



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- टेलिफैक्स 07926305136



DIN: 20230964SW0000444FF9

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1553/2023-APPEAL / 6258-62
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-95/2023-24
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 22.09.2023
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/281/ANAND/AM/2022-23
दिनांक: 18.11.2022 , issued by The Assistant Commissioner, CGST Division-VI,
Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s. Anand Chandrakant Shah, C1, 49, Kendriya Vihar Suncity Campus, S.P.
Ring Road, Bopal, Ahmedabad - 380058

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 प्रकिया 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 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 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 आदेशों 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।

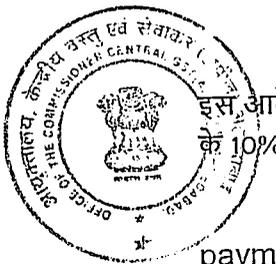
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Anand Chandrakant Shah, C1-49, Kendriya Vihar Suncity Campus, S.P.Ring Road, Bopal-380058 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST-06/D-VI/O&A/281/Ananad/AM/2022-23, dated 18.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding Service Tax Registration No. ANCPS7527FSE001.

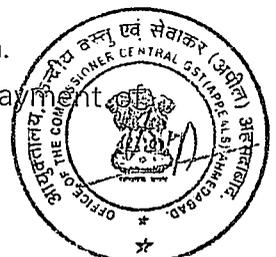
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, differential income of Rs. 22,17,806/- was noticed in the ST-3 vis-a-vis the ITR filed by the appellant. As no tax was paid on such income, letters were issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the 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 of Rs. 3,09,427/- for said period was accordingly worked out.

2.1 Thereafter, a Show Cause Notice (SCN) was issued to the appellant proposing recovery of service tax amount of Rs.3,09,427/- not paid on the differential value of income received during the F.Y. 2015-16, along with interest and penalties under Section 76, 77 & 78 of the Finance Act, 1994.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.3,09,427/- was confirmed alongwith interest. Penalty of Rs. 10,000/- under Section 77 and penalty of Rs.3,09,427/- 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:-

- They claim they are engaged in the profession of Interior Designer Consultancy which includes Design Consultancy, material procurement as a pure agent and labour services and consultancy service as pure agent. During the disputed period they submitted materials to various clients as a pure agent hence eligible for the benefit of Notification no.12/2003 dated 20.06.2003 in terms of sale of material.
- In terms of Rule 5(2) of the Determination of Value Rules, 2006, the appellant is not liable to pay any tax for the material procured from third party on behalf of the service recipient. This rule was subsequently substituted vide Notification No.24/2012-ST dated 06.06.2012. After deducting the value of reimbursement for material purchase the taxable amount comes to Rs.8,65,116/- which is below threshold limit.
- The demand covering F.Y. 2015-16 is time barred as the notice was issued on 23.12.2020 by invoking suppression. As there is no suppression of information, extended period cannot be invoked.
- Penalty under section 78 is not imposable in the absence of suppression.
- Penalty under Section 77 is also not imposable as there is no short payment of service tax.



4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 18.11.2022 and the same was received by the appellant on 01.12.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 20.02.2023 i.e. after a delay of 19 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that the accountant of the appellant could not provide the data in time hence the delay. They requested to condone the delay in filing the appeal as the delay is within the condonable period.

5. Personal hearing in the matter was held on 31.07.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing. He reiterated the submissions made in the appeal. He submitted that the appellant is an interior decorator who besides providing interior decoration service also purchases and hands over the materials on behalf of the clients and has received the amount for reimbursement purpose only. If the same is deducted from the total income, the taxable income shall be below the threshold limit. He handed over additional submissions with supporting documents and also reiterated the additional submissions in the COD application. He referred to Hon'ble CESTAT judgment passed in the case of Shri Kankeshwari Enterprises wherein it was held that extended period cannot be invoked on the basis of ITR data and SCN cannot be issued on the basis of ITR without carrying further investigation.

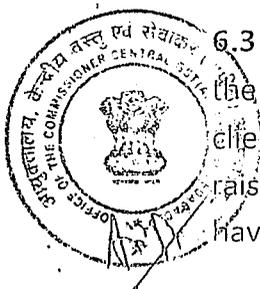
6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.3,09,427/- 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. 2015-16.

6.1 The appellant have claimed that they are providing Interior Designer Consultancy services and while providing such service they also purchases materials and made the expenses on behalf of the client, which was subsequently reimbursed to them. They also claimed that after deducting such reimbursable expenses from the total income, the taxable income shall be below the threshold limit and therefore they are not liable to pay service tax.

6.2 The adjudicating authority however claim that the nature of business mentioned in the ITR is Architect service and not Interior Designer Consultancy service. He observed that the appellant could not produce any contractual agreement between them and the service recipient, to substantiate their claim that they were acting as a pure agent to incur expenses in the course of providing taxable service. He therefore confirmed the demand.

6.3 On going through the Ledger account pertaining to Consulting Income, I find that the appellant have separately reflected reimbursement amount received from various clients as well as the consultancy income. Further, they also submitted a sample invoice raised for Interior Designing work carried out for Raja Ram School. In the invoice they have separately shown the charges of Colour Work, POP, Electricals, Furniture, Chairs,



Flooring, Civil Works and the charges of Design & Coordination (which is 10% of the total cost).

6.4 I find that in terms of Section 67, the service tax is chargeable on the taxable service with reference to its value and the gross amount charges for the taxable service and shall include any amount received towards taxable service before during or after provision of such service. In terms of Rule 5(2) of the SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006, where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service. However, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied. The relevant portion of Rule 5 is reproduced below:

RULE 5. Inclusion in or exclusion from value of certain expenditure or costs.

— (1) *Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*

Explanation.- *For the removal of doubts, it is hereby clarified that for the [the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided].*

(2) *Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-*

- (i) *the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*
- (ii) *the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
- (iii) *the recipient of service is liable to make payment to the third party;*
- (iv) *the recipient of service authorises the service provider to make payment on his behalf;*
- (v) *the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*
- (vi) *the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;*
- (vii) *the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
- (viii) *the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.*



Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

6.5 In terms of sub-rule (2) of Rule 5 of the Valuation Rules, the expenditure or cost incurred by the service provider as pure agent of service recipient has to be excluded from the value of taxable service if the conditions stipulated in the rule are satisfied. In the instant case the appellant have shown the reimbursement expenses in their books of accounts. Hence, I find that such reimbursable expenses incurred by them have to be treated as expense incurred on behalf of the service recipient. Therefore, such expenses shall not form part of gross amount.

7. Further, the appellant have claimed that after considering the deduction of such income from the total taxable income the taxable value arrived is below the threshold limit. They have submitted that working of consulting service and reimbursable income during the dispute period.

<i>Particulars</i>	<i>Amount</i>
Consultancy Income	2115340.
Commission Income	102466
Total Income	22,17,806
Reimbursement of material purchased	-1352690
Taxable service	8,65,116

I find that the demand has been raised on the taxable income of Rs. 22,17,806/- and after deducting the reimbursement expenses incurred on purchase of material, I find that the taxable income of the appellant shall be Rs.8,65,116/- which is below the threshold limit of Rs.10 Lacs. I, therefore, find that the appellant shall be exempted from payment of tax in terms of Notification No.33/2012-ST dated 20.06.2012.

In view of the foregoing, I find that the service tax demand of Rs.3,09,427/- is not sustainable in law and hence the impugned order confirming the service tax demand along with interest and imposition of penalty is concerned is set aside.



9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant is allowed in above terms.

Shiv Prataap Singh
28.8.23
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 28 8.2023

Attested

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



By RPAD/SPEED POST

To,

M/s. Anand Chandrakant Shah, - **Appellant**
C1-49, Kendriya Vihar Suncity Campus,
S.P.Ring Road,
Bopal-380058

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.