



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3967/2023 1872-76
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-248/23-24 and 20.02.2024
(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	05.03.2024
(ङ)	Arising out of Order-In-Original No.	GST-06/D-VI/O&A/602/ALPESH/AM/2022-23 dated 17.2.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Alpesh Chandulal Prajapati B-18, Padmavati Duplex Nr. Ghuma, Tal: Diskoroiing Dist: Ahmedabad - 422600

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 रूपये या उससे कम होती 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 और 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)।

- (28) खंड (Section) 11D के तहत निर्धारित राशि;
- (29) लिया गलत सेनवैट क्रेडिट की राशि;
- (30) 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:

- (xxviii) amount determined under Section 11 D;
- (xxix) amount of erroneous Cenvat Credit taken;
- (xxx) 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. Alpesh Chandulal Prajapati, B-18, Padmavati Duplex, Near Ghuma, Daskroi-422600 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/602/Alpesh/AM/2022-23 dated 17.02.2023 (in short '*impugned order*'), passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant was rendering taxable service but were not registered with the department. They were holding PAN No. AALPP3758P.

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 and 2016-17, it was noticed that the appellant had earned substantial income by providing taxable services. They declared Sales / Gross Receipts of Rs.15,61,699/- 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& 2016-17. 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.2,31,264/- was, therefore quantified considering the income of Rs.15,61,699/- as taxable income.

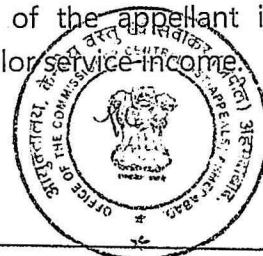
F.Y.	Sales / Gross Receipt as per ITR	Service Tax
2015-16	174691	24372
2016-17	1387008	206892
TOTAL	1561699	2,31,264

2.1 A Show Cause Notice was issued to the appellant proposing recovery of service tax amount of Rs.2,31,264/- not paid on the value of income received during the F.Y. 2015-16& 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70 and penalties under Section 77(1)(a), Section 77(2) 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.3,70,761/- was confirmed alongwith interest. Penalty of Rs. 40,000/- under Section 70 and penalty of Rs.10,000/- was imposed under Section 77(1). Penalty of Rs.3,70,761/- 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 filed written submission in reply to the Show Cause Notice on 20.05.2022 which clearly mentions that appellant is engaged in the business of cloths which includes trading and job work of readymade cloths hence the income of the appellant includes trading of cloths and tailoring services for the financial year 2015-16 and 2016-17.
- The learned Superintendent has erred in providing a proper opportunity for hearing to the appellant though in order he mentioned that he has provided proper opportunity to prove that income of the appellant includes income from trading of readymade cloth along with tailor service income.



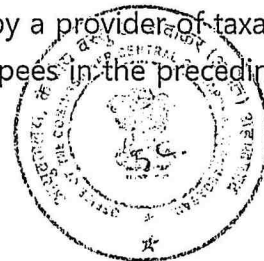
- On similar issue, for the F.Y. 2014-15, was dropped on similar grounds by the adjudicating authority vide OIO No. 161/WS03/AC/CSM/2022-23 dated 17.02.2023. Copy of the OIO, ITR, P&L, Balance Sheet for the F.Y. 2015-16 & 2016-17 are also submitted for reference.
- The appellant in F.Y. 2015-16 has inadvertently shown income of Rs.11,74,691/- from sale of services. In fact this income included the income of Rs.3,51,500/- from sale of shirts and income of Rs.8,23,191/- from sale of tailoring services. As sale of shirt is not taxable service, the remaining income is below the threshold limit and hence the appellant is not liable to pay service tax. Similarly, in the F.Y. 2016-17, the total income of Rs.13,87,008/- was inadvertently shown as income from sale of services. In fact, this income included the income of Rs.5,80,570/- from sale of shirts and income of Rs.8,06,438/- from sale of tailoring services. As sale of shirt is not taxable service, the remaining income is below the threshold limit and hence the appellant is not liable to pay service tax.
- Interest under Section 75 of the Finance Act, 1994 should not be demanded and recovered as there is no income liable to service tax.
- Penalty read with Section 78 of the said Act should not be imposed upon us as we have not suppressed the facts with regard to Income. Further the question of intention of evasion of payment of service tax does not arise.

5. Personal hearing in the appeal matter was held on 16.01.2024. Shri Keyur Bavishi, Chartered Accountant appeared on behalf of the appellant for personal hearing. He stated that the client is a tailor and does readymade garment job-work. He also sells shirts. His activities are exempted under Notification no.25/2012-ST and Notification no. 33/2012-ST. Reiterating the grounds of appeal, he requested to allow their appeal.

6. 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.3,70,761/-** 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 & 2016-17**.

6.1 It is observed that in the SCN, demand of Rs.2,31,264/- has been raised on the income of Rs.15,61,699/-. Whereas, the adjudicating authority in the impugned order confirmed the tax liability of Rs.3,70,761/- considering the income of Rs.25,61,699/- as taxable. I find that the adjudicating authority has travelled beyond the scope of the SCN by confirming the tax over and above the amount proposed in the SCN.

6.2 Contesting the tax liability, the appellant has claimed that they are not liable to pay service tax on the disputed period as their taxable income was below the threshold limit of Rs.10 lakhs prescribed in the Notification No.33/2012-ST dated 20.06.2012. It is observed that the said notification 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.



6.3 To examine their above claim, income of previous year was examined. In the demand raised for the F.Y. 2014-15, the adjudicating authority in OIO No. 161/WS03/AC/CSM/2022-23 dated 17.02.2023, has held that the appellant has earned income of Rs.10,80,510/- out of which the income of Rs.6,29,950/- was earned from job-work of cloths and the same being below the threshold limit of Rs. 10 lacs, the appellant shall be eligible for SSI exemption, hence the demand for said period was dropped. Considering the above facts, it appears that the appellant will be eligible for exemption in the F.Y. 2015-16 also as in the previous year their taxable turnover was less than Rs.10 lakhs.


6.4 For the F.Y. 2015-16, the appellant has claimed they have inadvertently shown total income of Rs.11,74,691/- from sale of services, whereas their taxable income was only Rs.8,23,191/- which is also below the threshold limit. It is observed that the appellant in the P&L Account of the F.Y. 2015-16 has shown income of Rs.8,23,191/- as income from 'Readymade Cloths job-work' and Rs. 3,51,500/- as income from 'Shirts Lot Sales'. As sale of goods is not taxable service, the income of Rs. 3,51,500/- needs to be excluded. Since, the remaining income of Rs.8,23,191/- is also below the threshold limit of Rs. 10 lacs, the appellant appears to be not required to pay tax on such income and will also be eligible for SSI exemption in the subsequent year.

6.5 In the subsequent year, 2016-17, also it is observed that the appellant in the P&L Account has shown income of Rs.5,80,570/- from 'Shirts Lot Sales' and income of Rs.8,06,438/- from 'Readymade Cloths job-work'. Income from sale of shirts is not taxable being sale of goods and the remaining income being less than the threshold limit of Rs.10 lacs, it appears that the appellant will not be required to pay tax on the job-work income.

6.6 The SCN demands Rs.2,31,264/- as tax demand while OIO confirms tax demand of Rs.3,70,761/-. Which figure is correct, the same needs to be decided. Further, whether appellant will be eligible for Notification No.33/2012-ST dated 20.06.2012 (SSI exemption) the same needs to be verified as the appellant has divided the turnover between sale of goods and sale of services. Hence, the matter needs to be remanded back to the adjudicating authority.

7. In light of above discussion and findings, the impugned order is set aside and the appeal is allowed by way of remand.


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. Alpesh Chandulal Prajapati,
B-18, Padmavati Duplex,
Near Ghuma,
Daskroi- 422600

- **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, Ahmedabad (Appeals) for uploading the OIA
4. Guard File.



