



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4397/2023 / 3265 - 69
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-244/23-24 and 20.02.2024
(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	05.03.2024
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/390/SURESH/AM/2022-23 dated 9.12.2022 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Suresh Vaghabhai Bharwad Bharwad Vas, Hebatpur Daskoi, Solaing Ahmedabad - 380060

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 इए-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 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 रूपये या उससे कम होतो रूपये 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 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 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)।

- (7) खंड (Section) 11D के तहत निर्धारित राशि;
- (8) लिया गलत सेनवैट क्रेडिट की राशि;
- (9) 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:

- (vii) amount determined under Section 11 D;
- (viii) amount of erroneous Cenvat Credit taken;
- (ix) 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. Suresh VaghabhaiBharwad, Bharwad Vas, Hebatpur, Daskroi, Sola, Ahmedabad-380060 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/390/Suresh/AM/2022-23 dated 09.12.2022 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

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 but were not registered with the department. They declared Sales / Gross Receipts of Rs.12,99,500/- 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.1,80,827/- was, therefore quantified considering the income of Rs.12,99,500/- as taxable income.

Table-A

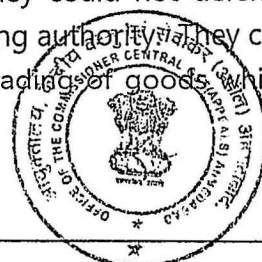
F.Y.	Sale of service as per ITR	Service tax payable
2015-16	12,99,500/-	1,80,827/-

2.1 A Show Cause Notice (SCN) No. GST-06/04-1071//O&A/ Suresh/2020-21 dated 24.03.2021 was issued to the appellant proposing recovery of service tax amount of Rs.1,80,827/- 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, penalties under Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,80,827/- was confirmed alongwith interest. Penalty of Rs. 10,000/- was imposed under Section 77 and penalty of Rs.1,80,827/- 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 claim that they were engaged in the business of Sand Soil Work, Sale of Fertilizer of Animals, Basement Digging Work, Carting Works and also JCB Labour Work. During the F.Y. 2015-16, their taxable turnover was below the threshold limit of Rs.10 lakhs hence they were not required to pay tax or obtain service tax registration.
- The impugned order was passed ex-party so they could not defend their case with supporting documents before the adjudicating authority. They claim that the income reflected in ITR includes income from trading of goods which is not be



included in the taxable income. They submitted bill/invoices issued during the said period to substantiate their above claim.

4. Personal hearing in the appeal matter was held on 17.01.2024. Shri Mitul Kanjariya, Chartered Accountant appeared for personal hearing, on behalf of the appellant. He requested one week time for submission of additional documents.

4.1 The appellant vide letter dated 25.01.2024, stated that their turnover during the F.Y. 2015-16 was Rs.12,99,500/- and other receipts of Rs.5,98,514/- was income received from GTA service provided to body corporates which is covered under RCM. They stated that this turnover included JCB labour work, Puran/Garden Mati, Kali Mati and Khatar which is excluded. Hence, their taxable income shall be Rs.5,72,800/- on which they are not liable to pay service tax. They also submitted ITR copy filed for the F.Y. 2014-15 and bifurcation of Goods & Services turnover. They also stated that for the subsequent year i.e. for 2016-17, similar proceeding was initiated against them which was dropped by the Divisional Deputy Commissioner. Copy of OIO No.GST-06/D-VI/O&A/45/Suresh/VM/2023-24 dated 11.08.2023 was also submitted as reference.

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.1,80,827/-** 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**.

5.1 I have gone through the documents like P&L Account, ITR, invoices submitted by the appellant. In the ITR filed for the F.Y. 2014-15, the appellant has shown the income of Rs.20,16,934/- under Sale of Services. Whereas in their P&L Account, they have shown the bifurcation as Rs.7,42,655/- under 'Sale of Services' and Rs.12,74,279/- under 'Sale of Goods'. Considering the above bifurcation mentioned in P&L Account, the income from service is Rs.7,42,655/- which is below Rs.10 lakhs prescribed in Notification no. 33/2012-ST. Since, their taxable turnover during the previous F.Y. 2014-15 was below the threshold limit, I find that the appellant shall be eligible for Rs. 10 Lakh exemption in the subsequent year i.e. in F.Y. 2015-16.

5.2 In the subsequent year they claim their turnover was Rs.12,99,500/- and on the income received from GTA service provided to body corporates, the tax liability shall be on the service recipient under RCM. The appellant submitted a reconciliation statement mentioning the invoice details, amount received under various heads and relevant invoices. As per reconciliation statement they have shown following incomes;

JCB Labour Income	Tractor Fera	Mati Fera	Khatar	Total
5,72,800	1,66,600	3,72,850	1,87,250	12,99,500

5.3 As per the invoices and the above data, it is clear that the appellant was rendering GTA service, Renting of JCB and trading of goods like sand/Khatar etc. The above services were rendered to ShajanandBuildcon LLP, Sahaj Developers, GulmohurBuildcon, E.B.H. Buildcon, SAL Institute of Technologies, Shajanand Ky. Infrawork Ltd. etc. In



terms of clause (2) of Notification No. 30/2012-ST dated 20.06.2012, 100% liability to pay service tax shall be on the service recipient subject to the condition that the GTA service is provided to specified categories which includes factory (registered under Factories Act, 1948), Company, registered corporation, registered society, registered body corporate or a registered partnership firm. As the service recipients in the instant cases are covered within the specified categories, hence, the liability to pay tax on GTA service rendered by the appellant for transportation of sand/mati etc shall be on the service recipient.

5.4 Further, I find that the sale of sand, Khatar etc is a trading activity hence not covered within the scope of the definition of 'service' defined in clause (44) of Section 65B, thus there is no tax liability on such income. However, the appellant shall be liable to pay tax on the JCB labour income of Rs.5,72,800/-. As the taxable income during the previous F.Y. 2014-15 was below Rs.10 lakhs, the appellant shall be eligible for Rupees Ten Lakhs exemption in the subsequent year and considering the fact that the JCB labour income is also less than ten lakhs the appellant shall not be required to pay tax on the above income. Further, it is also observed that the demand for subsequent period (F.Y. 2016-17), was dropped by the jurisdictional adjudicating authority on the findings that on GTA service and trading activity the appellant has no tax liability and the remaining income being less than the threshold limit the appellant is exempted from tax payment.

6. Thus, in light of above discussion and findings, I find that the service tax demand of Rs.1,80,827/- on the differential income of Rs.12,99,500/- is not legally sustainable. When the demand is not sustainable the question of recovering the interest and penalty also does not arise.

7. In view of the above, the impugned order is set aside and the appeal is allowed.


8. अपीलकर्ता 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.


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 20.02.2024

Attested


Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Suresh Vaghabhai Bharwad,
Bharwad Vas, Hebatpur,
Daskroi, Sola, Ahmedabad-380060



Appellant

The Assistant Commissioner
CGST, Division-VI,
Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Appeal, Ahmedabad., (For uploading the OIA)
4. ~~Guard File.~~



