



आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3855/2023 / 1175 - 79
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-198/23-24 and 25.01.2024
(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	01.02.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/941/2022-23 dated 28.2.2023 passed by The The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Rajendrakumar Chauhan B/1, Sattadhar Park, Near Shivkedhar Flat, Chandlodiya Ahmedabad - 380061

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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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 भीतरमूल-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 संलग्नरकम 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 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 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 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)।

- (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 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. Rajendrakumar Chauhan, B/1, Sattadhar Park, Nr. Shivkadar Flat, Chandlodiya, Ahmedabad-380061, (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/941/2022-23 dated 28.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AFOPC9307F. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 56,39,784/- during the above period, which was reflected under the heads "sales of services (Value from ITR)" filed with Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment 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. CGST/Abad North/Div-VII/AR-IV/TPD/Un Reg/15-16/2021/37 dated 24.12.2020 demanding Service Tax amounting to Rs. 8,17,768/- for the period FY 2015-16, under proviso to 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 (i) under Section 77(1)(a), 77(1)(c), 77(2) and (ii) Section 78 of the Finance Act, 1994.

2.2 Subsequently, the Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein considering the appellant's submission, the demand of Service Tax amounting only of Rs. 8,17,768/- 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. Further (i) Penalty of Rs. 8,17,768/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) & 77(1)(c) of the Finance Act, 1994; and (iii) 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, inter alia, on the following grounds:

- The appellant submitted that they were engaged in construction activity. They denied all the allegations made against them in SCN and impugned OIO. The OIO was issued ex parte without providing reasonable opportunity of hearing and the same is gross violation





of natural justice. The appellant submitted that they were given 3 opportunities of hearing within the period of 5 days vide single letter and the same goes against the principals of natural justice. They made reference of the case of Regent Overseas wherein the Hon'ble High Court held that a single letter giving 3 opportunities of hearing can't be treated as valid opportunity of hearing.

- Further the appellant submitted that they provided Work contract service and the SCN was issued without giving the benefit of Rule 2A of the valuation rules (Service tax determination of value rules 2006) which is bad in law. The benefit on account of transfer of property of materials should be allowed to them. The appellant has provided the service to Gujarat Ambuja Exports Limited, M/s Shrinivas Organizers Pvt. Ltd and various other body corporate which can be verified from the Form 26AS for the relevant period. therefore, they are liable to pay service tax only on the 50% of the service portion as per Notification No 30/2012-ST dated 20.06.2012.
- The appellant submitted that they have not suppressed any fact from the department and extended period can't be invoked in this case and therefore the entire demand is being hit by the bar of limitation. The meaning of word "suppression" was considered by the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh, reported in 2007(216) ELT 177(SC) wherein it was held that the mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty.

They also place reliance on the judgement in case of M/s Jaiprakash Industries Limited, reported in 2002 (146) ELT 481(SC) wherein the Hon'ble Supreme Court of India held that a bonafide doubt as to non-dutiability of goods was sufficient for the appellant to challenge the demand. Mere failure to pay service tax on account of interpretation of law would not be sufficient to invoke extended period. In absence of mens rea, penalty can't be imposed. They placed reliance on the following case law:

- (i) M/s Pahwa Chemicals Private Ltd Vs Commissioner-2005(189) ELT 257(SC);
- (ii) M/s Hindustan Steel Ltd. Vs State of Orissa-1978(2) ELT j 159 (SC).
- (iii) M/s Padmini Products Vs. Collector of C.Ex., 1989(043) ELT 0195(SC)

- The appellant assuming that they are liable to pay service tax, stated that they were not given the benefit of cum-tax principle by the adjudicating authority as they have not charged any service tax from any client. They placed reliance on the following case laws:
  - i) The judgment of the Hon'ble Supreme Court in the case of Maruti Udyog Limited as reported in 2002 (141) ELT 3 (SC).



- ii) The Honorable West Zonal Bench in case of PROFESSIONAL COURIERS Versus COMMISSIONER OF SERVICE TAX, MUMBAI reported 2013 (32) S. T.R. 348 (Tri. - Mumbai).

Further, Section 67 as amended itself states that where the gross amount charged is inclusive of Service Tax payable, in other words where Service Tax is not charged additionally the value should be taken as cum-tax value.

*Section 67(2): Where the gross amount charged by a service provider, for the service provided or to be provided inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.*

They prayed to set aside the impugned OIO on the above grounds.

4. Personal hearing in the case was held on 04.01.2024. Shri Manojkumar Nogiya, Tax Consultant and Shri Rajendrakumar Chauhan appeared for personal hearing. They stated that the appellant is doing POP work for construction projects/individual projects. The work falls under original works contract where 60% abatement of volume is allowed. Further some of the clients are body corporate where liability to pay service tax is only 50% in forward charge mechanism. He submitted additional documents and reiterated the written submission and requested to allow the appeal.

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 contention of the appellant is that they were not provided the opportunity of personal hearing and document submission and in the absence of relevant documents the adjudicating authority decided the matter ex parte basis.

Now, as per submission before me, it is seen that the appellant has earned total amount Rs. 56,39,784/- against the activity of POP work of various construction projects. The activity involves service portion as well as goods portion and the same is also shown in the invoices furnished by the appellant. Hence the same is covered under work contract service. Being the original work, 60% abatement on the total consideration is available to them as per Rule 2A of the valuation rules (Service tax determination of value rules 2006). The benefit of the same may be extended to them.

Further, as per submission, during the F.Y. 2015-16, they have provided the above service to the following service recipients:

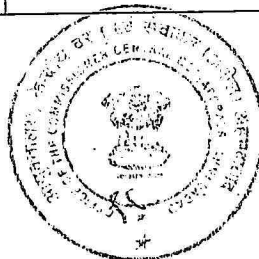


Invoice Sr. No.	Service Recipient	Total amount in Rs.	Remarks
01/15-16	Quality Furniture and projects pvt ltd.	67,784/-	Body corporate
02/15-16	True Value management Cons. Pvt.Ltd.	75,000/-	Body corporate
03/15-16	Gujarat Ambuja Export Ltd.	8,35,000/-	Body corporate
04/15-16	Microtech IT Systems Pvt. Ltd.	65,000/-	Body corporate
06/15-16	Shrinivas Organisers Pvt. Ltd.	10,31,200/-	Body corporate
<b>Total</b>		<b>20,73,984/-</b>	
05/15-16	Aditya Constructions	30,00,287/-	Other than Body corporate
07/15-16	Super city	5,65,513/-	Other than Body corporate
<b>Total</b>		<b>35,65,800/-</b>	
<b>Gross Total</b>		<b>56,39,784/-</b>	

From the above it may be seen that they have provided the said work contract service to body corporate of Rs. 20,73,984/- and of Rs. 35,65,800/- to Other than Body corporate. In case of services provided to body corporate, 50% of the liability to pay the service tax is upon recipient and remaining 50% is upon service provider as per Notification No 30/2012-ST dated 20.06.2012. Therefore the contention of the appellant appears to be sustainable and the benefit of the said notification may also be extended to them.

Further, while going through the invoices furnished by the appellant, it can be seen that they have not charged any service tax amount separately and in this case the gross receipt may be considered as inclusive service tax. Therefore, the duty-cum benefit may also be given after re-computation of the taxable income. Considering all the facts, the actual taxable amount and service tax liability comes as under:

Sr. No.	Amount of Service (In Rs.)	Remarks
1	20,73,984/-	Service being provided to Body corporate
2	10,36,992/-	Taxable income for the appellant as per Notification No 30/2012-ST dated 20.06.2012
3	35,65,800/-	Service being provided to Non-Body corporate
4	35,65,800/-	Taxable income for the appellant
5	46,02,792/-	Total Taxable value (1+4)
6	18,41,117/-	Taxable Value after 60% abatement as per Rule



		2A of the valuation rules (Service tax determination of value rules 2006)
7	16,00,971/-	Taxable Value after duty cum benefit
8	2,40,146/-	Service tax payable @ 15%

From the above table it can be seen that after considering all the contention made by the appellant, the net taxable amount comes as Rs. 16,00,971/- and the service tax on the same Rs. 2,40,146/- is required to be recovered from them along with interest and penalty.

7. Accordingly I pass following order in appeal;

7.1 I uphold service tax to the extent payable on the taxable value of Rs. 16,00,971/- only;

7.2 Interest as applicable, under section 75 of the Finance Act,1994 is also recoverable on the service tax amount as per para 7.1;


7.3 I uphold the penalties under section 77(1) & 77(2) and

7.4 I uphold the penalty under section 78 of the Finance Act,1994, equal to the service tax upheld in para 7.1 above.

8. 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,  
Rajendrakumar Chauhan,  
B/1, Sattadhar Park, Nr. Shivkadar Flat,  
Chandlodiya, Ahmedabad-380061

The Assistant Commissioner,  
CGST, Division-VII,  
Ahmedabad North



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 25.01.24



Appellant

Respondent



Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)
- 5) Guard File
- 6) PA file



