



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: 20230964SW000000CE62

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1537/2023-APPEAL / 5362 - 66

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-91/2023-24
 दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 04.09.2023

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/446/GITA/AM/2022-23
 दिनांक: 29.12.2022, issued by The Assistant Commissioner, CGST Division-VI,
 Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
 Gita Rajesh Bhavsar, 64, Mahalaya Bungalows, Near Sola High Court, Sola
 Road, Sola, Ahmedabad

2. Respondent
 The Assistant Commissioner, CGST Division-VI, Ahmedabad North, 7th Floor, B.
 D. Patel House, Naranpura, 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 :

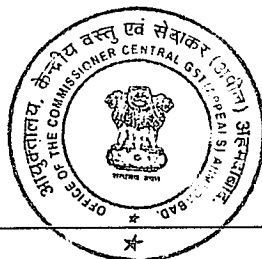
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(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 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.

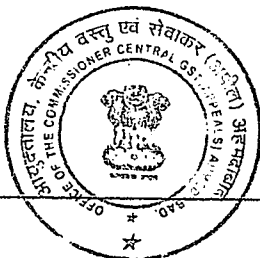
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

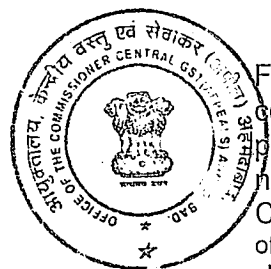
Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (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 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. Gita Rajesh Bhavsar, 64, Mahalaya Bunglows, Near Sola High Court, Sola Road, Sola, Ahmedabad- 380052 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-6/D-VI/O&A/446/Gita/AM2022-23 dated 29.12.2022, (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. They are holding PAN No. AETPB0837P.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant for the F.Y. 2014-15 and F.Y. 2015-2016 had not discharged service tax on the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)". Letters were, therefore, issued to the appellant to provide the details of the services provided during the aforesaid period and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts.

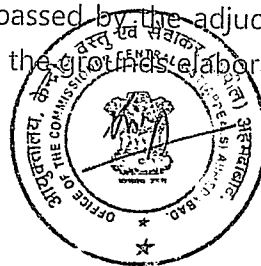
Table-A

<i>Sr. No.</i>	<i>F.Y.</i>	<i>Differential Taxable Value as per SCN</i>	<i>Service tax rate</i>	<i>Service tax payable</i>
01	2014-2015	38,48,681	12.36%	4,75,697/-
02	2015-2016	35,94,510	14.5%	5,21,203/-
			Total	9,96,900/-

2.1 A Show Cause Notices (SCN) bearing F. No. CGST/AR-III/Div-VIII/A'bad-North/125/GITA RAJESH/2020-2021 dated 28.09.2020 was therefore issued to the appellant proposing service tax recovery of Rs.9,96,900/- along with interest, not paid on the value of income received during the F.Y. 2014-15 & F.Y. 2015-16 under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the adjudicating authority confirmed the service tax demand of Rs.1,05,842/- alongwith interest (calculated on 25% of the taxable value in terms of Notification No.30/2012-ST dated 20.06.2012). Penalty of Rs.10,000/- under Section 77 and penalty of Rs.1,05,842/- under Section 78 of the Finance Act was also imposed. He however dropped the service tax demand on the income received during the F.Y. 2015-16 on the findings that after 01.4.2015, under RCM, 100% tax liability shall lie on the service recipient and not on the appellant.

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



- The appellant claim they were not given the benefit of exemption Notification No. 33/2012-ST dated 20.06.2012. The aggregate value for exemption should be considered on the net value received after the abatement as held in Aryavrat Housing Construction (P) Ltd. -82 ITPJ 422 (2018) Del.
- The Adjudicating Authority may be directed to re-work the tax liability considering the cum tax liability as no service tax was collected u/s 67(2) of the F.A.
- The Adjudicating Authority may be directed to verify the facts and re-determine the nature of service and tax liability.

5. Personal hearing in the matter was held on 10.07.2023. Shri Vaibhav N. Shah, Chartered Accountant, appeared for personal hearing. He reiterated the submissions made in the appeal. He submitted that the adjudicating authority has considered income of Rs.9,62,170/- as taxable value for confirming the demand in the impugned order, without considering that the same is below the threshold limit. He requested to grant the benefit of threshold exemption and to set-aside the impugned order. He stated he will submit proof of taxable income being less than Rs.10,00,00/- in the previous year 2013-14 in a few days.

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.1,05,842/- 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.

7. It is observed that the entire demand have been raised based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The adjudicating authority held that the appellant was providing Manpower Supply Services and in terms of Notification No.30/2012-ST dated 20.06.2012, under reverse charge mechanism, the liability to pay service tax on the service recipient who are body corporate shall be 75% of the taxable value and the liability to pay service tax on the service provider shall be 25% of the taxable value. He held that as the service was rendered to M/s. Navneet Education Ltd., which is a body corporate, the liability to pay tax on appellant as a service provider shall on 25% of the income and remaining 75% liability shall be on the service recipient. He therefore confirmed the demand of Rs.1,05,842/- on the appellant. The break-up is given in table below:-

Table-A

Sr. No.	F.Y.	Differential Taxable Value as per SCN	Income (abatement of 75% on which service recipient to pay service tax)	Income (abatement of 25% on which appellant liable to pay service tax)	Service tax payable
	2014-2015	38,48,681	28,86,511	9,62,170	1,05,842/-



8. The appellant however are claiming that the adjudicating authority has not granted the benefit of exemption under Notification No. 33/2012-ST dated 20.06.2012. They also claim that the tax should have been calculated after granting cum tax benefit.

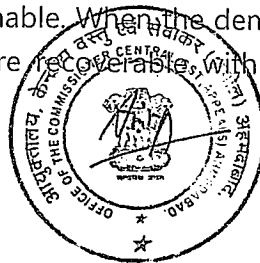
8.1 As regards, the Small Service Provider benefit claimed by the appellant under Notification No. 33/2012-ST dated 20.06.2012, it is observed that the said notification exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under Section 66B of the said Finance Act. The "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification. The appellant have submitted ITR, Form-26AS and have claimed that in the F.Y. 2013-14, total receipt was Rs.37,12,982/- out of which the service recipient is liable to pay tax on 75% of income which comes to Rs.27,84,737/- and their liability to pay tax shall be on 25% of income which comes to Rs.9,28,245/-. They therefore claim that their taxable income would be Rs.9,28,245/- which has not exceeded Rs.10 Lakh. I, have gone through the above documents and find that the gross receipts in the F.Y. 2013-14 is shown as Rs.37,12,982/-. However, I do not agree with their above contention because as per para-3 of the notification, the exclusion of taxable income of a person specified under Section 67(2) from aggregate value is available only for GTA service. As the services rendered by the appellant is neither GTA service and nor covered under negative list, I, therefore, find that the appellant is not eligible for the SSP benefit claimed under above notification as the gross taxable income of Rs.37,12,982/- is above the threshold limit of Rs.10 lakhs.

8.2 Further, the appellant have also claimed cum tax benefit which was not granted to them. I find that the adjudicating authority on the taxable value of Rs.9,62,170/- has confirmed the demand of Rs.1,05,842/-. This amount has been arrived after granting cum tax benefit to the appellant as mentioned at para-17 of the impugned order. The cum-tax calculation is given below. The amount arrived by the adjudicating authority is same as that being calculated below. I, therefore, cannot entertain the above contention as is devoid of merit.

Table-B

Tax after granting Cum Tax Benefit						
Sr.	Name of the Service	Year	Gross Value	Service tax rate	Taxable Value (Gross Value*100/112.36%)	S.Tax Payable
1	Manpower Supply Services	2014-2015	9,62,170/-	12.36%	8,56,328/-	1,05,842/-

9. As per the discussion held above, I find that the service tax demand of Rs.1,05,842/- for the F.Y. 2014-15 is legally sustainable. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.

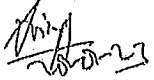


10. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s-Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], concluded that the section 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.

11. 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. I therefore, uphold the penalty imposed under Section 77(1) of the Finance Act, 1994. However, I reduce the same from Rs.10,000/- to Rs.2,000/-. Further, I also uphold the late fees imposed under Section 70 for non-filing of ST-3 Returns during the disputed period.

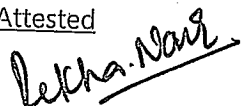
12. In view of the above discussion, I uphold the impugned order confirming the service tax demand alongwith interest and penalties.

13. 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 (अपील)

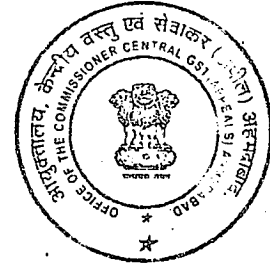
Date: 18.8.2023

Attested


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

By RPAD/SPEED POST

To,
M/s. Gita Rajesh Bhavsar,
64, Mahalaya Bungalows,
Near Sola High Court,
Sola Road, Sola,
Ahmedabad- 380052



Appellant

The Assistant Commissioner
CGST, Division-VI,
Ahmedabad North

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.

