



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: 20231064SW000000F151

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1530/2023-APPEAL /2023-14

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-98 /2023-24
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 03.10.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WT07/HG/713/2022-23 दिनांक:12.12.2022 ,
issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address:

1. Appellant
New Shiv Shakti Video, Aakash 3, FF 5, B/h AEC Limited, Naranpura,
Ahmedabad - 380013

2. Respondent
The Assistant Commissioner, CGST Division-VII, Ahmedabad North, 4th Floor,
Shajanand Arcade, Nr. Helmet Circle, 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 अतः 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 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।

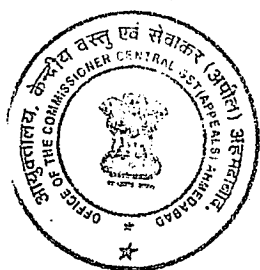
Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति 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. New Shivshakti Video, Aakash-3, F.F.5, B/h AEC Ltd., Naranpura, Ahmedabad-380013 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/713/2022-23 dated 12.12.2022, (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 Photography Service and Business Auxiliary Service and were holding Service Tax Registration No.ALJPP0125DSD001.

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, it was noticed that the appellant has declared less taxable value in their ST-3 return vis-à-vis taxable value declared in the ITR/Form-26 AS 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 S.Tax Return</i>	<i>Value as per ITR</i>	<i>Difference in income</i>	<i>Service Tax liability</i>
2014-15	5,37,300/-	58,66,150/-	53,28,850/-	6,58,646/-

2.1 A Show Cause Notice (SCN) No. CGST/Div-VII/A'bad-North/TPD/72/2020-2021 dated 27.09.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.6,58,646/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1), 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. 6,58,646/- was confirmed alongwith interest. Penalty of Rs. 5,000/- each under Section 77(1) & 77(2) and penalty of Rs. 6,58,646/- was also imposed under Section 78 of the F.A., 1994.

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

- The order of the adjudicating authority confirming demand of service tax of Rs. 6,58,646/- and imposing penalty of Rs. 6,58,646/- Rs. 5,000/- and Rs. 5,000/- is not proper, legal and sustainable on the grounds that it is passed in routine and superfluous manner without taking into consideration the facts, evidences and legal aspects of the issue.



- The show cause notice was issued and adjudicated merely on the basis of details obtained from Income Tax Department. However such details are required from the person who is not registered with Service Tax Department. In the present case the appellant was registered with Service Tax Department and regularly filed Returns. The Appellant filed returns half yearly for the period April '14 to September '14, however half yearly return for the period October '14 to March '15 was not filed. The appellant however discharged Service Tax liability for the period Oct. '14 to March '15. In the circumstances confirming demand is against the due compliance of payment of Tax.
 - Appellant could have been called upon by the Department for not filling return for the period October '14 to March '15. Since the Appellant filed returns regularly after March '15, they were under bona fide impression that there is no dispute with regard to payment of Service Tax by appellant. In any case since the Appellant discharged their Service Tax Liability of Rs. 6,58,646/- by payment of Rs. 4,03,091/- and remaining amount of Rs. 2,25,555/- was paid under input tax credit account. Copy of GAR 7 Challan No. 02503021201201580073 Dated 12/01/2015 for Rs. 1,70,909/- and Challan No. 02503021004201580187 Dated 10/04/2015 for Rs. 2,32,182/- and Rs. 2,55,555/- was debited under Input Tax credit account. Copy of payment challans and relevant folio of Cenvat Account are submitted.
 - The demand is time bared in as much as the show cause notice for the period 2014-15 was issued on 27/09/2020.
 - Imposition of penalty under Section 78 by invoking suppression cannot be invoked. Similarly imposition of penalty Under 77(1) and 77(2) is not just and proper in light of the substantial compliance of Law viz. payment of Service Tax.
4. Personal hearing in the matter was held on 14.08.2023. Shri Rajiv D. Shah, Chartered Accountant, appeared for personal hearing. He reiterated the submissions made in the appeal. He submitted that the appellant has made a deposit of indirect tax liability. However, inadvertently, he did not file returns for the second half of the concerned financial year. The adjudicating authority has confirmed the demand as per ITR without granting any effective opportunity to defend the case. As the tax liability is already discharged, he requested to take lenient view for non-filing of the return and 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 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.6,58,646/- 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.

It is observed that the appellant is holding Service Tax registration for providing 'Photography Service' and 'Business Auxiliary Service'. The entire demand has been



raised on the differential value noticed in the value of ST-3 Returns and ITR. The main contention of the appellant is that the demand pertains to the period October, 2014 to March, 2015 and for this period they could not file the ST-3 Return. However, they claim to have discharged the Service Tax liability of Rs. 6,58,646/- alongwith interest. They claimed to have paid Rs.4,03,091/- and remaining amount of Rs.2,25,555/- under input tax credit account. Copy of GAR-7 Challan No. 02503021201201580073 Dated 12/01/2015 for Rs.1,70,909/- and Challan No. 02503021004201580187 Dated 10/04/2015 for Rs.2,32,182/- and Rs.2,55,555/- was debited under Input Tax credit account. They submitted a re-conciliation statement to substantiate their above claim. As per their statement following is noticed:

TABLE-B

2014-15	Sales	S.Tax payable	S.Tax reflected as paid in cash	S.tax reflected as paid through CENVAT A/c	Total Tax reflected as paid in ST-3	Interest paid	Challan details Actual payment of tax made
October to Dec, 2014	20,01,850	2,47,429	1,70,321	77,107	1,70,909	588	02503021201 201580073
January to March, 2015	33,27,000	4,11,217	2,32,043	1,80,174	2,32,182	1,139	02503021004 201580187
Total	53,28,850	6,58,646	4,02,364	2,57,281	6,59,645	1,727	

7. It is observed that the appellant during the F.Y. 2014-15, for the period April, 2014 to September, 2014 have filed the ST-3 Return (as the differential income has been arrived based on reconciliation of ST-3 Return filed). However, for the period from October, 2014 to March, 2015, they did not file the ST-3 Return but filed the same belatedly on 21.08.2023. On reconciliation of their financial records and ST-3 Returns filed for the 2nd Half Year, it is noticed that the demand pertains to the income earned for the period from October, 2014 to March, 2015 and the appellant have made the Service tax payment of Rs.6,59,646/- and the interest liability of Rs. 1,727/- vide the challan mentioned above prior to issuance of SCN and the impugned order.

8. I find that intent to evade tax is not established. Hence, the allegation for suppression with intent to evade the tax is not sustainable. Therefore, the ingredients for invocation of extended period are missing.

9. In view of the above discussion, I set-aside the impugned order. As the tax liability of service in the impugned order is already admitted and discharged with interest, the appellant shall not be eligible for any refund based on this order.



10. 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: 28.8.2023

Attested

Rekha Nair

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

By RPAD/SPEED POST

To,
M/s. New Shivshakti Video,
Aakash-3, F.F.5,
B/h AEC Ltd., Naranpura,
Ahmedabad-380013

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.



