



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



By SPEED POST

DIN:- 20240364SW0000000C62

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4957/2023 / 6197 - 6101
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-288/23-24 dated 20.03.2024
(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	30.03.2024
(ङ)	Arising out of Order-In-Original No. 442/AC/Demand/22-23 dated 25.1.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Nikunj R Bhatta E-450, Parshwanath Township Part 1 Bh. Krishnanagar, Nava Naroda Ahmedabad - 382346

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 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.

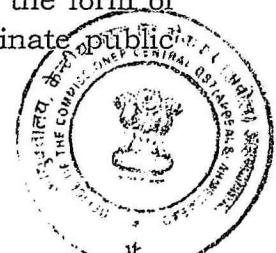
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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."



ORDER IN APPEAL

Shri Nikunj Rajendrakumar Bhatt, E-450, Parshwanath Township Part 1, B/h Krishnanagar, Nava Naroda, Ahmedabad-382346 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 442/AC/Demand/2022-23 dated 25.01.2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is holding PAN No. AIJPB3021F and was not registered with the department.

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. 2015-2016, it was noticed that the appellant in the ITR/Form-26 AS has shown substantial taxable income on which no service tax was discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the income reflected in the ITR was considered as a taxable income. The detail of the income is as under;

Table-A

<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	18,26,450/-	14.5%	2,64,835/-

2.1 A Show Cause Notice (SCN) No. AR-III/Nikunj/ST/Un-Reg/2015-16 dated 09.06.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs. 2,64,835/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a), 77(1)(c), 77(2) & Section 78 of the Finance Act, 1994 were also proposed. Service tax liability not paid during the F.Y. 2016-17 & 2017-18 (upto June) to be ascertainable in future was also proposed to be demanded.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 2,64,835/- was confirmed alongwith interest. Penalty of Rs.10,000/- under Section 77(1)(a), penalty of Rs.10,000/- or Rs.200 per day whichever is higher was imposed under Section 77(1)(c). Penalty of Rs. 2,64,835/- was also imposed under Section 78 of the F.A., 1994. Penalty under Section 77(2) was not imposed.

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

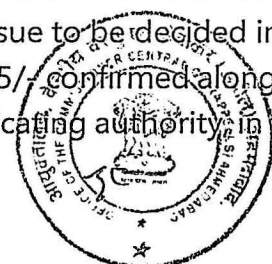
- The appellant claim that he is a registered medical practitioner qualified with the Bachelor of Ayurvedic Medicine & Surgery. He is engaged in said practice since 2007. A copy of degree certificate Bachelor of Ayurvedic Medicine & Surgery is also submitted as proof. The services rendered were healthcare services which are exempt as per entry No.02 of Notification No.25/2012-ST dated 20.06.2012 as amended. Hence, no registration was taken. Copy of detailed Income tax return filed for F.Y 2015-16, F.Y 2016-17 and F.Y 2017-18, are submitted wherein the Profession code 0604 of Medical professional is mentioned.



- Extended period cannot be invoked in the present case as the Show Cause Notice was issued on 24.03.2021 for raising the demand for the extended period from F.Y 2014-15 to F.Y 2016-17. A Show Cause cum demand notice is to be issued within 18 months (which is amended and increased to 30 months w.e.f. 14th May 2016) from the relevant date, raising a demand for tax which has not been levied or paid or which has been short-levied or short- paid. In view thereof, the impugned order is time barred.
- The Departmental Authority did not carry out the inquiry on the aspect whether the Appellant deliberately evaded service tax or it was bonafide impression for non-liability of service tax. In absence of any proper inquiry, the larger period cannot be invoked merely on the basis of the information available on the CBDT portal.
- In the present case, the Appellant has not suppressed any information from the Department and the Department was at all times, aware of the activities of the Appellant. Reliance placed on the ratio laid down by the Hon'ble Apex Court in the case of Pahwa Chemicals Private Limited vs. CCE, Delhi reported in 2005 (189) E.L.T. 257 (S.C.), wherein it has been inter alia held that: "It is settled law that mere failure to declare does not amount to wilful mis-declaration or wilful suppression. There must be some positive act on the part of the party to establish either wilful mis-declaration or wilful suppression."
- In the present case, the Authority has failed to bring on record any positive evidence of intent to evade payment of Service tax. Having failed to discharge its burden, onus of establishing the lack of intent to evade payment of tax cannot be placed on the Appellant. Thus, for F.Y 2014-15, the Show Cause Notice dated 24.03.2021 is beyond the extended period of limitation and therefore, service tax liability in respect of the same is liable to be dropped.
- No penalty or interest leviable in the facts of the present case as there is no liability of service tax for the period in dispute. Hence, the demand for interest also cannot sustain and no penalty can be imposed on us. It is settled law that where the demand itself is unsustainable, the imposition of penalty cannot sustain. Reliance placed on the judgment of the Hon'ble Supreme Court in CCE vs. HMM Ltd. reported in [1995 (76) ELT 497 (SC)] and Jindal Praxair Oxygen Co. Ltd. Versus Commissioner of C. Ex., Belgaum, 2007 (208) E.L.T. 181 (Tri. - Bang.).

5. Personal hearing in the matter was held on 12.03.2024. Shri Jaykishan Vidhwani appeared on behalf of the appellant. He informed that the appellant is a Doctor (Ayurvedacharya) and is providing healthcare services. Hence, there is no service tax liability in terms of Entry No.02 of Notification No.25/2012-ST and requested to set-aside the impugned order.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.2,64,835/- confirmed along with interest and penalties in the impugned order passed by the adjudicating authority in the facts and



circumstances of the case, is legal and proper or otherwise? The demand pertains to the period F.Y. 2015-16.

6.1 I have gone through the Certificate No.GB-I-15761 dated 30.06.2007, issued by The Gujarat Board of Ayurvedic and Unani Systems of Medicine, Ahmedabad which certifies that the appellant is a registered medical practitioner (Ayurvedacharya-B.A.M.S.). In terms of Entry No-2 of Notification No.25/2012-ST, "**Health care services by a clinical establishment, an authorised medical practitioner or para-medics;**" are exempted from the levy of service tax. Further, the term authorised medical practitioner is defined in clause (d) of Para-2, which is reproduced below:-

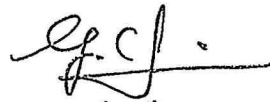
d) "**authorised medical practitioner**" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

6.2 The appellant is an authorized Ayurved Medical practitioner and is registered as Ayurvedacharya BAMS (Bachelor of Ayurvedic Medicine & Surgery) with the Gujarat Board of Ayurvedic and Unani Systems of Medicine, Ahmedabad. Further, it is noticed that the entire demand has been raised on the income of Rs.18,26,450/- reflected in the ITR. It is observed that the appellant in the ITR has shown the said income under sale of services and has mentioned the nature of business as Medical Professional. He is a proprietor of 'Pooja Clinic'. I find that the services provided by the appellant is a healthcare service as Ayurved & Unani is also a recognized system of medicine and squarely covered under Entry no.2 of the above notification, hence exempted. As the income earned was by rendering the above healthcare service, I find that the said income of Rs.18,26,450/- shall not be taxable and therefore the service tax demand of **Rs.2,64,835/-** on such income shall not sustain on merits.

7. When the demand is not sustainable, the recovery of interest, imposition of late fees and penalties also does not arise.

8. In light of above discussion and findings, I set-aside the impugned order and allow the appeal filed by the appellant.


9. 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)

Dated: 20.03.2024

सत्यापित/Attested :


अधीक्षक (अपील्स),

सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,

Shri Nikunj Rajendrakumar Bhatt,
E-450, Parshwanath Township Part 1,
B/h Krishnanagar, Nava Naroda,
Ahmedabad-382346

- **Appellant**

The Assistant Commissioner,
Central GST, Division-I,
Ahmedabad North

- **Respondent**

Copy to:

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad North.
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for uploading OIA on website.
4. Guard file.



