



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN:20230764SW000052095C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/267/2023-APPEAL / 3197-3201
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-48/2023-24
दिनांक Date : 10-07-2023 जारी करने की तारीख Date of Issue 17.07.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/161/Bhagirath/AM/2022-23
दिनांक: 23.08.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Bhagirath V Prasana (HUF),
D 002 Maruti Celedron, Behind Iscon Temple,
Bodakdev, Ahmedabad-380059

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
North, 7th Floor, B. D Patel House, Nr. Sardar Patel Statue, Ahmedabad -
380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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 :

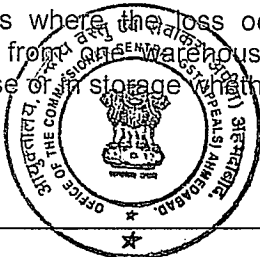
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(ii) 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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 हों।

(c) 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.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



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 पढ़ी 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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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 .

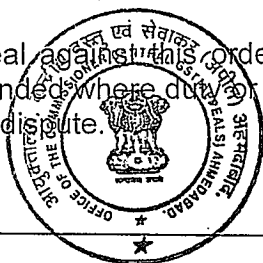
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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 the order shall lie before the Tribunal on payment of 10% of the duty demanded where duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



ORDER IN APPEAL

M/s. Bhagirath V Parsana (HUF), D002 Maruti Celedron, Behind Iscon Temple, Bodakdev, Ahmedbad- 380059 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST-06/D-VI/O&A/ 161/ Bhagirath/AM/2022-23 dated 23.08.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were not registered with the Service Tax Department. They are holding PAN No. AAIHB4169H.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant had earned substantial income by providing taxable services. They neither obtained Service Tax Registration nor paid service tax on such income. After the negative list regime all services are taxable except those covered under negative list. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2014-15 and explain the reasons for non-payment of tax and provide the certified documentary evidences for the same. The appellant neither provided the documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the service tax was calculated on the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, on which no tax was paid.

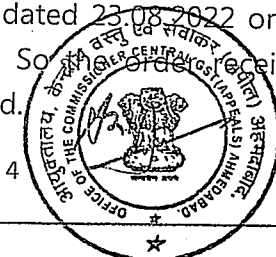
<i>Sr. No.</i>	<i>F.Y.</i>	<i>Value from ITR or Value of Form 26AS</i>	<i>Service Tax Payable</i>
01	2014-15	24,92,302/-	3,08,048/-

2.1 A Show Cause Notices (SCN) bearing No. CGST-06/04-593/O&A/Bhagirath/2020-21 dated 28.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 3,08,048/- along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. The late fee under Section 70; imposition of penalties under Section 77 and 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. 3,08,048/- was confirmed alongwith interest. Late fees of Rs. 40,000/- was imposed under Section 70. Penalty of Rs. 2000/- under Section 77 and penalty of Rs. 3,08,048/- was also imposed under Section 78 of the Finance Act.

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

- They received the impugned order dated 23.08.2022 on 20.11.2022 and by that time the appeal period was over. So, the order received after appeal period should be considered as null and void.



- Documents requisitioned were already submitted in February 2022 and re-submitted in August 2022 which was not considered by the adjudicating authority while passing the order.
- The appellant Bhagirath V Parsana (Karta) has valid license for financing and the main source of income is interest on loan given to customers. Service tax is not applicable on interest income in the year 2014-15 hence the demand, interest and penalty confirmed in the impugned order should be set-aside.
- On the same grounds the case of Bhagirath V. Parsana was dropped. Copy of the same is enclosed for reference.

5. Personal hearing in the matter was held on 30.06.2023. Shri Bhagirath V Parsana, the appellant himself appeared for personal hearing. He stated that he had appeared for personal hearing before the lower authority on 12th August 2022 and had given written submissions also, a copy of which is enclosed with stamp of acknowledgment. He submitted that the lower authority in another case of the same appellant has dropped the proceedings. Copy is submitted for reference. However, in the present case the lower authority has passed orders ex-parte without considering submissions of the appellant or granting sufficient opportunity. Therefore, he 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 by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 3,08,048/- alongwith interest and penalties, confirmed 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. 2014-15.

6.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT, on which no service tax was paid by the appellant. As the appellant was not registered with the department, they were requested to submit the documentary evidence in respect of their income, however, they failed to submit the required details /documents or offer any explanation before the adjudicating authority. They also did not file any reply to the SCN nor did they appear for personal hearing before the adjudicating authority, therefore the case was decided ex-parte.

6.2 The appellant however have contended that the documents called for were submitted to the lower authority vide letter dated 12.08.2022 but were not considered by the adjudicating authority. They submitted a copy of letter bearing dated acknowledgment of the department. On going through letter dated 12.08.2022, I find that it is addressed to Superintendent, Range-I of Division-VI, CGST Ahmedabad North Commissionerate under whose jurisdiction the appellant falls. The impugned order was passed by the Assistant Commissioner, Division-VI who is having control over of the aforesaid Range Office. If the documents were submitted by the appellant to a lower authority, it was the duty of the lower authority to hand over the same immediately to



the adjudicating authority. But, this was not done. So, I find that the department cannot allege that the appellant has failed to file reply to SCN or submit the documents called for, especially when the same was submitted on 12.08.2022 to the Range Superintendent and before the impugned order was passed. Ignoring the submissions made by the appellant in the written statement and the documents submitted thereof and proceeding to decide the issue as if no submissions was made before, makes the impugned order a non-speaking order inasmuch as it does not consider the contentions of the appellant. Thus, to that extent, I find that the principles of natural justice were not followed.

7. Further the appellant have strongly contended that in similar case of same appellant, the adjudicating authority vide O-I-O dated 24.11.2022 has dropped the proceedings. On going through the said O-I-O, I find that the said order was passed in the case of Shri Bhagirath V Parsana holding PAN No. AJRPP7581R whereas the impugned O-I-O has been passed in the case of Shri Bhagirath V Parsana (HUF) holding PAN no. AAIB4169H. Both are different entity in the eyes of law as they have different PAN numbers. Hence, the decision taken in the O-I-O dated 24.11.2022, cannot be considered to have been passed in the case of same appellant.

8. On going through the documents submitted by the appellant it is observed that the appellant are engaged in trading of shares and future options and are also providing financial services under the trade name 'Maruti Finance'. They produced a registration certificate dated 25.10.2012 issued by Registrar as an evidence to prove that 'Maruti Finance' is a registered money lender. It is claimed that during the disputed period the main source of income was from interest earned from money lending. In the Profit & Loss Account, the appellant have shown the Interest Income of Rs. 14,87,497/- reflected under 'Direct Income' which pertains to *F & O Profit and Speculation Profit*. Income of Rs. 2,25,504/- is shown under Indirect Income which pertains to *Bank Interest, Commission received, Dividend & FDR Interest*.

8.1 So far as the income from interest is concerned, I find that the same is not taxable as covered under clause (n) of Section 66D. The relevant text is reproduced below:-

(n) *services by way of—*

- (i) *extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;*
- (ii) *inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;*

8.2 The term 'interest' is defined under Clause (30) of Section 65B, which states that the money lend to others is not taxable, if the consideration is represented by way of interest. The text of Clause (30) of Section 65B is reproduced below;

(30) "Interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;



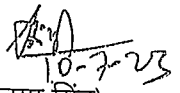
8.3 The services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. I, therefore, find that the income earned as interest on money by extending loans or advances are not taxable in terms of clause (n) above.

8.4 However, it is noticed that the appellant have also earned commission income of Rs. 1,59,500/- which has been reflected under 'Indirect Income' for which the appellant have not come up with any documentary evidences to justify the non-payment of tax on such income.

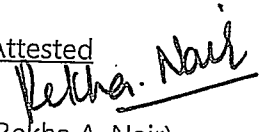
9. Considering the commission income earned and the facts that the order passed by the adjudicating authority was non-speaking order, I remand back the matter to the adjudicating authority to decide the case afresh by following the principle of natural justice and pass a speaking order in view of submission of appellant. The appellant is also directed to submit all relevant documents/submission directly to the adjudicating authority within 15 days.

10. Accordingly, I set-aside the impugned order and remand the matter back to adjudicating authority for deciding the SCN afresh specifically dealing with the contentions raised in the written submissions made by the appellant vis-à-vis the documentary evidences.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 10.07.2023

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Bhagirath V Parsana (HUF),
D002 Maruti Celedron,
Behind Iscon Temple, Bodakdev,
Ahmedabad- 380059

Appellant

The Assistant Commissioner,
CGST, Division-VI,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 4. ~~Guard File.~~

