



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/3873/2023 and / 1237-12 GAPPL/COM/STP/3848/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-295 to 296/23-24 dated 22.03.2024
(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. MP/88/Dem/AC/22-23/NSA dated 8.2.2023 passed by The Assistant Commissioner, CGST Division-II, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	01. Ardent Facilities Pvt. Ltd.a A-2, Prayag Bunglows Nr. Abjibapa Green, Nikol Ahmedabad - 382350 02. Brijesh Hansraj Kushwah A-2, Prayag Bunglows, Nr. Abjibapa Green, Nikol Ahmedabad - 382350

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 मामले 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 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 तब अपील किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर किया जा सकता है।



ORDER-IN-APPEAL

1. The present appeal (hereinafter referred to as 'Appeal-1') has been filed by M/s Ardent Facility Pvt. Ltd.,A-2,Prayag Bunglows,Nr. Abjibapa Green, Nikol, Ahmedabad-382350(hereinafter referred to as "the appellant-1") against Order-in-Original No. MP/88/Dem/AC/22-23/NSA dated 08.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division II, Ahmedabad North (hereinafter referred to as "the adjudicating authority") as well as another separate appeal as details mentioned below:

(i) An appeal (hereinafter referred to as 'Appeal-2) filed by Shri Brijesh Hansraj Kushwah, Director of M/s Ardent Facility Pvt. Ltd.,A-2,Prayag Bunglows,Nr. Abjibapa Green, Nikol, Ahmedabad-382350 (hereinafter referred to as 'Appellant-2) against the Penalty imposed on him by the adjudicating authority vide impugned order.

1.1 It is observed that 'appeal-1' is filed by the 'Appellant-1' against the impugned order in respect of the demand confirmed against them towards service tax not paid as well as the penalty imposed on them vide the impugned order. The appeal-2 as mentioned above have been filed by the appellant-2 against the penalty imposed on him by the adjudicating authority vide impugned order in relation to the demand confirmed against the main appellant i.e. 'Appellant-1'. Accordingly both the appeals have been taken up for consideration under common appeal proceedings.

2. Briefly stated, the facts of the case are that the appellant-1 was registered with the service tax department for providing "Security/Detective Agency Services", "Manpower Recruitment or supply Agency Service", Business Auxiliary Service and "Cleaning Services holding STC No. AAPCA0939GSD001 and now holding GSTIN 24AAPCA0939G1ZP. On scrutiny of the records, it was noticed by the DGGI, AZU officials that they have provided "Manpower Recruitment or supply Agency Service" and "House Keeping service" to various clients during the period from Jan-2017 to June-2017 but failed to pay the applicable service tax on the same and file the ST-3 returns. Detailed of the same are as under:

F.Y.	Income from Service provided in INR	Service tax not paid
Jan-2017 to June-2017	38,15,662/-	5,72,357/-



Accordingly, it appeared that the appellant had earned the substantial income by way of providing taxable services but had neither paid the applicable service tax thereon nor filed ST-3 returns for the relevant period.

2.1 Subsequently, the appellant were issued Show Cause Notice F. No. DGGI/AZU/12(4)77/Ardent/2018-19 dated 19.07.2021 demanding Service Tax amounting to Rs. 5,72,357/- for the period from Jan-2017 to June-2017, under proviso to Sub-Section (1) 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, Section 78 and Section 78A 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 total Service Tax amounting to Rs. 5,72,357/- 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 from Jan-2017 to June-2017. Further (i) Penalty of Rs. 5,72,357/- was imposed on the appellant under Section 78 of the Finance Act, 1994 ; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994 and (iii) Penalty upon Shri Brijesh Hansraj Kushwah, director of M/s Ardent facilities Pvt. Ltd. of Rs. 1,00,000/- was imposed on the appellant under Section 78A of the Finance Act, 1994.

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

- The appellant started their firm in Jan-2017 and got registered with service tax department in jan-2017. And started providing service from April-2017. Immediately upon starting new business, they had to face many problems in getting payment from customers, therefore they didn't pay service tax. They filed their reply in response of the SCN dated 19.07.2021 vide their letter dated 26.08.2022 wherein they requested to grant the personal hearing but the adjudicating authority didn't considered that same which the violation of the principle of natural justice. They stated that they didn't receive any correspondence from the department. They stated that as they had no turnover



in the F.Y. 2016-17, they are eligible for the basic threshold exemption as well as payment of service tax on receipt basis.

- The appellant submitted that they have suppressed nothing from the department and the extended period can't be invoked in their case. They requested to set aside the impugned OIO and allow their appeal.

4. Personal hearing in the case was held on 14.03.2024. Shri Nirav P Shah, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated the contents of the written submission and requested to allow their appeal. Further he relied on two judgements, one in the acse of shri siddhi foods vs. ACIT Bhavnagar and second Jai Bhawani international case..Since natural justice has not been followed, the matter may be remand back.

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 from Jan-2017 to June-2017.

6. It is observed that nowhere, the taxability of the services is disputed. As per submission they faced a financial crunch in initial stage of their business and were unable to pay service tax, as they didn't received payment from the service recipients. From the "table A" of the Statement dated 08.04.2021 of Shri Brijesh Hansraj Kushwah, it is seen that amount Rs. 30,91,016/- is shown as receipt in form-26AS filed for the relevant period(F.Y. 2017-18-upto-June-2017). Therefore it is not acceptable that they have not received payments from the service recipients.

6.1 As per para 12 of "Statement of facts" the appellant says that the turnover as per balance sheet filed with income tax department is less and the investigating authority has considered the sales account amount whereas in their reply dated 26.08.2022 filed against the SCN dated 19.07.2021, they have mentioned in para 6 that the investigating authority has considered the balance sheet amount and as per sales account, their turnover is less. Both the things are contradictory, confusing and misleading.



6.2 The appellant contended that they are not liable to pay service tax on the unrealized income as per Rule-6 of service tax rules but they failed to furnish any supporting document which can establish their claim. From the Annexure-A of the SCN, it is clearly seen that they have recovered even service tax from their service recipient and further failed to deposit the same to Government exchequer. Further, impugned OIO itself shows the turnover during the F.Y. 2016-17 as "0". Therefore the basic exemption as per Noti. No 33/2012 dated 20.06.2012 is available to the appellant.

6.3 Further, as per the impugned OIO the appellant was provided 05 personal hearing on dated 17.12.2021,03.02.2022,01.06.2022,07.06.2022 & 10.11.2022 but the appellant didn't appeared for the personal hearing. In para 5 of the Grounds of appeal, the appellant states that "the matter was not decided due to change in adjudicating authority". If he didn't received any PH letter as claimed, then how he knew that the adjudicating authority has been change and new authority should have given the fresh PH. From the above, it can be seen that the appellant had around one year time from 1st hearing to 5th hearing to present their case but they intentionally waited for another PH to make delay in the disposal of the case. Hence contention as they were not provided sufficient opportunity to be heard in person does not appears to be sustainable.

7. In view of the above discussion, I am in the agreement with the view of the adjudicating authority. However, the benefit of the basic threshold limit is required to be extended to the appellant in terms of Noti. No. 33/2012-ST dated 20.06.2012 as the turnover is less than threshold during the preceding F.Y..After extending the same, the actual taxable value will become as Rs. 28,15,662/-(38,15,662-10,00,000) and the liability of services tax comes as Rs. 4,22,349/- which is recoverable from them along with interest and penalty.

8. Further, Shri Brijesh Hansraj Kushwah, Director of Ms. Ardent was at the helm of the affairs of his company. During the course of recording of his statement, he has admitted evasion of service tax by his company and was in full knowledge that his company had collected service tax from the recipients but did not deposit the same to the government exchequer and has taken responsibility for the same. Hence he had a decisive role in the service tax evasion. Therefore, I am also in the agreement with the



view of the adjudicating authority imposing penalty of Rs. 1,00,000/- upon Shri Brijesh Hansraj Kushwah, Director of M/s Ardent Facilities Pvt. Ltd.

9. In view of the above, I pass the following order in appeal-I (filed by Appellant-I i.e. M/s Ardent Facility Pvt. Ltd. :

9.1 I uphold the service tax demand of Rs. 4,22,349/- only under the proviso to subsection (1) of section 73 of the Finance Act,1994;

9.2 Interest as applicable, under section 75 of the Finance Act,1994 is also recoverable on the service tax amount as per para 9.1;

9.3 I uphold the penalty under section 77 of the Finance Act,1994;

9.4 I uphold the penalty under section 78 of the Finance Act,1994, equal to the service tax upheld in para 9.1 above;

10. Further, I pass the following order in appeal-II (filed by Appellant-II i.e. Shri Brijesh Hansraj Kushwah, Director of M/s Ardent Facility Pvt. Ltd.):

10.1 I uphold the penalty of Rs. 1,00,000/- on Shri Brijesh Hansraj Kushwah, Director of M/s Ardent Facility Pvt. Ltd. under section 78A of the Finance Act,1994.

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.

Attested



Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 22.03.24



By RPAD / SPEED POST

To,
M/s Ardent Facility Pvt. Ltd.,
A-2, Prayag Bungalows, Nr. Abjibapa Green,
Nikol, Ahmedabad-382350.

Appellant-1

Appellant-II

(2) Shri Brijesh Hansraj Kushwah,
Director of M/s Ardent facilities Pvt. Ltd.
-2, Prayag Bungalows, Nr. Abjibapa Green,
Nikol, Ahmedabad-382350.

The
Respondent
CGST, Division-II,
Ahmedabad North

Assistant

Commissioner

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division II, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- ✓ 5) Guard File
- ^ 6) PA file



