



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: 20230864SW00008181E7

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/700/2023-APPEAL/4628 - 32
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-63/2023-24
 दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 17.08.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 24/AC/Dem/NA/2022-23 दिनांक: 30.11.2022 , issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Pruthviraj Bhupendrasinh Vaghela, Nr. Ramji Temple, Po.- Kauka, Dhandhuka, Ahmedabad

2. Respondent

The Assistant Commissioner, CGST, Division-V, Ahmedabad North 2nd Floor, Shahajanad Arcade, Memnagar, Ahmedabad - 380052

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 हो।

(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 इ. 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.

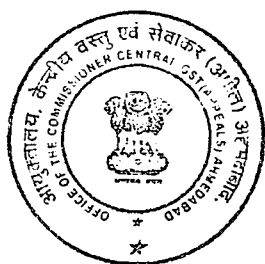
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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 Prithvirajsinh Bhupendrasinh Vaghela, Near Ramji Temple, Po-Kauka, Dhanduka, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 24/AC/Dem/NA/2022-23 dated 30.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department.

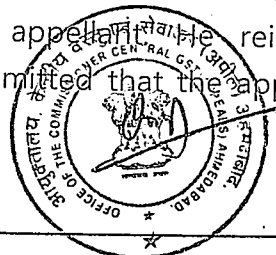
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, it was noticed that the appellant during the F.Y. 2016-17 had earned income of Rs.10,67,506/-, which they reflected under the heads "Sales / Gross Receipts 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. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2016-2017 to 2017-2018 (upto June, 2017). The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the income of Rs.10,67,506/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs.1,60,125/- for F.Y. 2016-17 was accordingly worked out.

2.1 A Show Cause Notice (SCN) No. V/25/Prithvirajsinh Bhupendrasinh Vaghela/Div-V/2021 dated 04.10.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.1,60,125/- not paid on the value of income received during the F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 70, Section 77(1) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.1,60,125/- was confirmed alongwith interest on the taxable services provided during the F.Y. 2016-17. Amount of Rs.48,617/- paid by the appellant vide DRC-03 dated 07.07.2022 was also appropriated. Penalty of Rs.10,000/- under Section 77(1), Penalty under Section 70 and penalty of Rs.1,60,125/- under Section 78 of the F.A., 1994 was also imposed.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal. They contended that they have provided Manpower Supply Services on which they paid appropriate tax alongwith interest amounting to Rs.94,746/- on 07.07.2022. However, due to lack of documents the adjudicating authority has not considered the abatement and made order for tax on full value.

4. Personal hearing in the matter was held on 17.07.2023. Shri Kashyap Patel, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He submitted that the appellant have



provided Manpower Supply Services. The liability of the appellant to pay service tax was limited to 25% and the balance 75% liability was to be paid by the recipient. The appellant has already paid the service tax payable by him. He undertook to submit a copy of Financial Statement, Form 26-AS and ITR etc. within a week. He requested to set aside the impugned order.

5. 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 during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.1,60,125/- confirmed alongwith 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. 2016-17.

6. 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. The appellant have claimed that the income reflected in the Balance Sheet / ITR relates to Manpower Supply Services. They claim that they have discharged 25% tax liability as the remaining 75% tax liability is on the service recipient being a body corporate. The adjudicating authority observed that though the appellant claimed to have rendered Manpower Supply Services to Body Corporates like M/s. Ramdev Food Pvt. Ltd, M/s. Sumip Composites Pvt. Ltd, they however did not produce any documentary evidences like invoices/bill books to substantiate their above claim. The adjudicating authority therefore held that the appellant was not eligible for the abatement claimed under Notification No.30/2012-ST dated 20.06.2012.

6.1 I find that the demand pertains to the F.Y. 2016-17. Up to 31st March, 2015, in terms as of the provisions of Notification No.30/2012-ST dated 20.06.2012, under Sr. No. 08, the service tax liability under reverse charge mechanism in respect of Supply of Manpower Service was partially on the service provider and partially on service recipient in the ratio of 25:75 respectively. However, from 1st April, 2015, vide Notification No.07/2015-ST dated 01.03.2015, this ratio was amended to substitute to 100% tax liability on service recipient. Relevant text of both the notification is reproduced below.

Notification No.30/2012-ST dated 20.06.2012

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %

Notification No.07/2015-ST dated 01.03.2015

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	Nil	100 %

6.2 Considering the period of dispute involved, I find that in terms of Notification No.07/2015-ST dated 01.03.2015 effective from 01.4.2015, a service provider has no liability to pay service tax if the Supply of Manpower is provided to a business entity registered as body corporate, located in the taxable territory.

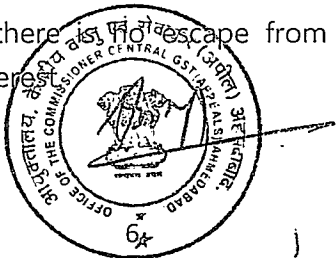
6.3 The appellant vide letter dated 21.07.2023, submitted Form-26AS, Balance Sheet for the F.Y. 2016-17 and the licence issued by Labour Commission granting licence for doing Labour Work. On going through the said documents, I find that the appellant during the said period have earned service income from following.

F.Y. 2016-17

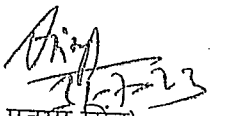
Service Recipient	Status of Service recipient	Amount
Harsh Ashvin Shah	Individuals	65,739/-
Ramdev Food Products Pvt. Ltd.	Body Corporate	5,22,119/-
Sumip Composites Ltd.	Body Corporate	4,69,075/-
Others	Individuals	10,573/-
	Total	10,67,506/-

For the services rendered to Body Corporates like M/s.Ramdev Foods Products Pvt. Ltd and M/s. Sumip Composites Ltd., in terms of Notification No.07/2015-ST dated 01.03.2015, I find that the appellant shall have no service tax liability as 100% liability has been shifted on the recipient of service if they are body corporate. However, for the services rendered to others, I find that the service recipients does not fall under the exclusion category prescribed under Notification No.30/2012-ST dated 20.06.2012, hence the liability to pay tax shall lie on the service provider i.e. on the appellant. Thus, for the remaining income i.e. on income of Rs.65,739/- and Rs.10,573/- (Totalling to Rs. 76,312/-) the appellant is liable to pay 100% tax. Accordingly, I, find that the appellant is liable to discharge the service tax liability amounting to Rs. 11,447/-.

6.4 When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.




7. The appellant further claim that they have already made the payment of Rs.94,746/- (Tax:- Rs.48,617/- + Interest of Rs. 46,129/-) against the above liability. It is observed that the said payment was also appropriated by the adjudicating authority against their tax liability. So, considering the reduction in tax, I find that the appellant is eligible for consequential relief, accordingly.
8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but suppressed the value of taxable service and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined. As the demand has been reduced to Rs. 11,447/- and considering that the appellant has made the payment of tax alongwith interest prior to issuance of O-I-O, I find that they are eligible for 25% of penalty equal to the tax confirmed. The penalty shall get reduced to Rs. 2,862/- only.
9. As regards the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. The appellant were rendering the taxable service and were liable to pay service tax, however, they failed to obtain registration and thereby failed to file ST-3 Return. I, therefore, find that all such acts make them liable to a penalty. Considering the reduction in demand, I uphold the penalty to the extent of Rs.1000/- imposed under Section 77(1) of the Finance Act, 1994. Further, I also uphold the late fees imposed under Section 70 for non-filing of ST-3 Returns during the disputed period to the extent of Rs.2,000/- only.
10. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand alongwith interest and penalties.
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:

Attested


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

By RPAD/SPEED POST

To,
Shri.Prithvirajsinh Bhupendrasinh Vaghela,
Near Ramji Temple,
P.O-Kauka, Dhanduka,

Appellant

Ahmedabad

The Assistant Commissioner,
CGST, Division-V,
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.

