



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/4015/2023 / 3519 - 23
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-305/23-24 dated 27.03.2024
(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	02.04.2024
(ङ)	Arising out of Order-In-Original No. 596/AC/DEMAND/22-23 dated 10.3.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Ajitkumar Janardan Rawania 284/19, Indrasing Ni Chali Near Kailash Nagar, Saijpur Bogha Naroda Road, Ahmedabad - 382345

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 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 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

M/s. Ajitkumar Janardhan Rawani, 284/19, Indrasing Ni Chali, Near Kailash Nagar, Saijpur Bogha, Naroda Road, Ahmedabad- 382345 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 596/AC/DEMAND/2022-23 dated 10.03.2023 (in short '*impugned order*'), passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant is holding PAN No. AYBPR1397N and were 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. 2016-17, 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>
2016-17	11,23,500/-	15%	1,68,525/-

2.1 A Show Cause Notice (SCN) No. CGST-Div-1/Unregistered/SCN/2016-17/1258 dated 18.10.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs. 1,68,525/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70 and penalties under Section 77 (1), 77(2) & Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,68,525/- was confirmed alongwith interest. Late fees of Rs.20,000/-under Section 70, Penalty of Rs.10,000/- each under Section 77(1)(a) & 77(1)(c) and penalty of Rs. 4,71,308/- was also imposed under Section 78 of the F.A., 1994. However, 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 is engaged in the business of providing job work services to textile processing units which is exempted vide Entry No. 30 (i) (a) of Notification No.25/2012-ST dated 20.06.2012. The substantial income was earned from said service. Copy of invoices evidencing the job work services to textile processing units is submitted alongwith ITR & Form-26AS for the F.Y. 2016-17 & 2017-18.
- The appellant was not required to obtain registration as the taxable turnover after granting exemption is below the threshold limit.



- The SCN was issued for extended period. The appellant has filed all the details in the returns and therefore extended period cannot be invoked. Reliance placed on the judgment of the Hon'ble Supreme Court in the case of Anand Mishi Kawa Co. Ltd vs. CCE, Meerut [2005 (18.8) _E.L.T. 14,9(SC)], wherein it was held that 'Suppression of facts' can have only one meaning that correct information was not deliberately disclosed to evade payment of duty, when facts were known to both the parties omission by one to do what he might have done and not that he must have done would render suppression. Also, reliance is placed on
 - Continental Foundation Jt. Venturk - 201 { (288) ELT 177 (SC)
 - Ashirvad Enterprises Pvt. Ltd.- 2013 (288) ELT 172 (Patna)
- The entire demand itself is un-sustainable as the Appellant has rightly not obtained registration after following the provision of law. Hence, no interest and penalty can be imposed. It is settled law, as held by the Judgment of the Hon'ble Supreme Court in CCE. vs. HMM Ltd. [1995 (76) ELT 497 (SC) followed in Coolade Beverages Ltd.- 2004 (172) E.L. T. 4.51 (All) wherein it was held that when the demand itself is not sustainable, the imposition of interest and penalty cannot sustain.
- In the case of Tamil Nadu Housing Board - 1994(74) ELT 9 (SC)], the Hon'ble Supreme Court held that an intent to evade payment of tax is not a mere failure to pay the tax, it is much more. Hon'ble Supreme Court further held that the word "evade" in the context of the phrase 'intent to evade' payment of tax is in law of paying the tax, and it is made more stringent by the use of Word 'intent'. Thus, intent to evade payment of tax in law is much more than mere failure to pay the tax. In the absence of intent to evade payment of duty, penalty should not be imposed.

5. Personal hearing in the appeal matter was granted on 12.01.2024 & 06.02.2024. However, the appellant sought adjournment for 15 days. Therefore, next hearing was granted on 06.03.2024 for which also they did not appear. Final hearing was fixed on 13.03.2024 and again the appellant did not appear.

5.1 In terms of sub-section (1A) of Section 35 of the CEA, 1994, the Commissioner (Appeals) may grant hearing adjournment if sufficient cause is shown. However, no such adjournment shall be granted more than three times to a party during hearing of the appeal.

Section 35. Appeals to ¹ [Commissioner (Appeals)]. -

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a ² [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the ³ [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the ⁴ [Commissioner (Appeals)]] ⁵ [within sixty days] from the date of the communication to him of such decision or order :

⁶ [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]



⁷ [(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

5.2 In terms of Section 85(5) of the Finance Act, 1994, the Commissioner of Central Excise (Appeals) will exercise the same powers and follow the same procedure as he exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944. While in Central Excise Act, 1944, the Section 35 A specifically deals with the Procedure in Appeals, no such separate section exists in Service Tax. The Section 35 A of the Central Excise Act, 1944 has been made applicable to Service tax matters by virtue of Section 85(5) of the Finance Act, 1994 subject to modification as mentioned in Section 84 and 85 of the Finance Act, 1994. As no sufficient cause was shown in terms of the proviso to Section 35(1A), I proceed to decide the case ex-parte based on the documents available on record.

6. 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.1,68,525/-** 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**.

7. It is observed that the entire demand has been raised on the basis of third-party data. In the ITR the appellant has shown the income of Rs.11,23,500/- from sale of service. But they have not produced the Profit & Loss Account and Balance Sheet hence the nature of income is not ascertainable. The appellant though claim that they were doing job-work services to the textile processing unit which they claim is covered under negative list and exempted vide Entry No.30 of Notification No.25/2012-ST. They submitted copy of invoices as evidence of job-work done.

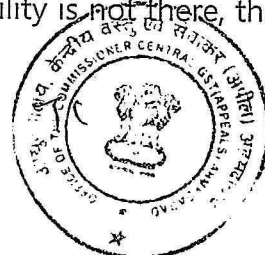
7.1 From the invoices, it is observed that the appellant was doing job-work on readymade hosiery items. The service tax exemption on above process was in the general exemption notification (Notification No. 25/2012-ST as amended by Notification No. 07/2017-ST, dated 02.02.2017). The amended Mega Notification No. 25/2012-ST dated 20.06.2012 is re-produced below for reference;

30. Carrying out an intermediate production process as job work in relation to -
(a) *agriculture, printing or textile processing;*

It is observed that the appellant was carrying out job-work for various Hosiery shops.

7.2 Further, the appellant has also contested that they are eligible for threshold limit exemption, however, they failed to produce any documentary evidences like Balance Sheet, P&L account, ITR for the F.Y. 2015-16. I, therefore, find that their claim seeking SSI exemption cannot be entertained.


8. As the appellant is engaged into business of providing job work services to textile processing units, the same is not liable to service tax. As the tax liability is not there, the question of interest and penalty does not arise.



9. In view of the above discussion and findings, the impugned order is set aside and the appeal is allowed.


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: 27.3.2024

Attested


अधीक्षक (अपील्स)
केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,
M/s. Ajitkumar Janardhan Rawani,
284/19, Indrasing Ni Chali,
Near Kailash Nagar,
Saijpur Bogha, Naroda Road,
Ahmedabad- 382345

- **Appellant**



The Assistant Commissioner
CGST, Division-I,
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.

