



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: 20230864SW00007757CA

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1539/2023-APPEAL | 5072 - 26
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-83/2023-24
 दिनांक Date : 18-08-2023 जारी करने की तारीख Date of Issue 28.08.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 347/AC/DEMAND/22-23 दिनांक: 27.12.2022 , issued
 by The Assistant Commissioner, CGST Division-I, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
Hasmukhbhai Govindbhai Singadia, C-47, Ashwamegh Society, Naroda,
Ahmedabad - 382330

2. Respondent
The Assistant Commissioner, CGST Division-I, Ahmedabad North, Ground
Floor, Jivabhai Mansion, Ashram Road, Ahmedabad-380009

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 :

(i) 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.

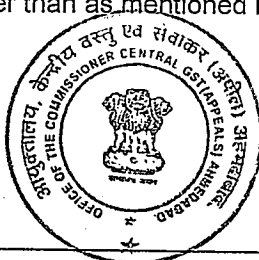
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 अनुसूचि-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 अपीलो 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

M/s. Hasmukhbhai Govindbhai Singadia, C-47, Ashwamegh Society, Naroda, Ahmedabad-382330 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 347/AC/Demand/2022-23 dated 27.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service but 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. 2015-16, it was noticed that the appellant in the ITR/Form-26 AS has earned 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 the said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. 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>
2015-16	10,22,148/-	14.5%	1,48,211/-

2.1 A Show Cause Notice (SCN) No.AR-III/Hasmukhbhai/ST/Unreg/2015-16 dated 09.06.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.1,48,211/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a) & (c), 77(2) 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.1,48,211/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each under Section 77(1)(a) & 77(1)(c) and penalty of Rs.1,48,211/- was also imposed under Section 78 of the F.A., 1994. Penalty under Section 77(2) was however dropped.

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

- The impugned Order is patently against law, contrary to the facts on record, unjust, erroneous and passed with complete non application of mind. The same merits to be quashed on this ground alone.
- The appellant was carrying Job work of dress materials which is considered as manufacture and have derived income of Rs.10,22,148/-. As per Sec. 658(40) of the Finance Act, 1994, defines manufacture as follows:
 "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944.) 5[or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955" (16 of 1955)] or any process amounting to manufacture of



opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;"

- Services provided by the appellant is exempt and is covered by entry at S. No. 30 of Notification No. 25/2012-ST, dated 20.06.2012
- 30. Carrying out an intermediate production process as job work in relation to (a) agriculture, printing or textile processing;"
- Therefore the appellant is neither liable for registration nor liable to pay any service tax on the services provided by him.
- Imposition of service tax of Rs.1,48,211/- and penalty of Rs.1,48,211/- and penalty of Rs.10,000/- u/s 77(1)(a) and penalty of Rs.10,000/- or Rs.200/- per day u/s 77(1)(c) for the period of default on the appellant is liable to be set aside.

4. Personal hearing in the matter was held on 07.08.2023. Shri Dipal Dutt, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum. He submitted that the appellant was providing job-work for embroidery & Stitching for textiles. The same is exempted vide mega Notification No.25/2012-ST. He undertook to submit all documents in this regard within a week's time. Therefore, 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 by the appellant in the appeal memorandum, additional submissions 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. 1,48,211/- 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. 2015-2016.

5.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT and on the differential income on which no service tax was paid by the appellant. They 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. However, the appellant before the Appellate Authority has submitted the copy of invoices demonstrating the nature of job-work provided, Copy of MSME Certificate, Copy of ITR. On going through the documents, I find that as per the MSME certificate dated 12.5.2011, issued by District Industries Centre, Ahmedabad, allows the appellant to set-up an enterprise for doing all types of job-work in Punjabi Suits, Shorts, TOR, Kurti, Embroidery work. The invoices raised were also for the job work like embroidery work, Butti Work, Lace Work done on dress material.

5.2 The above job-work carried out by the appellant is in relation to textile processing which is exempted vide Mega Notification No. 25/2012-ST dated 20.06.2012. Relevant Clause (30) of Notification No. 25/2012-ST is re-produced below for reference;



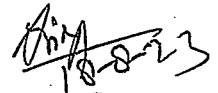
30. Carrying out an intermediate production process as job work in relation to -

- (a) *agriculture, printing or textile processing;*
- (b) *cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);*
- (c) *any goods on which appropriate duty is payable by the principal manufacturer; or*
- (d) *processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;*

5.3 As the appellant were engaged in the business of carrying out an intermediate production process as job work in relation to textiles, I find that such intermediate process carried out by the appellant is squarely covered under Clause (30) (a) of the mega notification. I, therefore, do not find any reason as to why the benefit of above exemption cannot be extended to the appellant. Considering the invoices, MSME certificate and ITR submitted by the appellant, I find the demand of Rs.1,48,211/- confirmed alongwith interest and penalties is not sustainable in the eyes of law.

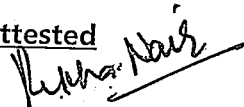
6. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of **Rs.1,48,211/-** alongwith interest and penalties and allow the appeal filed by the appellant.

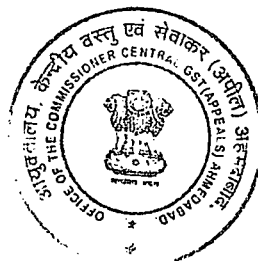
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 8.2023

Attested


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



By RPAD/SPEED POST

To,
M/s. Hasmukhbhai Govindbhai Singadia,
C-47, Ashwamegh Society, Naroda,

Appellant

Ahmedabad-382330

The Assistant Commissioner,
CGST, Division-I,
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.

