



सत्यमेव जयते

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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DIN:- 20240364SW0000777CBC

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STP/4399/2023 / 7651 - SS |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date | AHM-EXCUS-002-APP-260/23-24 and 28.02.2024 |
| (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 | 07.03.2024 |
| (ङ) | Arising out of Order-In-Original No. CGST/WT07/HG/801/2022-23 dated 30.1.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | Kalpesh Jagdishbhai Bhavsar 10, Amarpura, Nr. Dhanjibhai Bus Stand Chandlodiya Road, Chandlodiyaing Ahmedabad - 382481 |

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.

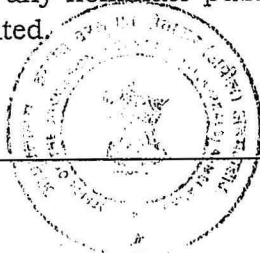
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2ndfloor, 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)।

- (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."



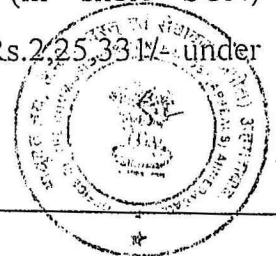
अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Kalpeshbhai Jagdishbhai Bhavsar, 10, Amarpura, Nr. Dhanjibhai Bus Stand, Chandlodia Road, Chandlodia, Ahmedabad – 382481 (hereinafter referred to as '*the appellant*') against Order in Original No. CGST/WT07/HG/801/2022-23 dated 30.01.2023 [hereinafter referred to as '*impugned order*'] passed by the Deputy Commissioner, CGST & CEx, Division-VII, Ahmedabad North Commissionerate [hereinafter referred to as '*adjudicating authority*'].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AATPB2982RST001 and engaged in the business of providing taxable services. As per the information received from the Income Tax department discrepancies were observed in the total income declared by the appellant in their Income Tax Return (ITR) when compared with Service Tax Returns (ST-3) filed by them for the period F.Y. 2015-16 & F.Y. 2016-17. Accordingly, in order to verify, letter dated 07.10.2020 was issued to the appellant calling for the details of services provided during the period. The appellant did not submit any reply. Further, the jurisdictional officers considering the services provided by the appellant as taxable determined the Service Tax liability for the F.Y. 2015-16 & F.Y. 2016-17 on the basis of differential value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) or "Total amount paid/credited under Section 194C, 194I, 194H & 194J of Income Tax Act, 1961" shown in the ITR-5 and Taxable Value shown in ST-3 return for the relevant period as per details below :

| Sr. No. | F.Y. | Total taxable Value Provided in Service Tax Return | Sale of Services provided in Income Tax Return | Total Value in TDS (Form 26AS) | Higher differential Value (difference in value provided in ITR / Form 26S and STR) | Service Tax Short Paid |
|---------|---------|--|--|--------------------------------|--|------------------------|
| 1 | 2015-16 | 46,00,000 | 52,53,160 | 55,05,906 | 9,05,906 | 1,31,356 |
| 2 | 2016-17 | 42,00,000 | 48,26,500 | 43,03,613 | 6,26,500 | 93,975 |
| | | | | | | 2,25,331 |

3. The appellant was issued Show Cause Notice No. CGST/AR-V/Div-VII/A'BAD-NORTH/TPD-UR/51/20-21 dated 26.09.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.2,25,331/- under



proviso to Section 73 of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. It was also proposed that Service Tax liability not paid during the F.Y. 2017-18 (upto June 2017), ascertained in future due to non-availability of pertaining data.

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- Service Tax demand of Rs.2,25,331/- was confirmed under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- Penalty of Rs.3,000/- was imposed under Section 77(1)(a) & Section 77(1)(c) of the Finance Act, 1994.
- Penalty of Rs.3,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- Penalty of Rs.2,25,331/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty in terms of clause (ii).

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant is a consulting Engineer and registered under vide Service Tax Registration No.AATPB2982RST001.
- The alleged difference in gross receipts as per ST-03 Returns and Income Tax Return is apparently on account of amount of service tax only. The gross of value of receipts in ITR is inclusive of service tax while value captured in SCN have taken to compare the gross receipts is at basic value only i.e. without inclusive of service tax. Thus, the impugned difference is on account of amount of service tax only in both the years.
- In support of the above, appellant submitted the following facts :
 - (a) Form ST-03 returns wherein the amount of service tax can be verified which is alleged difference in the impugned order.
 - (b) Copy of Profit & Loss Account wherein service tax is separately mentioned.



➤ The difference in gross receipts in FY 2015-16 to the tune of Rs.2,62,746/- is on account of house rent income which is exempted from the payment of whole of service tax on it.

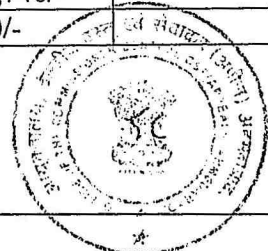
6. Personal Hearing in the case was held on 16.01.2024. Shri Shakir V. Chauhan, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He submitted additional submission at the time of PH. He reiterated the written submission. He stated that gross value of services declared in ITR is inclusive of Service Tax amount.

7. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions & additional submission made during personal hearing and the facts available on records. The issue before me for decision in the present appeal is whether the demand for Service Tax amounting to Rs.2,25,331/- confirmed along with interest and penalties vide the impugned order in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

8. It is observed from the case records that the appellant are registered under Service Tax and during the period F.Y. 2015-16 & F.Y. 2016-17 and they have filed their ST-3 Returns, these facts are undisputed. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant and the case was adjudicated *ex-parte* by the adjudicating authority.

9. I find that the appellant was engaged in providing the consulting engineer services and they has submitted the reconciliation statement wherein they asserted that they had self assessed the due service tax and furnished the service tax return for the period F.Y. 2015-16 & F.Y. 2016-17 under proviso to Section 70 of the Finance Act, 1994 and the reconciliation statement for the disputed period are as under:

| Particulars | F.Y. 2015-16 | F.Y. 2016-17 |
|---------------------------------------|--------------|--------------|
| Gross receipts at basic value | 46,09,000/- | 42,00,000/- |
| Add: Service Tax Amount | 6,34,160/- | 6,26,500/- |
| Total Gross value as per ITR/ P&L A/c | 52,43,160/- | 48,26,500/- |
| Gross Value as per SCN | 55,05,906/- | 48,26,500/- |
| Balance | 2,62,746/- | 0/- |
| Rent Income | 2,62,746/- | |
| Difference | 0/- | |



9.2 Upon examining the submissions made by the appellant, I find that the appellant have filed the ST-3 and paid the due amount of Service Tax. Half-yearly Service Tax Return details are as under:

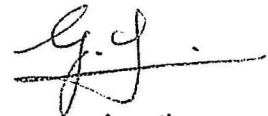
| F.Y. 2015-16 | | | |
|------------------|-----------------|---------------|-----------|
| Return Period | April-September | October-March | Total |
| Taxable Value | 21,00,000 | 25,00,000 | 46,00,000 |
| Service Tax paid | 2,84,160 | 3,59,000 | 6,43,160 |

| F.Y. 2016-17 | | | |
|------------------|-----------------|---------------|-----------|
| Return Period | April-September | October-March | Total |
| Taxable Value | 21,00,000 | 21,00,000 | 42,00,000 |
| Service Tax paid | 3,11,500 | 3,15,000 | 6,26,500 |

10. I find that there is a short payment of service tax on the taxable value of Rs.9,000/- (46,09,000 – 46,00,000), and they did not submit any documentary evidence for their rental income earned by them during the F.Y. 2015-16. They only reconciled the rental income as exempted from levability of service tax. Since, they have not produced concrete evidence to support their claim and they did not even get an opportunity to attend the personal hearing & submit their defense submission before the adjudicating authority, therefore, I am of the considered view that it would be in the fitness of things in the interest of natural justice that the matter is to be remanded back to the adjudicating authority to evaluate the appellant's claim following their submission and adjudicate the matter accordingly.

11. Accordingly, the impugned order is set aside and the matter remanded back to the adjudicating authority for adjudication afresh. The appeal filed by the appellant is allowed by way of remand.

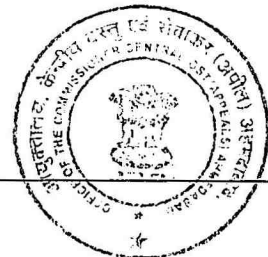
12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 28 .02.2024



सत्यापित/Attested :



मनीष कुमार

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D

To,

M/s. Kalpeshbhai Jagdishbhai Bhavsar,
10, Amarpura, Nr. Dhanjibhai Bus Stand,
Chandlodia Road, Chandlodia,
Ahmedabad – 382481.



Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad North.
3. The Deputy / Assistant Commissioner, CGST & CEX, Division - VII, Ahmedabad North Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.

