



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW000000DFEO

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2231/2023 /612-16
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002 APP-176/23-24 and 28.12.2023
(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. 94/ADC/MR/2022-23 dated 27.12.2022 passed by The The Additional Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Vihal Construction 1, Ajanta Elora Complex, NH-8 Opp. Galaxy Cinema, Naroda Ahmedabad - 382330

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.

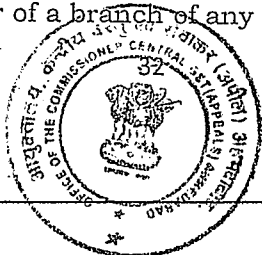
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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 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 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 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)।

- (31) खंड (Section) 11D के तहत निर्धारित राशि;
- (32) लिया गलत सेनवैट क्रेडिट की राशि;
- (33) 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:

- (xxxi) amount determined under Section 11 D;
- (xxxii) amount of erroneous Cenvat Credit taken;
- (xxxiii) 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."



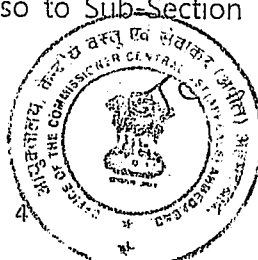
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Vihal Construction, Proprietor Jayantibhai Narsibhai Mehani, 1, Ajanta Elora Complex, NH-8, Opp. Galaxy Cinema, Naroda, Ahmedabad-382330 (hereinafter referred to as "the appellant") against Order-in-Original No. 94/ADC/MR/2022-23 dated 27.12.2022 issued on 29.12.2022 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, CGST & Central Excise, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that Shri Jayantibhai Narsibhai Meghani, Proprietor of the appellant were holding Service Tax Registration No. ABCPM8177BSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 8,10,93,379/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. STC/15-249/OA/2020-21 dated 23.04.2021 demanding Service Tax amounting to Rs. 1,21,64,007/- for the period FY 2015-16, under provision 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 77(2) and Section 78 of the Finance Act, 1994.

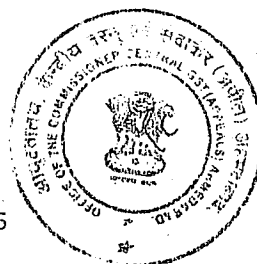
2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,21,64,007/- was confirmed under proviso to Sub-Section (1) of Section 73 of the



Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further, Penalty of Rs. 1,21,64,007/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) 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 Proprietor of M/s. Vihal Construction and are holding Service Tax Registration No. ABCPM8177BSD001 since 08.10.2015 and are regularly filed periodical Service Tax Returns in Form ST-3 since then. The appellant have correctly deposited the service tax amount on the taxable services rendered by them. The appellant are engaged into the business of Construction Services.
- The appellant submitted that they have not received any notice including show cause notice and personal hearing notice. They were called by the department on the mobile number mentioned in ITR and the OIO was delivered to them. On receipt of the impugned order, it was found that value of services as per Income Tax Return was considered as Rs. 8,10,93,379/- as against the actual value of Rs. 3,98,68,486/-, which is also mentioned in the Income Tax Return filed by them for the FY 2015-16. Further, in the impugned order, the value as per ST-3 filed was considered Nil against the actual value of Rs. 2,87,83,438/-, which is also shown in the ST-3 Return filed by them for the second half of the F.Y. 2015-16.
- The appellant submitted that the adjudicating authority erred in law by issuing the impugned order against natural justice by not providing the opportunity of being heard. They place reliance on the case law of Hon. Supreme Court in the case of Umanath Pandey v. state of UP[2009] 12 SCC 40-43.
- The appellant submitted that the adjudicating authority has taken the taxable amount Rs. 8,10,93,379/- against the actual figures Rs 3,98,68,486/- which can be seen in ITR-4 and the Part A-P& L Point No 1(A) also. The adjudicating



authority also failed to consider the actual taxable value Rs.2,87,83,438/- shown in the ST-3.

Calculation of Service Tax payable and paid including Swachh Bharat Cess is as under:

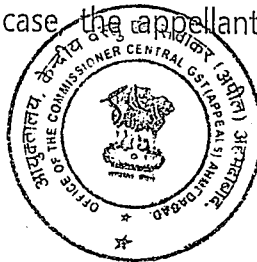
Value of taxable service as per Income Tax Return	:	Rs. 3,98,68,486/-
Service Tax on the same (@ 14%)	:	Rs. 55,81,589/-
Swachh Bharat Cess (@ 0,5%)	:	Rs. 1,99,343/-
Total Service Tax Payable	:	Rs. 57,80,932/-

Service Tax and Swachh Bharat Cess already paid as under:

CIN: 63602193103201635077	as per ST-3	:	Rs. 36,73,598/-
Dated 31.03.2016			
CIN: 63602190701201672085	as per ST-3	:	Rs. 5,00,000/-
Dated 07.01.2016			
CIN: 63602191407201630156	not included in ST-3	:	Rs. 13,68,919/-
Dated 14.07.2016			
CIN: 63602192707201630079	not included in ST-3	:	Rs. 3,33,103/-
Dated 27.07.2016			
Total Service Tax Paid		:	Rs. 58,75,620/-

They have correctly paid the service tax and had no any intention to evade the tax. The adjudicating authority as well as the show cause notice issuing authority has not taken into account the details available with them on the common portal of service tax in Form ST-3, where all the details pertaining to taxable service rendered are being reflected, and therefore the show cause notice and impugned order issued by the adjudicating authority is completely vague.

- The adjudicating authority erred in law and fact of the case by invoking extended period under Section 73(1) of the Finance Act, 1994. The same can be invoked only in case of fraud, collusion, willful misstatement, suppression of facts, etc., however, in present case the appellant have truly and correctly



declared all the facts and figures pertaining to the taxable services at the time of filing the periodic service tax return in Form ST-3.

Since, there is no delay in payment of service tax, there does not arise the question of payment of interest under Section 75 of the Finance Act, 1994 or payment of penalty under Section 77 and 78 of the Finance Act, 1994.

4. Personal hearing in the case was held on 25.09.2023. Shri Kunal Agrawal, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted that the appellant had provided services of worth Rs.3,98,68,486. However, the value of these services was erroneously shown as sale of goods in the profit and loss of the IT. Further he stated that It is surprising that the Adjudicating Authority has taken the value from ITR as Rs.8,10,93,379 without any basis, since the value of services as per IT was zero. He further submitted that the appellant had filed service tax return for the period under demand, but missed to include the amount of Rs.13,68,919/- (including interest amount Rs.65,000/-) and 3,33,103/- (including interest amount Rs.33103/-) towards tax payable in the service tax return. He submitted that this amount/tax was subsequently paid in the month of July 2016 itself. He also submitted that the adjudicating authority has not verified the service tax return filed by the appellant and has taken a totally mistaken value as per IT. He submitted that since, there was no liability on the appellant, the impugned order is liable to be set aside.

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 the main contentions of the appellant are that they were not heard in person by the adjudicating authority and in their ITR and P& L, the income is shown Rs. 3,98,68,486/- and the service tax liability on the same @14.5% comes as Rs.



57,80,932/- . Out of total liability they have paid Rs. 41,73,598/- vide challan no 35077 dated 31.03.2016(Rs. 36,73,598/-) and vide challan no 72085 dated 07.01.2016 (Rs. 5,00,000/-) and shown in their ST-3 filed for second half of the F.Y. 2015-16.

Rest of the amount Rs. 15,51,907/-was paid along with interest , Rs. 13,68,919/- vide challan no 30156 dated 14.07.2016 and Rs. 3,33,103/- vide challan no 30079 dated 27.07.2016 which they missed to pay during the F.Y. 2015-16.

Now, As per Form 26AS for the F.Y. 2015-16 the amount received from various service recipient to the appellant is seen different which is as under:

Sr. No.	Name of the Party	Amount (In Rs.)
1	Aaryan Infrabuild	60,300/-
2	Eminent Infracon	2,29,75,286/-
3	Euphoria Infracon	99,92,543/-
4	Swastik Infra	5,00,000/-
5	Vrindavan Develpers	95,12,834/-
	Total	4,30,40,963/-

As per the above table, taxable income is Rs. 4,30,40,963/- and the service tax @14.5% is as Rs. 62,40,940/- which are different from the Income claimed by the appellant and shown in the ITR .The adjudicating authority has also considered the amount Rs. 8,10,93,379/- as taxable. As there are 3 different taxable values and to ascertain the correct taxable value and service tax liability, detailed examination at the adjudication level is required.

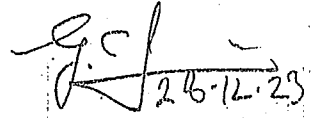
7. Therefore, I find it proper to remand back the impugned order to the adjudicating authority to re-examine and decide it afresh, following the principle of natural justice and considering the all facts. The appellant is also directed to furnish all relevant documents before the adjudicating authority.



8. In view of above, I remand back the impugned order to the adjudicating authority to re-examine the issue and decide it afresh.

9. 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)

Date : 28.12.2023

Attested



Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Vihal Construction,
Proprietor Jayantibhai Narsibhai Mehani,
C-77, Rameshwar Park,
Near Geeta Gauri Cinema,
NH-8, Odhav, Ahmedabad



Appellant

The Additional Commissioner,
CGST & Central Excise,
Ahmedabad North

Respondent

Copy to :

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

(for uploading the OIA)

5) Guard File



6) PA File

