



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240264SW000000F376

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3968/2023 / 1112 - 16
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-220/23-24 and 08.02.2024
(ग)	पारित किया गया / Passed By	श्री ग्यानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	12.02.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/929/2022-23 dated 24.2.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	National Construction B-62, Sahajand Apartment Near Sterling Hospital, Gurukul Road Ahmedabad - 380052

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:

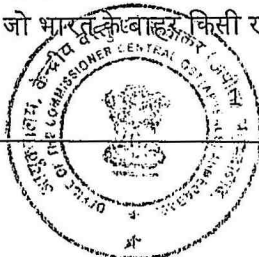
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 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 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)।

- (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. National Construction, B-62, Sahjanand Apartment, Near Sterling Hospital, Gurukul Road, Ahmedabad - 380052 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/929/2022-23 dated 24.02.2023 (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").

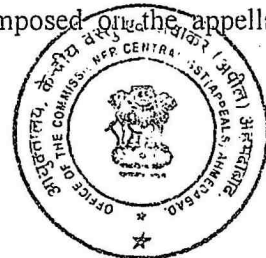
2. Briefly stated, the facts of the case are that the appellant is engaged in the business activity of service provider holding STC No. AAUPS8999LST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant has shown less amount in their ST-3 in compare to amount Shown as "Sale of Service" in their ITR filed with the Income Tax department as under:

Year	Total sale of service as per ITR	Total taxable value shown in ST-3	Difference between ITR & ST-3	Service tax short paid
2014-15	47,38,167/-	10,50,272/-	36,87,895/-	4,55,824/-

Accordingly, it appeared that the appellant had short paid the service tax. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letter issued by the department.

2.1 Subsequently, the appellant were issued a Show Cause Notice No. CGST/AR-II/Div-VII/A'bad North/TPD UR/65/20-21 demanding Service Tax amounting to Rs 4,55,824/- for the period FY 2014-15, 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 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,55,824/- 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 2016-17. Further, (i) Penalty of Rs. 4,55,824/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(1)(a) & 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 5,000/- 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 submitted that they were registered under the service tax and Since the Service Tax has Act has been replaced by GST Act in July 2017, their service tax portal user id and password were forgotten. Their Chartered Accountant applied to reset the user id and password to pay the service tax pre deposit to file an appeal but the same was received by them on 8th May 2023 and then after they paid pre-deposit on 9th May 2023. However, on request, appeal was acknowledged by the officer on 02/05/2023 with the condition to file the condolence delay form along with pre deposit tax. The appellant requested to consider the application of condonation for delay of 01 day.
- They are engaged in providing Works Contract Services and the same are covered under partial reverse charge mechanism. The value for the purpose of service tax is governed as per of service Rule 2A determination of value of service portion in execution of work contract of service tax (Determination of Value) Rules, 2006. Further, despite of knowing the type of service provided by the appellant, adjudicating authority has calculated the tax erroneously by ignoring the fact that the works contract service is also eligible for the partial reverse charge mechanism as per Notification No.30/2012-ST.
- The appellant stated that the adjudicating authority have not appreciated various provisions for determining the value on which service tax payable on the service portion in execution of works contract and confirm entire demand of service tax without considering following law and procedure applicable to the appellant. The service tax is payable only for service portion in execution of works contracts as under.
- The appellant submitted that they were providing construction service by execution of work contract and the same is covered under clause (h) of Section 66E of declared service of the Finance Act, 1994 [taxable under Section 66B of the Finance Act, 1994], which is as under.
SECTION [66E. Declared services. - The following shall constitute declared services, namely :-
(h) service portion in the execution of a works contract;
Further, the value for the purpose of service tax is governed as per Rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 which is as under;



RULE [2A. *Determination of value of service portion in the execution of a works contract. - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :*

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]

[(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

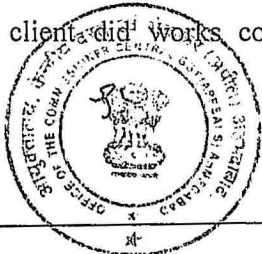
- As the appellant is engaged in construction service under 'works contract' . The appellant is liable to pay only 50% of service tax and the liability of the rest will be upon service recipient under partial RCM as per Entry No 9 of the Notification No.30/2012-ST dated 20.06.2012.
- The appellant stated that the adjudicating authority has erroneously confirmed demand of Service tax of Rs.4,55,824/- . The actual service tax liability is as under:

Income as per P& L and Form 26AS	
Particular	Amount(in Rs.)
Gross Receipt(WCS)	47,38,167/-

They have provided the subject service to Indian Oil Corporation Ltd only which is body corporate. Therefore the liability on the appellant would be only on the taxable income Ts. 23,69,084/-(50% of the total value) as the rest will be upon recipient as per the Notification No.30/2012-ST dated 20.06.2012 .

As per Rule 2A(ii) of Service Tax (Determination of value) Rules, 2006, they are eligible 60% abatement and the net taxable value will become as Rs. 9,47,634/-.As per their ST-3 they have already paid the service tax on taxable value Rs.10,50,272/- which is excess to their liability. Hence the demand of Rs. 4,55,824/- is not sustainable in law. They requested to allow their appeal.

4. Personal hearing in the matter was held on dated 18.01.2024. Shri Parth Desai, C.A., appeared on behalf of the appellant. He stated that his client did works contract for



construction to IOCL. As per Valuation Rules, taxable value will be 40%. As per RCM 50% tax is to be paid by the recipient. As per STR they have paid service tax on higher side of value. So they are not liable to pay any service tax.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 24.02.2023 and delivered on dated 01.03.2023 to appellant. The present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 02.05.2023, i.e. after a delay of 01 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that due to loss of ID and Password of service tax portal, they couldn't paid pre-deposit in time and thereby was a delay of 01 days in filing appeal which was required to be filed on or before 01.04.2023.

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 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 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 01 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 2014-15.

8. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 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 value shown against "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.

7 Now, as the written & verbal submission by the appellant has been made before me. As per submission filed by the appellant, the appellant was engaged in providing work contract service i.e. construction services to the IOCL and received consideration as Rs. 47,38,167 for the same. The same is verified from the Form 26AS and the P& L Account statement for the relevant period. In the P& L Statement, a sizable amount of material purchase cost is also



shown. Therefore, the value of service portion may be ascertained applying rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 and the benefit of the above abatement may be extended to them.

7.1 Further, the appellant has provided their service only to IOCL which is a body corporate and therefore is liable to pay only 50% service tax and the remaining will be paid by the service recipient as per Notification No 30/2012-ST dated 20.06.2012. Therefore the benefit of the above notification may also be extended to them.

8. In view of the above discussion, I am of the considered view that the activity carried out by the appellant is liable to Service Tax during the FY 2014-15. Considering the benefit of the 60% abatement on Total receipt Rs. 47,38,167/- as per rule 2A of Service Tax (Determination of value) Rules, 2006, the taxable value comes as Rs.18,95,267/- and the service tax @12.36% comes as Rs. 2,34,255/-.

Further, Considering the benefit of Notification No 30/2012-ST dated 20.06.2012 the appellant is liable to pay service tax of Rs. 1,17,127/- only. Against their tax liability they have paid Rs. 1,29,814/-. The same is ascertained from the ST-3 returns. Therefore no service tax liability is pending on appellant. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

9. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the appellant during the FY 2014-15, is not legal and proper and deserve to be set aside.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. 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



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 08.02.2024



By RPAD / SPEED POST

To,

M/s. National Construction,
B-62, Sahjanand Apartment,
Near Sterling Hospital, Gurukul Road,
Ahmedabad - 380052

Appellant

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

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



