



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



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| (क) | फाइल संख्या / File No. | GAPPL/COM/STP/4408/2023/1212-21 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date | AHM-EXCUS-002-APP-221/23-24 and 07.02.2024 |
| (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. 136/DC/D/VM/22-23 dated 10.3.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | Paragaon Management Services Shed No. 3, Plot No. 5 & 5A Opp. Eye Hospital, Viramgam Road Sanand Village, Ahmedabad - 382110 |

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 प्रकिया 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 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. Paragaon Management Services situated at Plot No 16, Shubh Laxmi Estate, Opp. Eye Hospital, Viramgam Road, Sanand-382110 (hereinafter referred to as "the appellant") against Order-in-Original No. 136/DC/D/VM/2022-23 dated 10.03.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division-III, 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. AARFP7441BSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, it was noticed that the appellant has shown less income in their ST-3 return in compare to the figures Shown as "Sale of Service" in their ITR filed with the Income Tax department. Details are as under:

| Year | Value as per ST-3 Returns | Total sale of service as per ITR | Service tax Not paid(in Rs.) |
|---------|---------------------------|----------------------------------|------------------------------|
| 2016-17 | Not Filed | 20,92,447/- | 3,13,867/- |

Accordingly, it appeared that the appellant had earned the substantial income providing the service during the above period but not paid the service tax on the same. 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. III/SCN/AC/Paragaon management/174/21-22 dated 20.10.2021 demanding Service Tax amounting to Rs 3,13,867/- for the FY 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 77(1), 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. 3,13,867/- for the F.Y. 2016-17 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. Further, (i) Penalty of Rs. 3,13,867/- 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) 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 on the following grounds:

- The appellant submitted that they are a small service provider engaged in dry-cleaning services having STC No.AARFP7441BSD001.they have not received any letter issued by the Department except the SCN. They vide letter dated 27-10-2021 submitted reply of the SCN wherein they submitted that the turnover exceeded threshold limit during F.Y. 2016-17 and they have applied for service tax registration on 04-10-2016. They have provided services to SEZ unit and the same is not liable to service tax as per Noti. No. 12/2013-S.T. dated 1-7-2013
- The appellant has paid appropriate service tax on the taxable services provided by them and challan evidencing payment of service tax is also submitted to substantiate the claim. During the personal hearing they have submitted that they have provided dry cleaning services to SEZ units which is not liable to service tax but the adjudicating authority didn't consider the same and confirmed the demand.They have provided dry cleaning services to SEZ units viz., Jai Pharma Limited and subsequently the name of the SEZ unit is changed to Mylan Labs Limited. The copy of agreement for work with Jai Pharma Limited and Mylan Labs Limited are furnished by them. As per the Notification No. 12/2013-S.T. dated 1-7-2013 , services provided to a SEZ unit are exempted from service tax if the same are used exclusively for the authorised operations. The SEZ Unit or the Developer have to provide a copy of said authorisation to the service provider and on the basis of same, the service provider will provide the specified services to the SEZ Unit without paying service tax. As they have furnished the Form-A issued by the Mylan Labs Limited (earlier name is Jai pharma Limited) wherein at Sr no 217 the name of appellant and the specific service is mentioned.
- The appellant submitted that they have not given the benefit of threshold limit i.e. 10 lakhs as per the Noti. No 33/2012-ST dated 20.06.2012 which is available to them.
- Further they stated that the SCN can't be issued only on the basis of presumption by considering the receipt reported in ITR as a taxable service of the appellant. They placed reliance on the decision of Hon'ble CESTAT, Allahbad in case of Kush Construction V CGST NACIN 2019(24) GSTL 606(Tri-All).
- Further they submitted the adjudicating authority decided the matter without considering the amount received as cum- tax.The SCN is time barred as they have not suppressed any fact and therefore the extended period can't be invoked in their case. They prayed to set aside the impugned order and allow their appeal.

4. Personal hearing in the matter was held on dated 11.01.2024. Shri Gopal Krishna Laddha, C.A. and Anjali Bhatia, C.A., appeared on behalf of the appellant. They submitted that the 11,81,798/- is the SEZ service supply so they are not liable to pay any service tax.



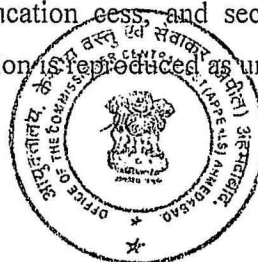
They will not claim the refund of the service tax Rs. 34,743/- paid by them. Further they submitted the copy of PAN and partnership deed as proof.

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 F.Y. 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period F.Y. 2016-17 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 filed their submission and the considering that they failed to submit any supporting documents, the adjudicating authority confirmed the demand.

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 laundry services to local units as well as SEZ units and received consideration as Rs. 20,92,447/- for the same during the relevant period. One of the contentions of the appellant is that they have not given the benefit of the threshold limit i.e. 10 lakhs. From the partnership deed it can be seen that the Firm was formed on dated 07.09.2015 and as per ITR filed for the f.Y. 15-16 the total turnover/receipt is shown as Rs. 1,36,334/- only. Therefore, they are eligible for the benefit of threshold exemption as per the Noti. No 33/2012-ST dated 20.06.2012 and the same may be extended to them.

7.1 Further, another contention of the appellant is that they have provided the laundry services to SEZ unit M/s Mylan Laboratories Limited situated at Plot No 20 & 21, Pharmez, The Pharmaceutical Special Economic Zone, Sarkhej Bavla Road, Near Matoda, Dist.- Ahmedabad, Gujarat-3822139(earlier known as Jai Pharma Limited) and the same is exempted as per Noti. no. 12/2013-S.T. dated 1-7-2013. While going through the amendment-1 made on dated 18.08.2017 in original agreement dated 01.08.2016, it is seen that M/s Jai Pharma Limited was merged with the SEZ unit M/s Mylan Laboratories Limited and the latter was in operation in place/address of earlier. From going through the ledgers furnished by the appellant it is seen that they have provided laundry service to M/s Jai Pharma Ltd. of Rs. 6,51,534/- and to M/s Mylan Laboratories Limited of Rs. 7,11,905/- total Rs. 13,63,429/- while going through the Notification 12/2013-S.T. dated 01-07-2013 it is seen that the services provided to a SEZ unit and used exclusively for the authorised operation are exempted from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon. The relevant extraction is reproduced as under:



2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner: (I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab -initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

From the submission it is seen that the appellant has provided the laundry service to M/s Mylan Laboratories Limited (earlier known as Jai Pharma Limited) against the authorization wherein their name and specific service was mentioned and hence fulfilled the condition of above Notification and the benefit of the same is available to them.

8. In view of the above, out of total receipt Rs. 20,92,447/-, the Amount Rs. 13,63,429/- received against the services provided to SEZ is exempted as per the Notification 12/2013-S.T. dated 01-07-2013 and after debiting the same from total receipt (20,92,447-13,63,429) the net taxable income comes as Rs. 7,29,018/- which is within threshold limit of Rs. 10 lakhs. Therefore the appellant is not liable to pay any service tax. 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 2016-17, is not legal and proper and deserves 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

By RPAD / SPEED POST

To,

M/s. Paragaon Management Services,
Situating at Plot No 16, Shubh Laxmi Estate,
Opp. Eye Hospital, Viramgam Road,
Sanand-382110

The Deputy Commissioner,
CGST, Div-III.
Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Div-III., Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) Guard File

6) PA file



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 07.02.2024



Appellant

Respondent