



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

By SPEED POST

DIN:- 20240364SW000000FC77

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/6173/2023/2462-60
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-250/23-24 and 26.02.2024
(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. CGST/WT07/HG/999/2022-23 dated 27.3.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Sachchidanand J Mishra F-506, Ganesh Green, Opp. Ganesh Dwar, Chenpura Roading New Ranip, Ahmedabad - 382480

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 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.

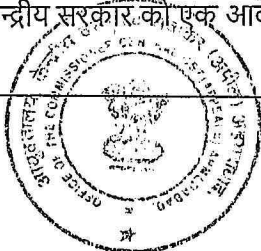
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(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 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 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)।

- (13) खंड (Section) 11D के तहत निर्धारित राशि;
- (14) लिया गलत सेनवैट क्रेडिट की राशि;
- (15) 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:

- (xiii) amount determined under Section 11 D;
- (xiv) amount of erroneous Cenvat Credit taken;
- (xv) 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. Sachchidanand J Mishra, F-506, Ganesh Green, Opp. Ganesh Dwar, Chenpura Road, New Ranip, Ahmedabad-382480 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/999/2022-23 dated 27.03.2023 (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. AVRPM6865BSD001. 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
2015-16	98,22,507/-	70,78,700/-	27,43,807/-	3,97,852/-

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-IV/Div-VII/A'bad North/TPD -Regd/04/20-21 dated 23.10.2020 demanding Service Tax amounting to Rs 3,97,852/- for the period FY 2015-16, 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. 3,97,852/- 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 2015-16. Further, (i) Penalty of Rs. 3,97,852/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(1)(a) & 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.



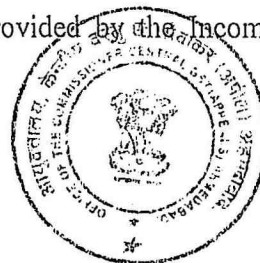
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant submitted that they are a proprietary firm and engaged in execution of works contract services wherein the service portion is taxable as per section 66E(h) of the Finance Act,1994. They were rendering services mainly to body corporates.They have done the original work as well as finishing work and valuation has been done as per Rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 .They were registered with the Service Tax Department and discharging their services tax liability on time.
- They submitted that the only 50% service tax liability on the WCS provided to the body corporate comes on the service provider and rest 50% comes upon the service recipient as per Notification No.30/2012-ST.
- They submitted that the SCN is issued without pre-consultation notice which is sheer disregard of Circular No 1053/2/2017-CX dated 10.03.2017.The matter is decided ex parte and the same is gross violation of the principle of natural justice. The adjudicating authority failed to consider their submission dated 11.11.2020 in response of the SCN.
- The appellant submitted that they have suppressed nothing from the department and therefore the penalty under Section 78 is not as per law. They requested to allow their appeal.

4. Personal hearing in the matter was held on dated 15.02.2024. Shri Vijay N. Thakkar, Consultant, appeared online for PH on behalf of the appellant. He reiterated the contents of the written submission and stated that his client is regularly filling returns and paying tax. After re-conciliation no liability arises.

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 FY 2015-16.

6. 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. From the submission filed by the appellant, it is seen that during the F.Y. 2015-16, the appellant was engaged in providing work contract service i.e. colour/paint service to various body Corporates and received consideration of Rs. 91,46,024/- for the same. To ascertain the value of service portion, the rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 may be apply and the abatement of 30% of total value may be given to them for the service tax purpose. The service recipients being body corporate, the appellant/service provider is required to pay the service tax only on 50% of the taxable value and the service tax on remaining 50% taxable value will be paid by the service recipient under RCM as per Notification No 30/2012-ST dated 20.06.2012.

Further, they performed original work of Rs. 5,92,533/- for which they are eligible for abatement of 60% of total value as per above Rule 2A and also benefit of partial RCM as per Notification No 30/2012-ST dated 20.06.2012.

The appellant has also provided work contract service to non-body corporate and received consideration of Rs. 83,950/-. Service tax on the same was required to be paid in forward charge mechanism by the appellant. However, the benefit of the rule 2A(ii) of Service Tax (Determination of value) Rules, 2006 was available to them.

Considering the above, the actual service tax liability comes as under:

2015-16					
Nature of the Contract	Total Receipt	Abatement Available as per Rule 2A	Abated Value	Partial RCM(50%) as per Noti. No 30/2012	Net Taxable value for Appellant
Colour-Body Corporate	91,46,024/-	27,43,807(30%)	64,02,217/-	32,01,108/-	32,01,108/-
Original work-Body Corporate	5,92,533/-	3,55,520/-(60%)	2,37,013/-	1,18,506/-	1,18,506/-
WCS to Non Body Corporate Firm	83950/-	---	83950/-	---	83950/-
Total	98,22,507/-	30,99,327/-	67,23,180/-	33,19,614/-	34,03,564/-

From the above table it can be seen that the net taxable value on which the appellant is liable to pay service tax is Rs. 34,03,564/-. From the Service tax Returns filed for the relevant period, it can be seen that the net taxable value is shown as Rs. 34,03,564/- and the applicable service tax on the same is paid by the appellant. Hence no service tax liability is upon the appellant.



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 2015-16 and the whole service tax liability has been discharged by them. 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 2015-16, 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.

(Handwritten Signature)

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 26.02.2024

Attested

(Handwritten Signature)

(Manish Kumar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Sachchidanand J Mishra,
F-506, ganesh Green, Opp. Ganesh Dwar,
Chenpura Road, New Ranip,
Ahmedabad-382480

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

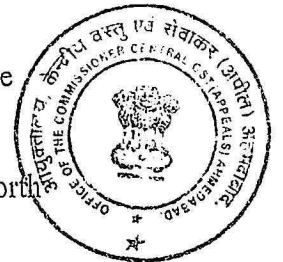
Copy to :

- 1) .The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad North



Appellant

Respondent



4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

5) Guard File

6) PA file

