The appellant subsequently submitted C.A. Certificate dated 09.12.2023, issued by Chirah R Shah & Associates wherein they have certified that the turnover of the appellant amounting to Rs.1,04,12,068/- for the F.Y. 2015-16 pertains to sale of goods. While filing the ITR for the A.Y. 2016-17, the said turnover was inadvertently disclosed as "Sale of Services" instead of "Sale of Goods". Further, the appellant has not provided any services during the said financial year.

**6.** I have carefully gone through the facts of the case, the impugned order passed by the refund sanctioning authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is whether the demand of **Rs.14,52,686/-** confirmed vide the impugned order alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise.

Period of dispute involved is F.Y.2015-16.

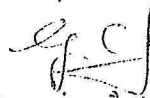
**6.1** I have gone through the Profit & Loss Account for the F.Y. 2015-16. It is observed that the income of Rs.1,04,12,068/- is reflected as receipts under head sale of goods. As the entire demand has been raised on said income, considering the Profit & Loss Account and the C.A. certificate issued in this regard, I find that the appellant has not rendered any service therefore they are not liable to discharge the service tax. ~~therefore find that the~~



demand is not sustainable when there is no element of service involved. Accordingly, I find that the appellant is not liable to pay service tax amounting to Rs.14,52,686/-. When the demand does not sustain there is no question of demanding interest and imposing penalty.

7. In view of the above discussion, I set-aside the impugned order confirming the service tax demand of Rs.14,52,686/- alongwith interest and penalties and allow the appeal filed by the appellant.

8. 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(अपील)

Date: 26.12.2023

Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जीटी.एस., अहमदाबाद



By RPAD/SPEED POST

To,

M/s. Snehal Jayantila Modi,  
Proprietor of M/s. Harsh Industries,  
24/281, Rameshwar Flat, Sola,  
Ahmedabad-380013

- 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 (H.Q. System), CGST, Ahmedabad (Appeals).

(For uploading the OIA)

4. Guard File.



