



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

DIN:- 20240364SW000000BDC2

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4977/2023 / 4977 - 6126
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-299/23-24 dated 26.03.2024
(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. 122/DC/D/VM/22-23 dated 11.4.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Ashapura Electricala 60, Sarvoday Society Opp. PWD Store, Sanand Dist: Ahmedabad

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:-

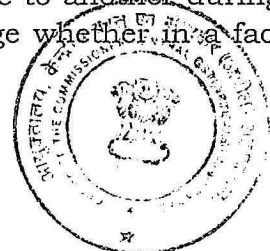
Revision application to Government of India:

(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 प्रक्रिया 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.

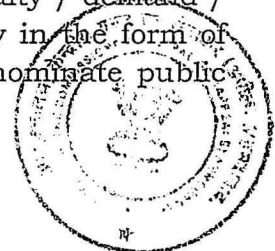
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 अपीलो 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।

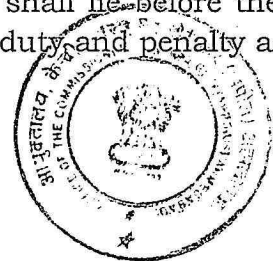
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

The present appeal has been filed by M/s. Ashapura Electrical, 60, PWD Store, Sanand, Dist: Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 122/DC/D/VM/22-23 dated 04.05.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST and C. Ex., Division-III, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding STC No. AAXFA8288KSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2016-17, it was noticed that the appellant has less shown income in their ST-3 filed for the F.Y 2016-17 in compare to income shown under the heads "Sales of services under sales / Gross Receipts from Services (Value from ITR)" and "Value of Total amount Credited under 194C, 194H, 194I, 194J". Details of the same are as under:

F.Y.	"Value of Total amount Credited under 194C, 194H, 194I, 194J"	Sales of services (Value from ITR)	Value of services per ST-3 returns
2016-17	1,41,14,473/-	40,13,585/-	17,34,828/-

From the above table higher difference amount Rs. 1,23,79,645/- is taken into consideration for demand of service tax. Detail of the service tax demand raised is as under:

F.Y.	Difference between Value of Total amount Credited under 194C, 194H, 194I, 194J" and Value from ST-3 Returns	Service tax short/not paid
2016-17	1,23,79,645/-	18,56,947/-

The appellant were called upon to clarify the difference as above and submit copies of relevant documents for assessment for the above said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued Show Cause Notice F. No. III/SCN/AC/Ashapura Electrical/135/21-22 dated 21.10.2021 demanding Service Tax amounting to Rs. 18,56,947/- for the period FY 2016-17, 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(1) & 77(2) and Section 78 of the Finance Act, 1994.



2.2 The Show Cause Notice was adjudicated vide the impugned order wherein the adjudicating authority considered the total income as Rs. 1,41,14,473/- as the appellant failed to produce the documentary evidence that their total income is only Rs. 1,22,20,372/- .Out of total income Rs. 1,41,14,473/- , the adjudicating authority considered Rs. 82,05,221/- from sale of goods and remaining Rs. 59,09,252/- from sale of services. Further the adjudicating authority held that as the appellant has already shown Rs.28,67,902/- in their ST-3 returns, taxable income remains as Rs. 30,41,350/-. Further adjudicating authority held that the appellant got registration during the F.Y. 2016-17 and therefore extended the basic threshold benefit of 10 lakhs and confirmed the demand of service tax of Rs. 3,06,203/-on the remaining taxable value Rs. 20,41,350 for F.Y. 2016-17 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. Further (i) Penalty of Rs. 3,06,203/- was also 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(1) of the Finance Act, 1994 and (ii) Penalty of Rs. 10,000/- 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, inter alia, on the following grounds:

- The appellant submitted that they were a partnership firm engaged in sale of electrical goods and supply of installation services. They are filing their ST-3 and VAT returns regularly. During the F.Y. 2016-17, their turnover was Rs. 1,22,20,372/- and the same is shown in their audited balance sheet for the relevant period. Appellant stated that some of their customers have deducted TDS on the VAT value also and for the same the adjudicating authority wrongly considered the turnover of Rs. 1,41,14,473/- instead of actual audited turnover of Rs. 1,22,20,372/-. They requested to set aside the impugned OIO and allow their appeal.

4. Personal hearing in the case was held on dated 21.03.2024. Shri Hem Chhajed, CA appeared for PH on the behalf of the appellant. He stated that there is computational error on the part of the department.their actual turnover is Rs. 1,22,20,372/-. While department has mentioned Rs. 1,41,14,473/-. It is not known from where department took the figure.the ITR, 26AS, STR, audit report all mention the turnover only Rs. 1,22,20,372/-. The demand on the excess turnover is not sustainable. He requested to allow the appeal. They filed additional submission at the time of PH on dated 21.03.2024.The same are summarized as under:

- They have nothing suppressed from the department and the extended period can't be invoked in their case. They furnished copy of ST-2, ST-3 filed for relevant period, audited balance sheet, VAT statement etc.



5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing 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 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2016-17 based on the difference amount shown in Income Tax Returns/ Form -26AS and ST-3 for the relevant period as the appellant failed to respond to departmental letters. Further the appellant filed their written submission at the time of PH before the adjudicating authority and considering the same, the demand was confirmed accordingly by the adjudicating authority.

7. Now, the submission is filed before me. While going through the submission it is seen that the only one contention made by the appellant is that some of their customers have deducted the TDS on the ineligible amount which was subject to VAT and due to this there was mismatch of turnover in books of accounts and Form-26AS. However, details of such deductors and amount thereof has not been provided specifically by the appellant in their submission. Even they didn't furnished the copy of Form-26AS for the relevant period. Further, one side the appellant himself saying in Para 1.10 of "Statement of Facts" that due to "some of customers have deducted TDS on the VAT value as well. Hence, there was mismatch of turnover between books of accounts and 26AS" and other side in their PH statement dated 21.03.2024 raising question "It is not known from where department took the figure". Both the statements are contradictory. From the submission it is clear that the receipt of Rs. 20,41,350/-for the F.Y. 2016-17 is disputed and the same is difference amount of balance sheet and Form-26AS for the relevant period. Proper clarification in this regard is not given by the appellant and no documentary evidence supporting their claim is furnished. In the absence of the same, the contention of the appellant is not tenable. In view of the above I am in the agreement with the view of the adjudicating authority confirmed the service tax demand on the said differential amount and the same is recoverable from them along with the interest and penalty.

8. In view of the above, I uphold the impugned order and reject the appeal.

9. 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)



Attested


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Ashapura Electrical,
60, PWD Store, Sanand,
Dist: Ahmedabad

Appellant

The Deputy Commissioner,
Central GST and C. Ex.,
Division-III, Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, Central GST and C. Ex., Division-III, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- ✓ 5) Guard File
- 6) PA file



