



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:- 20240164SW0000438477

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3859/2023 / 627-31
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-178/23-24 and 29.12.2023
(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. 58/DC/D/VM/22-23 dated 18.1.2023 passed by The The Deputy Commissioner, CGST Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Jigar Harshadbhai Thakkar Prop. of Riddhi Electricals 10, Gausadan Building, Near Parkota Viramgam 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:-

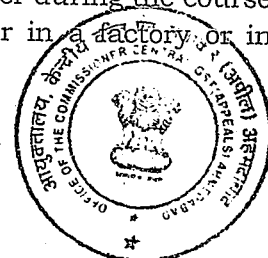
Revision application to Government of India:

(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 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 हों।

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 हो तो 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 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 उपयुक्त 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 प्रतिपरर रु 6.50 पैसे का न्यायालय शुल्क दिकट 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)।

(34) खंड (Section) 11D के तहत निर्धारित राशि;

(35) लिया गलत सेनवैट क्रेडिट की राशि;

(36) 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:

(xxxiv) amount determined under Section 11 D;

(xxxv) amount of erroneous Cenvat Credit taken;

(xxxvi) 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."



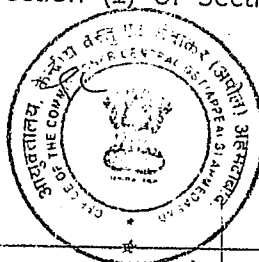
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Jigar harshadbhai Thakkar, Proprietor of Riddhi Electricals, 10, Gausadan Building, Near Parkota Viramgam, Ahmedabad-382150 (hereinafter referred to as "the appellant") against Order-in-Original No. 58/DC/D/VM/22-23 dated 18.01.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST Division-III, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that Shri Jigar harshadbhai Thakkar, Proprietor of Riddhi Electricals were engaged in the business of providing security/detective Agency Services and man power recruitment/supply service holding Service Tax Registration No. AEYPT7636KSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2016-17, it was noticed that there is difference of value of service amounting to Rs. 24,56,555/- 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 2016-17. 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. III/SCN/AC/JIGARHTHAKKAR/169/21-22 dated 21.10.2021 demanding Service Tax amounting to Rs. 3,68,483/- for the period FY 2016-17, 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(1), 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. 3,68,483/- 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, Penalty of Rs. 3,68,483/- was imposed on the appellant under Section 78 of the Finance Act, 1994, Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) 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 received the Impugned OIA on dated 25.01.2023 and the appeal was required to be filed on or before 25.03.2023. However, the accountant of the appellant had not given the data in time thereby there is a delay in filing appeal of 17 days. The applicant has requested to consider the cause of delay.
- The appellant denied all the allegations and submitted that they are engaged in the business of security/detective agency services and manpower recruitment/supply services. They have sold the electrical material of Rs. 12,94,472/- to various customers and also paying VAT on such transactions therefore the same is out of preview of service tax.
- They submitted that they were engaged in supply of goods along with providing service and the service tax is payable only on the amount received against service provided. They were providing work contract services in terms of electrification work wherein the material and labour both were used, therefore abatement @60% is available to them as per Rule 2A of Service tax(Determination of Value) Rules,2006.
- Further, they submitted that services provided them are covered under RCM as per Notification No 30/2012-ST dated 20.06.2012 and the service provider and recipient both are liable to pay service tax on 50% amount each. The appellant submitted the reconciliation of the income during the F.Y. 2016-17 as under:



Particulars	2016-17		
Total Income	40,35,308/-		
Material same(Less)	12,94,472/-		
Net Work Contract Value	27,40,836/-		
Abatement@ 60%(Less)	16,44,502/-		
Taxable income	10,96,334/-		
RCM Exemption@50%	5,48,167/-		
Service Tax Payable	82,225/-		

- The appellant agrees to pay the above service tax amount Rs. 82,225/-. Further they submitted that the adjudicating authority failed to consider the facts and raised the demand wrongly. They are filing regular ITR and never intended to evade the duty payment and were under bonfide belief that they are not liable to pay service tax. Therefore the extended period is not invocable. They prayed to drop the demand.

4. Personal hearing in the case was held on 12.12.2023. Shri Vipul Kahndhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum and requested for two days time to submit additional documents but no submission is received till date.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 18.01.2022 and received by the appellant on 25.01.2023. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 12.04.2022, i.e. after a delay of 17 days. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the accountant of the appellant had not given the data in time. This has cause a delay in filing the appeal.

6. Before taking up the issue on merits, I proceed to decide the application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the dates 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 Finance Act, 1994, 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. Considering the cause of delay given in application as genuine, I condone the delay of 17 days and take up the appeal for decision on merits.

7. 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 2016-17.

8. 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 appellant didn't responded to the letter issued by the department. Therefore the impugned SCN was issued considering the differential value of "ST-3" return and "Sales of Services" value provided by the Income Tax Department. Further the appellant neither filed their submission nor attended the personal hearing. Therefore, the adjudicating authority adjudicated the matter ex parte.

9. It is observed that the main contentions of the appellant that they have done electrification work wherein the material and labour both were used and have earned Rs. 12,94,472/- against the sale of electrical material of Rs. 12,94,472/- to various customers. They have furnished the Form 205 for the F.Y. 2016-17 filed before the Gujarat Vat Authorities in support of their claim. While going through the P & L Account for the F.Y. 2016-17, opening stock, closing stock may also be seen which establishes that they appellant was engaged in the sale and purchase of the goods. Hence, service tax liability does not arises to the same. The contention needs verification at the stage of adjudication.

Further, as per submission the rest of the amount Rs 27,40,836/- was earned against the service portion for which they claimed the benefit of abatement @ 60% as per Rule 2A of Service tax(Determination of Value) Rules, 2006 but they failed to furnish any document in support of their claim. Further it also can't be ascertain that they have provided the work contract service or any other service as they have not furnished any document in support of their claim. In absence of the identity of

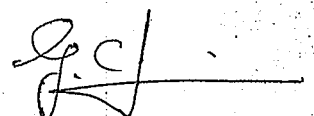


the particular service, the benefit of abatement @ 60% as per Rule 2A and RCM as per Notification No. 30/2012-ST dated 20.06.2012 also needs verification.

10. In view of the above discussion, I find that the matter needs to be remanded back for fresh adjudication keeping all the contentions open.

11. Accordingly, the impugned order is set aside and the appeal is allowed by the way of remand.

12. 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)

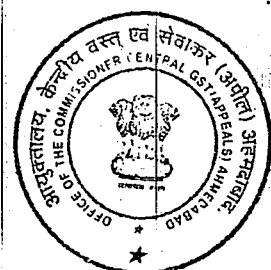
आयुक्त (अपील्स)

Attested



Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

Date : 29.12.2023



By RPAD / SPEED POST

To,

M/s. Jigar harshadbhai Thakkar,
Proprietor of Riddhi Electricals,
10, Gausadan Building, Near Parkota 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 Deputy Commissioner, CGST & Central Excise Div-III, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA File



