



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:20230464SW0000999B21

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2862/2022-APPEAL / 519 - 23
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-009/2023-24
दिनांक Date : 19-04-2023 जारी करने की तारीख Date of Issue 21.04.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/HG/258/2022-23 दिनांक: 28.07.2022,
issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Timir Lalpura,
C-104, Swaminarayn Park-3,
Opposite Ambica Vadi, Ranip,
Ahmedabad-380061

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North , 4th Floor, Shahjanand 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) केंद्रीय 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।



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 मामले 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 इए-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 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 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 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. Timir Lalpura, C-104, Swaminarayn Park-3, Opposite Ambica Vadi, Ranip, Ahmedabad-380061 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/258/2022-23, dated 28.07.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, 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. They are holding PAN No. ABCPL6125E.

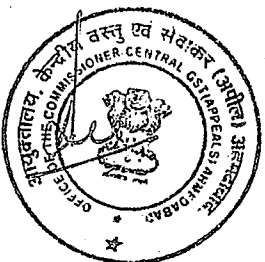
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. They had earned income of Rs. 10,53,100/- and Rs. 10,62,150/- during the F.Y. 2014-15 and F.Y. 2015-16 respectively, 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. 2014-15 and F.Y. 2015-16. 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 total income of Rs. 21,15,250/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs. 2,84,175/- for said period was accordingly worked out.

2.1 Thereafter, a Show Cause Notice (SCN) No. CGST/AR-V/Div-VII/A'bad North/39/2020-2021 dated 26.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 2,84,175/- not paid on the value of income received during the F.Y. 2014-15 & F.Y. 2015-16, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. The Service tax liability not paid during the F.Y. 2016-17 to 2017-18 (upto June, 2017) to be ascertained in the future, was also proposed to be demanded along with interest under Section 73 & Section 75 respectively. Imposition of penalties under Section 77(1)(a), 77(1)(b) & 77(2) and under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order ex-parte, wherein the service tax demand of Rs. 2,84,175/- was confirmed alongwith interest on the taxable services provided during the F.Y. 2014-15 & F.Y. 2015-16. Penalty of Rs. 10,000/- under Section 77(1); penalty of Rs. 5000/- under Section 77(2) and penalty of Rs. 2,84,175/- was also imposed under Section 78.

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

- In the impugned order the demand of Service Tax of Rs. 2,84,175/- has been confirmed based on the value taken from the income tax return filed by the Appellant to Income Tax Department. The appellant is engaged in manufacture of idols and other sculptures of stones i.e. marbles at very small scale. As the



turnover reported in Income Tax Return was in the nature of manufacturing activity, it would not fall within the scope and definition of 'service' as defined in Section 65B(44) of the Act. Moreover, the turnover reported in Income Tax Return merits classification under clause (f) of Section 66D of the Act. Accordingly, the appellant is not liable to pay Service Tax u/s 66B of the Act.

- The demand cannot be made u/s 73(1) of the Act without conducting proper examination of underlying facts and conducting appropriate inquiry. Revenue had not discharged its onus contemplated in Section 73 of the Act. Adjudicating Authority has not justified in adjudicating the Notice issued on the strength of incorrect and misleading facts.
- The data received from the Income Tax Department as regards turnover reported in the Income Tax Return cannot become the evidence admissible against the Appellant to demand the Service Tax as no comprehensive examination of facts was done.
- The appellant was not granted the opportunity of personal hearing and to submit written submissions which led to violation of the principles of natural justice and audi alteram partem while passing the impugned Order.
- The Notice is barred by limitation of normal period in terms of Section 73 (1) of the Act as extended period is not invocable.
- Demanding interest u/s 75 of the Act, imposing penalties u/s 77 & u/s 78 of the Act is also not justified.

4. Opportunities for personal hearing in the matter was granted on 24.01.2023 and 08.02.2023 vide letters dated 13.01.2023 & 27.01.2023, respectively. However, the appellant vide letter dated 08.02.2023 sought adjournment. Next hearing was granted on 06.03.2023 and 29.03.2023, vide letters dated 17.02.2023 & 13.03.2023, respectively, however, no one appeared on behalf of the appellant.

4.1 In terms of proviso to Section 35(1A) of the CEA, 1944 read with Section 85(5) of the Finance Act, 1994, four hearing dates were granted to the appellant. They, however, failed to avail all these opportunities. Further, the appellant have later vide letter dated 29.03.2023, filed additional written submission and also submitted copy of invoices in support of their contention that they were engaged in manufacturing activities, hence were outside the purview of 'service'. They reiterated the contentions made in the appeal memorandum and also relied on following case laws to state that the in absence of corroborative evidences, the demand of service tax proposed based on the income tax data is illegal and arbitrary.

- Deltax Enterprise- 2018(10) GSTL 392
- Go Binds Entertainment Pvt. Ltd- 2019 (27) GSTL 397
- Kush Construction- 2019 (24) GSTL 606

Further, they also claimed that the communications by the department seeking clarification on the income received was made during the COVID-19 Pandemic and therefore, it was unjust and unfair to expect compliance. Further, the exemption available under Notification No. 25/2012-ST, applicability of abatement as per



Notification No. 26/2012-ST and applicability of reverse charge mechanism in terms of Notification No. 30/2012-ST was also not examined before confirming the demand.

4.2 Accordingly, I take up the matter for adjudication based on the submissions made by the appellant and the facts available on record.

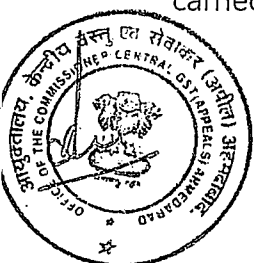
5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the additional submissions made vide letter dated 29.03.2023. The issue to be decided in the present case is as to whether the service tax demand of Rs. 2,84,175/- 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. 2014-15 to F.Y. 2015-16.

6. It is observed that the entire demand has been raised based on the income data shared by CBDT, on which no service tax was paid by the appellant. The appellant did not file any reply to the SCN nor did they appear for personal hearing before the adjudicating authority. The adjudicating authority, therefore, decided the case ex-parte based on the income data shared by the Income Tax Department. On going through the impugned order, it is observed that the three personal hearing dates (20.07.2022, 22.07.2022 & 26.07.2022) were communicated to the appellant vide a single letter dated 14.07.2022. Giving choice of three dates for personal hearing in one letter by the adjudicating authority is not in accordance with the principle of natural justice. This lapse on the part of the adjudicating authority brings to the fore a legal infirmity in the impugned order. Further, the appellant, in the appeal memorandum, have claimed that they are engaged in activities of manufacturing and supply of stone articles which is excluded from service tax levy in terms of Clause (f) of Section 66D of the F.A., 1994 and also submitted copy of invoices in support of their above argument.

6.1 It is observed that Section 66D (Negative list of services) was introduced with effect from June, 2012, wherein certain services were classified, on which no service tax is payable. Clause (f) of the said Section earlier covered *(f) any process amounting to manufacture or production of goods*. This clause was substituted vide Finance Act, 2015 w.e.f. 1st day of June, 2015, vide Notification No. 14/2015-ST dated 19.05.2015, and the same read as,

(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;

Thus, in terms of above clause, any process which amounts to manufacture or production of goods are excluded from the levy of service tax. On going through the invoices submitted by the appellant, it is observed that the appellant have charged certain amount for carving of stones to make idols. I find that such activity amounts to manufacture, hence, in terms of Section 66B, service tax shall not be levied on such activity. I, therefore, find merit in the argument raised by the appellant that the activities carried out by them is not taxable.



6.2 Board, vide Instruction dated 26.10.2021, has directed that where the show cause notice were issued based on the third party data, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. The appellant are contending that the income reflected in the ITR was earned for stone carving which is a manufacturing activity hence not taxable in terms of Clause (f) of Section 66D. They are also claiming exemption under various notifications, if the activity is held as taxable. Now, since the appellant have produced documents to substantiate their above claim, which were not submitted before the adjudicating authority, I, therefore, in the interest of justice, remand back the case to the adjudicating authority to decide the case afresh and for passing the speaking order in view of submission made by the appellant and keeping in mind the CBIC Instruction dated 26.10.2021 as well as the observations made above. The appellant is also directed to submit all the relevant documents like reconciliation statement showing the income received from said activity during the disputed period, copy of invoices, ITR, corroborating their above contention, to the adjudicating authority, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice. The appellant is also directed to avail the opportunity of personal hearing granted in the matter and make necessary submission before the adjudicating authority. Consequently, I remand the matter back to the adjudicating authority who shall pass the order after examination of the documents and verification of the claim of the appellant.

10. In light of above discussion, I set-aside the impugned order confirming the service tax demand of Rs. 2,84,175/- alongwith interest and penalties and allow the appeal filed by the appellant by way of remand.

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.

(Signature)
(अखिलेश कुमार) 9 April,
आयुक्त(अपील्स) 2023..

Date: 19.04.2023

Attested

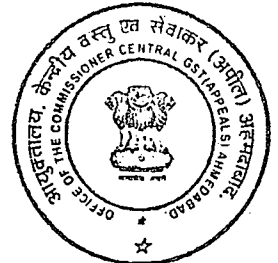
(Signature)

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

By RPAD/SPEED POST

To,
M/s. Timir Lalpura,
C-104, Swaminarayn Park-3,
Opposite Ambica Vadi, Ranip,
Ahmedabad-380061

Appellant



The Assistant Commissioner
CGST, Division-VII, 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.

