



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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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/6143/2023 / 2856-60
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-261/23-24 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. GST-06/D-VI/O&A/749/Rekha/AM/2022-23 dated 9.6.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Rekha Yogendrasingh Rajput 304, Vrundavan Arcade Bhaikakanagar, Thaltejing Ahmedabad-380059

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 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)।

- (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

M/s. Rekha Yogendrasingh Rajput, 304, Vrundavan Arcade, Bhaikakanagar, Thaltej, Ahmedabad-380059 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/749/Rekha/AM/2022-23 dated 23.03.2023 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. AGXPR3748P.

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. 2016-17, it was noticed that the appellant had earned substantial income by providing taxable services. They declared Sales/ Gross Receipts of Rs.15,57,630/- 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. 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. 2,33,644/- was, therefore quantified considering the income of Rs.15,57,630/- as taxable income.

F.Y.	Sales / Gross Receipt as per ITR	Service Tax
2016-17	15,57,630/-	2,33,644/-

2.1 A Show Cause Notice (SCN) No. GST-06/04-1604/Rekha/2021-22 dated 18.10.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs. 2,33,644/-not paid on the value of income received during the F.Y. 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; penalty under Section 77 and under Section 78 of the Finance Act, 1994 was also proposed.

2.2 The said SCN was adjudicated ex-parte vide the impugned order, wherein the service tax demand of Rs. 2,33,644/- was confirmed alongwith interest. Fine of Rs.40,000/- u/s 70; penalty of Rs. 5,000/- under Section 77 and penalty of Rs.2,33,644/- under Section 78was also imposed.

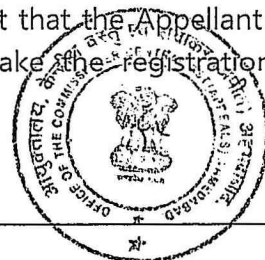
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The appellant is a housewife running a small set-up of photocopy business in the name of Adarsh Xerox to support his husband in maintaining lively hood of the family. In the instant case, the impugned SCNs do not contain the details like the category of services under which the service tax liability would fall; the nature of activities carried out by the appellants and whether such activities could be classified under specific categories of services and applicability of relevant provisions to the said category. Thus, the impugned orders emanating from such insufficient SCNs are not sustainable.
- The entire demand is solely based on the figures mentioned in the balance sheets of the Appellant by completely ignoring the justification of the Appellant on the issue in its true spirit. The impugned order lacks a proper appreciation of the facts and circumstances and the provision of the Finance Act, 1994 and the Service Tax



Rules, 1994. The Hon'ble Tribunal in the case of Paro Food Products Vs. CCE, Hyderabad clearly held that demand solely based on the balance sheet is unsustainable.

- The Adjudicating Authority did not even examine the correct method of the valuation to arrive at the tax liability and confirmed the entire demand on the basis of the figures mentioned in the head of Sales/Gross Receipts from Services (ITR). The Adjudicating Authority could not have taken entire figures of Sales/Gross Receipts as taxable income without excluding the cost of the materials/papers/consumables/maintenance etc. Therefore, the impugned order fails on this count itself and is not tenable.
- The Adjudicating Authority could not have confirmed the demand without considering the service component and value of materials. If the Adjudicating Authority could have examined this aspect, he could have got a clear picture that the service element involved in the present case was very small and same was below the threshold limit of Rs. 10 lacs, and there is no question of taking registration as well as payment of tax. The Adjudicating Authority has wrongly denied the benefit of Notification No. 6/2005 -S.T dated 1.03.2005 as amended.
- The Adjudicating Authority could not have confirmed the demand for the materials sold while providing the services of the Photocopy and could not have brushed aside the law laid down by the Hon'ble Apex Court in the case of the State of Karnataka Vs. Pro Lab, wherein the Hon'ble Court has held that the Central Government has no competence to levy tax on the sales of the goods, which is in the purview of the State Legislature. The Hon'ble Apex Court has also held that when there is an indivisible contract, it can be bifurcated into two parts, one for the sales of goods and one for the services.
- The Adjudicating Authority is even otherwise erred in confirming the demand for the larger period invoking the proviso to Section 73 of the Finance Act, 1994. The adjudicating authority has not given any reasons or findings as to how the Appellant had made fraud, collusion, willful misstatement, or suppression of facts. In the absence of any specific findings on any of these limbs of the provisions, the extended period cannot be invoked, and demand under the proviso to Section 73 is not tenable.
- The Adjudicating Authority has erred in imposing a penalty of Rs. 2,33,644/- under Section 78 of the Finance Act, 1994 as amended, as the same has been imposed without any basis and grounds. The penalty under Section 78 can be levied only in the case of failure to pay service tax for reasons of fraud, etc., whereas, the facts of the present case and the grounds raised above, there is no evidence to prove that the Appellant can be charged with any of the limbs of the proviso to Section 73, and therefore, penalty under the said provision is unjustified, untenable and without any authority of law.
- The Adjudicating Authority has erred in imposing a penalty of Rs.40,000/- under Section 70 of the Finance Act, 1994, for the late filing of the statutory returns, but the Adjudicating Authority failed to consider the fact that the Appellant was not required to file the return and not required to take the registration as the



Appellant never crossed the threshold limit of Rs. 10 lacs, and therefore the penalty is not justified.

- The Adjudicating Authority has erred in imposing penalty of Rs. 5000/- for not taking the Service Tax Registration, as there was no obligation on the part of the Appellant to take the registration considering the exemption availed under Notification No. 6/2005 -S.T. Dated 1.03.2005, and therefore, the impugned order imposing the penalty is nonest and illegal. Thus, the impugned order needs to be set-aside.

4. Personal hearing in the appeal matter was held on 15.02.2024 through virtual mode. Shri Dhaval Shah, Advocate appeared on behalf of the appellant for personal hearing. He reiterated the grounds of appeal and relied on various cases laws submitted by him and requested to allow the appeal.

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.2,33,644/- 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.

5.1 The appellant has contended that she in running photocopy business under the trade name of 'Adarsh Xerox'. It is claimed that the material purchased for rendering the service was not considered while arriving the taxable value and after deducting the material cost their taxable income shall be less than the threshold limit of Rs.10 lacs. Hence, were not required to obtain registration and discharge any tax. In support of their contention, they submitted copy of ITR and P&L Account of the F.Y. 2015-16.

5.2 From the P&L account submitted by the appellant, it is observed that the appellant during the F.Y. 2015-16 has earned taxable income of Rs.16,58,241/- from sale of services. As the said income is above the threshold limit of Rs. 10 lakhs, I find the appellant shall not be eligible for the SSI exemption in the subsequent year i.e. in F.Y. 2016-17. In the F.Y. 2016-17, they have earned taxable income of Rs.15,57,630/- which is also above the threshold limit. So, their claim seeking SSI exemption cannot be entertained. When they were not eligible for threshold limit exemption prescribed under Notification No.33/2012-ST dated 20.06.2012, I find that the appellant was required to obtain the registration and liable to pay tax on the taxable income.

5.3 Regarding the nature of service rendered, I find that the appellant has not submitted any invoice or contract to substantiate their claim that they were into photocopy business. In the P&L Account, the appellant has reflected income under 'sale of service'. Any consideration received against a service is taxable under Finance Act. Though enough opportunity was available with the appellant they failed to submit required documents like invoices/contracts to substantiate the claim seeking reduction of the cost of material reimbursed. I find that the appellant has miserably failed to disprove the allegation made in the SCN. I, therefore, have no option but to concur with the findings of the adjudicating authority. Accordingly, I uphold the service tax demand of Rs. 2,33,644/- considering the income of Rs. 15,57,630/- as taxable income. When the



demand sustains there is no escape from the interest liability and the same is also recoverable.

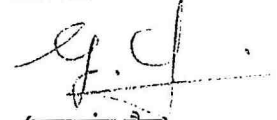
6. The appellant by not obtaining registration intentionally evaded the taxes. This act thereby led to suppression of the nature of taxable service rendered, value of taxable service and non-payment of service tax. All these acts undoubtedly bring out the willful mis-statement and fraud with intent to evade payment of service tax. Hence, I find that the extended period of limitation has been rightly invoked. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above. Therefore, the appellant is also liable for equivalent penalty of Rs. 2,33,644/- imposed under Section 78.

7. As regards, the late fees of Rs.40,000/- imposed under Section 70, I find that the same is impossible as the appellant has failed to file the statutory returns.

8. Regarding the imposition of penalty under Section 77 (1)(a), the same was imposed as the appellant failed to obtain registration. Hence, I find that the penalty under section 77(1)(a) is also sustainable.

9. In view of the above discussion and findings, the impugned order is upheld.

10. 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.

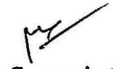


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 28.02.2024

Attested


Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Rekha Yogendrasingh Rajput,
304, Vrundavan Arcade,
Bhaikakanagar, Thaltej,
Ahmedabad-380059

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 Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
(For uploading the OIA)

4. Guard File.



