



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 ☎ 07926305065- टेलीफैक्स 07926305136



DIN:20230564SW0000620488

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2683/2022-APPEAL /11M1 - 43
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-021/2023-24
 दिनांक Date : 03-05-2023 जारी करने की तारीख Date of Issue 09.05.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-06/D-VI/74-75/VIJAYKUAMR/AM/2022-23
 दिनांक: 21.06.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Vijaykumar H Borana,
 A-304, Dream Residency,
 Opp. Hetarth Party Plot, Science City Road,
 Sola, Ahmedabad-380060

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
 North, 7th Floor, B D Patel House, Nr. Sardar Patel Statue, Naranpura,
 Ahmedabad - 380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रकिया के दौरान हुई हो।

(ii) 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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.

(1) 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 मुख्यशीर्ष 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.

(2) 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.

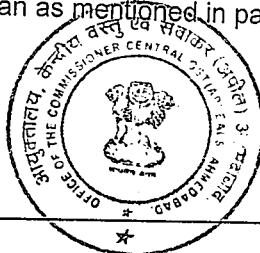
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



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 Appellate 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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.

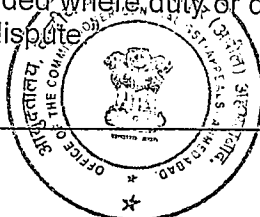
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

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. Vijaykumar H. Borana, A-304, Dream Residency, Opp. Hetarth Party Plot, Science City Road, Sola, Ahmedabad- 380060 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST-06/D-VI/74-75/Vijaykumar/AM/2022-23, dated 21.06.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department. They are holding PAN No. ABAPB7670A.

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. 2014-15, it was noticed that the appellant had earned substantial income by providing taxable services amounting to Rs. 31,01,411/- which they reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, on which no tax was paid. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 3,83,334/- was, therefore, quantified considering the income of Rs. 31,01,411/- as taxable income.

2.1 Thereafter, Show Cause Notice (SCN) No. GST-06/04-649/O&A/Vijay/2020-21 dated 29.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 3,83,334/- not paid on the value of income received during the F.Y. 2014-15 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 76; imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994 were also proposed. The service tax liability for the F.Y.2015-16 to 2017-18 (up to June, 2017) ascertained in future was also proposed to be recovered under provisions of Section 73 of the F.A., 1994.

2.2 Another Show Cause Notice (SCN) No. GST-06/04-1001/O&A/Vijaykumar/2020-21/3126 dated 24.03.2021 was also issued to the appellant proposing recovery of service tax amount of Rs. 2,30,638/- not paid on the value of income received during the F.Y. 2015-16 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70, imposition of penalties under Section 76, Section 77(1) and under Section 78 of the Finance Act, 1994 were also proposed.

3. Both these SCNs were adjudicated vide the impugned order ex-parte, wherein the total service tax demand of Rs. 8,14,211/- was confirmed alongwith interest on the income of Rs. 60,89,430/- received for providing taxable services provided during the F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. Late Fees of Rs. 1,20,000/- was imposed. Penalty of Rs. 10,000/- under Section 77(1) and penalty of Rs. 8,14,211/- was also imposed under Section 78.



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

- The appellant has provided works contract service to SEZ units, which is exempted vide Notification No. 40/2012-ST dated 20.06.2012.
- The amount received by the appellant is inclusive of service tax. The benefit of cum-tax benefit should, therefore, be provided while determining the service tax liability. Reliance is placed on Robot Detective & Security Agency- 2009 (14) STR 689; Advantage Media Consultant- 2008 (10) STR 449.
- The appellant is also eligible for Small Scale Service Providers exemption under Notification No. 33/2012-ST dated 20.06.2012, as taxable income is below Rs. 10 lacs.
- The SCN dated 24.03.2021 demanding tax for the F.Y. 2014-15 to F.Y. 2016-17, invoking extended period is time barred as the same was not issued within 18 months or 30 months from the relevant date. Appellant has not suppressed any material facts from the department hence extended period cannot be invoked. Reliance placed on Pahwa Chemicals Pvt. Ltd- 2005 (189) ELT 257 (SC).
- When there is no service tax liability, imposition of penalty and recovery of interest is not justifiable. Reliance placed on HMM Ltd-2007 (208) ELT 181 (Tr-Bang) and Jindal Praxair Oxygen Co. Ltd- 2007(208) ELT 181.

4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 21.06.2022 and the same was received by the appellant on 04.07.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 22.09.2022 i.e. after a delay of 18 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay stating that theirs is a Proprietorship firm. Their proprietor is 62 year old man having health problems. Due to ill health they could not file the appeal in time, hence requested to condone the delay as the delay was within the condonable period.

5. Personal hearing in the COD matter was held on 08.02.2023. Shri Jaykishan Vidhwani, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Miscellaneous Application seeking condonation of delay in filing the appeal.

5.1 Subsequently, another personal hearing was granted on 06.03.2023. Shri Jaykishan Vidhwani, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also sought adjournment to submit various work orders and reconciliation statement. Subsequently, personal hearing was held on 18.04.2023. Shri Jaykishan Vidhwani, Chartered Accountant, appeared alongwith the appellant. He requested two days time to submit the above documents.

5.2 Later, vide letter dated 20.04.2023, the appellant submitted the copy of Work Orders issued to M/s. Larsen & Tubro Ltd. for carrying out Works Contract Service at Corrent Pharmaceuticals Ltd. (Dahej SEZ Unit) and few copies of retail invoices issued to M/s. Larsen & Tubro Ltd. The appellant have claimed that the main contractor (i.e. M/s.



Larsen & Tubro Ltd) subsequently sub-contracted this work to them. The main contractor provided the services to SEZ /SEZ developer, hence the same are exempted in terms of Notification No. 40/2012-ST dated 20.06.2012. Further, they also claimed that if the services provided by main contractor and sub-contractor are covered under works contract, then the sub-contractor under clause 29 (h) of Notification No. 25/2012-ST dated 30.06.2012 can claim exemption from service tax, as the main contractor is exempted from service tax on account of service rendered to SEZ unit of Torrent Pharmaceuticals Ltd.

6. Before taking up the issue on merits, I will first decide the Miscellaneous 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 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. Considering the cause of delay as genuine, I condone the delay of 18 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating 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 as to whether the service tax demand of Rs. 8,14,211/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise.

The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

7.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT, on which no service tax was paid by the appellant. As the appellant was not registered with the department, they were requested to submit the documentary evidence in respect of their income, however, they failed to submit the required details /documents or offer any explanation before the adjudicating authority. They also did not file any reply to the SCN nor did they appear for personal hearing before the adjudicating authority, therefore the case was decided ex-parte. However, now before the appellate authority, they have submitted copy of Work Order issued in the name of M/s. Larsen & Tubro Ltd (Main-Contractor) and copy of few invoices issued to M/s. Larsen & Tubro Ltd.

7.2 I have gone through the Work Order issued in name of M/s. Larsen & Tubro Ltd (Main-Contractor). From the nature of work mentioned therein, it is observed that the main-contractor was assigned masonry work (i.e stone flooring & cladding, doing groove filling, loading & unloading of material, material shifting at site, Labour supply for housekeeping work etc) whereas the sub-contractor was entrusted the work of mobilizing the labour and material. Further, it is also evident that the work was to be carried out at Torrent Dahej, SEZ. In the said Work Contract, the name of the appellant is mentioned under 'Vendor Address' and from the invoices submitted by the appellant, it



appears that these invoices were raised for sale of various stones like Red Mandana Stone, Granite Slab, Kota Stone supplied to M/s. Larsen & Tubro Ltd. The appellant, however, could not produce any Contract entered between them and M/s. Larsen & Tubro Ltd (main-contractor) to prove that the works contract entrusted to main-contractor was further sub-contracted to them. Further, in the Work Order dated 09.08.2012, the work order period mentioned is from 10th July, 2012 to 31st December, 2012, whereas the period of dispute for which the demand has been raised pertains to the F.Y. 2014-15 to F.Y. 2016-17. Hence, most of the documents submitted by the appellant are not in order to substantiate their claims.

7.3 It is observed that the impugned order was decided ex-parte as the appellant did not submit any documentary evidence before the adjudicating authority. Now, since the appellant has submitted a copy of Work Order issued to M/s. Larsen & Tubro Ltd to carry out the work at Torrent Dahej, SEZ and the invoices issued in this respect, I find that in the interest of justice, it would be proper to remand the matter to the adjudicating authority to decide the issue afresh after examination of the documents and verification of the claim of the appellant. The appellant is, therefore, directed to submit all the relevant documents and details, in support of their contentions as well as the observations made at Para 7.2 above, within 15 days, to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice. Consequently, I remand the matter back to the adjudicating authority, who shall pass the order after examination of the documents and verification of the claim of the appellant.

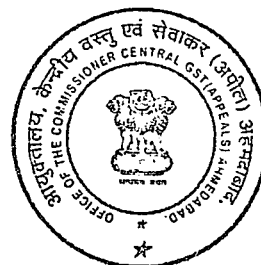
8. In light of above discussion, I set-aside the impugned order confirming the service tax demand of Rs.8,41,211/- alongwith interest and penalties and allow the appeal filed by the appellant by way of remand.

9. 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.

(Signature)
(अखिलेश कुमार)
आयुक्त(अपील्स) 2023

Date: 03.05.2023

Attested
(Signature)
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Vijaykumar H. Borana,
A-304, Dream Residency,

Appellant

Opp. Hetarth Party Plot,
Science City Road, Sola,
Ahmedabad- 380060

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

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, CGST, Division-V, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 5. Guard File.

