



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



By SPEED POST

DIN:- 20240264SW000000DEBE

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4454/2023 / 164 - 18
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-210/23-24 and 29.01.2024
(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	31.01.2024
(ङ)	Arising out of Order-In-Original No. 539/AC/DEMAND/22-23 dated 16.2.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shree Krishna Engineering Works Proprietor Ezhava Sudhakarna Madhwan 8/76, Kamdheni Apartment, GIDC 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 ईए-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 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 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

M/s. Ezhava Sudhakaran Madhavan, 8/76, Kamdhenu Apartment, GIDC, Naroda, Ahmedabad-382330 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 539/AC/Demand/22-23 dated 16.02.2023 (in short '*impugned order*'), passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant were rendering taxable service but were not registered with the department. They were holding PAN No. AMXPM6759R.

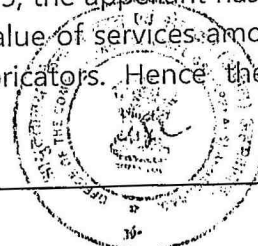
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. They declared Sales / Gross Receipts of Rs.13,77,483/- in their ITR, on which no service 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. 2015-16. 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. 1,99,736/- was, therefore quantified considering the income of Rs.13,77,483/- as taxable income.

2.1 A Show Cause Notice (SCN) No. IV/TPD/SCN/EZHAVA/2021 dated 23.04.2021 was issued to the appellant proposing recovery of service tax amount of Rs. 1,99,736/- not paid on the value of income received during the F.Y. 2015-2016, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 77(1) and penalty under Section 78 of the Finance Act, 1994 was also proposed.

2.2 The said SCN was adjudicated ex-parte vide the impugned order, wherein the service tax demand of Rs. 1,99,736/- was confirmed alongwith interest. Penalty of Rs. 10,000/- was imposed under Section 77(1) and penalty of Rs. 1,99,736/- was also imposed under Section 78.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The appellant is a proprietor of Shree Krishna Engineering Works and is into the business of manufacturing of articles of Iron and Steel being Tank onJob Work basis on which the principle manufacturer is liable to pay excise duty. The appellant is required to do the work of bending, cutting and related aspects w.r.t articles received by appellant for the purpose of job work. The sample copy of the declaration made by the principal manufacturer is also attached as proof.
- In terms of Sr.no. 30(c) of Notification 25/2012-ST dated 20.06.2012, any intermediate production process of job-work not amounting to manufacture or production in relation to-(c) any goods excluding alcoholic liquors for human consumption, onwhich appropriate duty is payable by the principal manufacturer, then the Job worker is exempt from the payment of the service Tax. Here in the present case appellant has provided services by way of job work on the goods which are subject to excise duty. In the year, 2014-15, the appellant has provided services of Rs.13,06,006 (as per ITR) out of which value of services amounting to Rs. 6,38,822/- was provided to the M/s C.N.Fabricators. Hence the balance



amount is 6,67,184/- which is under the Ten Lakhs in terms of Notification No 33/2012-ST, and thereby, in the year 2015-16, the appellant is eligible for exemption upto Rs 10 lakhs.

- Similarly, in the financial year 2015-16, also the appellant has provided services which are subject to excise duty. The summary of the same is as under:

	2014-15	2015-16
Total Sales	1306006	1377483
Less Value of services provided to undermentioned parties by way of job work		
C.N. Fabricators	638822	256900
A L Engineering		7080
SkilTech Engineers		117039

- Thus, in the year 2015-16, the value of services is less than Rs 10 lakhs, as a reason, the appellant is eligible for SSI exemption and thereby is not required to make payment of service tax.
- As per section 73(1) the Finance Act, 1994, extended period can be invoked only if there is suppression of facts. In the present case, the matter relates to the year 2015-16 and that the last date for filing return is 25.04.2016 and that the period of five years expires on 24.04.2021. However, in the present case, the notice is dated 23.04.2021 and received by speed post and is received after 24.04.2021, thus, the SCN is received beyond the period of 5 years and is thus barred by limitation. Reliance is placed on CC v. MMK Jewellers (2008) 225 ELT 353; Padmini Products v. Collector of Central Excise 1989 (43) E.L.T.195, TamilNadu Housing Board v. CCE 1994 (74) E.L.T. 9(SC) = 1994 (9) TMI 69.
- In the OIO, no specific charge has been made for invoking extended period of limitation and on this ground the SCN is time barred. Hon'ble Delhi High Court has held in the case of Bharat Hotels Limited Versus Commissioner, Central Excise (Adjudication) (2018) 2 TMI 23 that failure to pay tax is not a justification for imposition of penalty. Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement" - there must be deliberate suppression of information for the purpose of evading of payment of duty.
- The SCN does not specify as to for which activity, the charge has been framed. Further, OIO issued through the SCN also does not specify the activities of the business of the applicant for which service tax has been caused to be demanded in the SCN as well as OIO.
- Penalty is also not imposable under Section 78. When the extended period of limitation is not invocable in the present case, therefore, penalty under section 78 also cannot be charged. The penalty under the said Section shall be put aside.



- So far as requirement of payment of interest is concerned as there is no levy of the service Tax on the business activity of the applicant, no interest shall be payable under section 75 of the Act.

4. Personal hearing in the appeal matter was held on 17.01.2024. Shri Rohan Thakkar, Advocate appeared on behalf of the appellant for personal hearing. He reiterated the grounds of appeal and stated that the client does job work related to fabrication of machines. He reiterated the contents of the written submission. He submitted declaration of the principal manufacturer 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 **Rs. 1,99,736/-** 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 **F.Y 2015-16**.

6. It is observed that the entire demand has been raised on the basis of third-party data. From the Balance Sheet submitted by the appellant, it is noticed that the appellants have shown the income of Rs. 13,77,483/- as job work income in the F.Y. 2015-16. They have claimed that they have done job-work related to fabrication of machines and these were later cleared to principal manufacturer who subsequently cleared the finished goods on payment of excise duty. They also produced certificate issued by principal manufacturers viz M/s. C.N.Fabricators and M/s. SkilTech Engineers certifying that the appellant has done machining job-work on M S Plates, Pipes, Shafts, Pulleys, Flinger etc during said period and that the job work process is being used in manufacture and clearance of finished goods on which appropriate excise duty has been discharged by them.

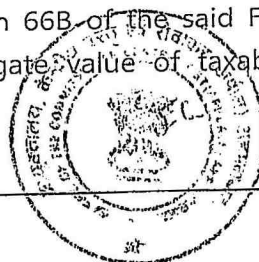
7. It is observed that Notification No.25/2012-ST dated 20.06.2012, vide entry No. 30(c) has exempted the intermediate production process as job-work carried in relation to any goods on which appropriate excise duty is payable by the principal manufacturer. Relevant text is reproduced below;

30. Services by way of carrying out,-

(c) any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer;

7.1 Principal manufacturer is defined in clause 2(z) of the notification as any person who gets goods manufactured or processed on his account from another person. I find the appellant during the F.Y. 2015-16 has earned job-work income of Rs.13,77,483/-. Out of said income, they have rendered job-work valued at Rs.6,94,108/- to the principal manufacturers, who have discharged duty on finished goods. Hence, on such income, the appellant is eligible for exemption in terms of Notification No.25/2012-ST. However, on the remaining income of Rs.6,83,375/- they have not produced any documents hence the same shall be taxable.

7.2 But the appellant had claimed benefit of SSI exemption to substantiate non-payment of tax. Notification No.33/2012-ST dated 20.06.2012, exempts the taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under Section 66B of the said Finance Act. Further, this exemption shall apply where the aggregate value of taxable services




rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

7.3 It is observed that during the F.Y. 2014-15, the appellant had earned job-work income of Rs.13,06,006/-, out of said income, they have rendered job-work valued at Rs.9,75,589/- to the principal manufacturers (M/s. C.N. Fabricators) on which the appellant is eligible for exemption in terms of Notification No.25/2012-ST. Thus, the remaining taxable income comes to Rs.3,30,417/-, which I find is below the threshold limit prescribed in Notification No. No.33/2012-ST dated 20.06.2012. Hence, I find that the appellant shall be eligible for SSI exemption in the F.Y. 2015-16 as the taxable value in the previous year is below the threshold limit.

8. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of **Rs. 1,99,736/-** alongwith interest and penalties.

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.


(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 29.1.2024

Attested



(रेखा नायर)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Ezhava Sudhakaran Madhavan,
8/76, Kamdhenu Apartment,
GIDC, Naroda,
Ahmedabad-382330

The Assistant Commissioner
CGST, Division-I,
Ahmedabad North

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Ahmedabad (Appeals), for uploading the OIA
- ✓ 4. Guard File.

