



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:- 20240164SW0000824253

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3878/2023/662-666
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-179to180/23-24 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. 125 to 126/JC/LD/2022-23 dated 10.2.2023 passed by The The Joint Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Sarjan Engineers Proprietor Hardik Satishkumar Sharma 106, Sarnam County, Gala Gymkhana Road South 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:-

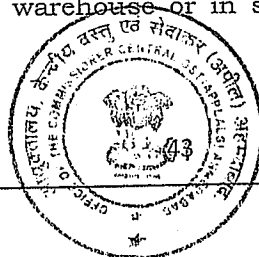
Revision application to Government of India:

(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 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.

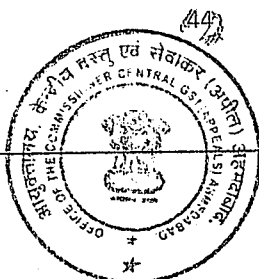
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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 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 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)।

- (43) खंड (Section) 11D के तहत निर्धारित राशि;
- (44) लिया गलत सेनवैट क्रेडिट की राशि;
- (45) 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।

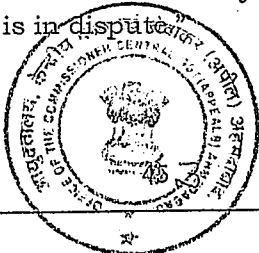
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xliii) amount determined under Section 11 D;
- (xliv) amount of erroneous Cenvat Credit taken;
- (xlv) 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. Hardik Satishkumar Sharma (Proprietor of Sarjan Engineers), 106, Sarnam County, Gala Zymkhana Road, South Bopal, Ahmedabad - 380058 (hereinafter referred to as "the appellant") against Order-in-Original No. 125 to 126/JC/LD/2022-23 dated 10.02.2023 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

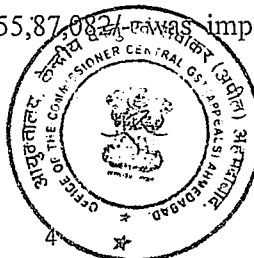
2. Briefly stated, the facts of the case are that the appellant is engaged in the business activity of service provider holding STC No. AQBPS7578NSD003 and AQBPS7578NSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 & 2016-17, it was noticed that the appellant had shown less amount of gross value of service provided in ST-3 against the amount shown as "Sales of Services" in their ITR filed with the Income Tax department as under:

Year	Value difference of ST-3 & ITR	Service Tax(in Rs.)
2015-16	Rs. 5,37,88,695/-	Rs. 75,04,569/-
2016-17	Rs. 2,01,74,742/-	Rs. 30,09,352/-
Total	Rs. 7,39,63,437/-	Rs. 1,05,13,922/-

Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has not paid the applicable service tax thereon. The appellant also failed to attend the pre consultation fixed on dated 23.04.2021.

2.1 Subsequently, the appellant were issued a Show Cause Notice No. STC/15-168/OA/2021-22 dated 23.04.2021 demanding Service Tax amounting to Rs. 1,05,13,922/- for the period FY 2015-16 & 2016-17, under provisions 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, 77 and Section 78 of the Finance Act, 1994. The SCN on the similar issued was also issued to the appellant for F.Y. 2014-15 by the assistant Commissioner, CGST Div-VI, Ahmedabad North demanding the Service tax Amount Rs. 56,205/- along with interest Section 75 and penalties under Section 76, 77 and Section 78 of the Finance Act, 1994.

2.2 considering the submission made by the appellant, both the Show Cause Notice were adjudicated vide the impugned order wherein the demand of Service Tax amounting to Rs. 55,87,082/- 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 FY 2015-16 & 2016-17. Further, (i) Penalty of Rs. 55,87,082/- was imposed on the appellant under



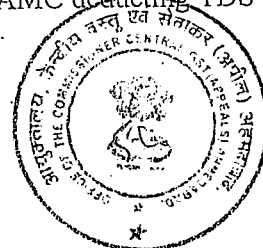
Section 78 of the Finance Act, 1994 and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994.

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 submitted that they are approved contractor engaged in carrying out various infrastructure projects for the local government authorities i.e. AMC, GIDC and Notified Area Officers in civil contract and sub- contract basis. The Impugned OIO has been passed without proper appreciation of facts and the demand confirmed are as under:

15-16	Name of the party	Amount	Remarks
	Ahmedabad Municipal Corporation	3,05,66,888/-	non-submission of supporting documents
	Notified Area Office	1,85,344/-	Services not covered under Mega Exemption Notification Number 25/2012
	Toray Kusumgar Advanced Textile Pvt Ltd	7,45,350/-	non-submission of supporting documents
16-17	Ahmedabad Municipal Corporation	47,73,654/-	non-submission of supporting documents
	Notified Area Office	18,63,564/-	Services not covered under Mega Exemption Notification Number 25/2012
	Chopra Siddharth Jagdishkumar (HUF)	8,00,000/-	non-submission of supporting documents
	TOTAL	3,89,34,800/-	

- The appellant submitted that they were awarded various contracts during the F.Y. 2015-16 of Rs. 3,05,66,888/- and 2016-17 of Rs. 47,73,654/- by the Ahmedabad Municipal Corporation for carrying out work related to the construction of roads in the city of Ahmedabad. They received money from AMC deducting TDS and the same is



shown in their form 26AS for respective period. The activity is exempted as per Sr. No 13(a) of the Notification No 25/2012-ST dated 20.06.2012.

- The appellant further states that they have raised a bill in F.Y. 2015-16 of Rs. 1,85,344/- for the work carried out till 31.03.2015 against a work contract from the Notified Area Office which is local government authority.

Further they also raised a bill of Rs. 18,63,564/- during the F.Y. 2016-17 for the work carried out till 31.03.2016 against a work contract from the Notified Area Office and the activity is exempted as per Sr. No 12A(a) of the Notification No 25/2012-ST dated 20.06.2012.

- The appellant further submitted that after considering the service provided to AMC of Rs. 3,05,66,888/- and Notified Area office of Rs. 1,85,344/- as exempted, the taxable value for the F.Y. 2015-16 comes as Rs. 7,45,350/- which is within threshold limit as per Noti. No. 33/2012-ST dated 20.06.2012.

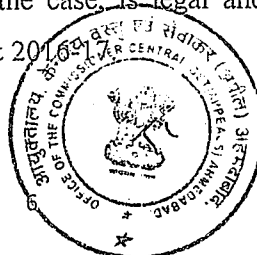
Further they also submitted that after considering the service provided to AMC of Rs. 47,73,654/- and Notified Area office of Rs. 18,63,654/- as exempted, the taxable value for the F.Y. 2016-17 comes as 8,00,000/- which is within threshold limit as per Noti. No. 33/2012-ST dated 20.06.2012.

Therefore, they are not under legal obligation to pay service tax for the F.Y. 2015-16 and 2016-17 and the demand confirmed by the impugned OIO is wrong and needs to be vacated.

- The appellant submitted that invocation of the extended period and penalty as per section 78 of the Finance Act, 1994 in the fact and circumstances of the case is arbitrary, bad and illegal and prayed that the appeal may be accepted and the OIO may be set aside in light of the above.

4. Personal hearing in the matter was held on dated 20.12.2023. Shri Manoj Kansara, Tax Consultant appeared on behalf of the appellant. He reiterated the written submission and requested to allow their appeal. He also submitted additional written submission at the time of PH.

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 & 2016-17.



6. I find that in the SCN in question, the demand has been confirmed for the period F.Y. 2015-16 & 2016-17 as the appellant failed to produce the sufficient supporting documents in case of Amount Received from Amhedabad Municipal Corporation. Further the adjudicating authority didn't consider the service provided to Notified Area Office as exempted.

7. Now, as per the submission made before me, they were awarded various contracts by the AMC during the F.Y. 2015-16 & 2016-17 and received Rs. 3,05,66,888/- & 47,73,654/- in respective F.Y. after deducting TDS and the same is shown in their form 26AS for respective period. The appellant has furnished the copies of the contracts in support of their claim. The appellant has claimed that the same were for execution of laying water distribution & drainage pipeline and construction & widening of Road and the both are exempted service as per Sr. No. 12(e) and 13(a) respectively of the Noti. No 25/2012-ST. This needs detailed verification and examination.

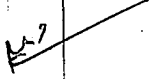
7.1 Further, in view of the above the claim of benefit of Notification 33/2012-ST dated 20.06.2012 also needs to be examined. Therefore, I am of the considered view that as the appellant could not produce the documents at the time of original adjudication, he should be given the opportunity to produce the same before the adjudicating authority in the interest of natural justice. Hence the matter needs to be remanded back for fresh adjudication in respect of the demand confirmed.

8. In view of the above discussion, I allow the appeal filed by the appellant by way of remand back.

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.

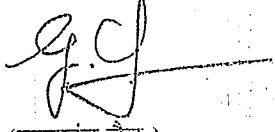
Attested


(Manish Kumar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

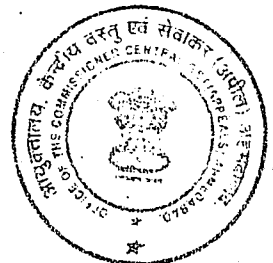
To,

M/s. Hardik Satishkumar Sharma,


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 27.12.23



Appellant

(Proprietor of Sarjan Engineers),
106, Sarnam County, Gala Zymkhana Road,
South Bopal, Ahmedabad - 380058

The Joint Commissioner,
CGST, Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
 - 2) The Commissioner, CGST, Ahmedabad North
 - 3) The Joint Commissioner, CGST, Ahmedabad North
 - 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
- (for uploading the OIA)

~~5) Guard File~~

6) PA file

