आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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सत्यमेव जयते

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STP/959/2024 / 4910 – 15 |
| (ख) | अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date | AHM-EXCUS-002-APP-04/2024-25 dated 19.04.2024 |
| (ग) | पारित किया गया / Passed By | श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of Issue | 02.05.2024 |
| (ङ) | Arising out of Order-In-Original No. 14/JC/LD/2023-24 dated 30.6.2023 passed by The Joint Commissioner, CGST & Central Excise, Ahmedabad North | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | Truptiben Harshadbhai Gediya 2269, Kumbhar Vas, Shakti Estate Chenpur Road, Gota, Ahmedabad-382481 |

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 पूवोक्त 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 :-

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 : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 मे हो माल की प्रकिया 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.

(ख) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

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.

(2) 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 दिनाँक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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. Registar 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 ओदश 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 हैं।

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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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. Truptiben Harshadbhai Gediya, 2269, Kumbhar Vas, Shakti Estate, Chenpur Road, Gota, Ahmedabad-382481 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 14/JC/LD/2023-24 dated 30.06.2023 (referred in short as '*impugned order*') passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is engaged in providing taxable services and are holding Service Tax Registration No. AYTPG9525FSD001.

**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), it was noticed that the appellant for the F.Y. 2015-16 & F.Y. 2016-17 has shown less taxable value in their ST-3 Return as compared to the taxable income declared in their ITR/Form-26AS. The difference of the taxable income & STR value is furnished below.

**Table-A**

| F.Y. | Value as per STR | Value as per ITR | Difference in value | S.Tax | Service tax payable |
|---|---|---|---|---|---|
| 2015-16 | 0/- | 4,42,03,623 | 4,42,03,623 | 14.5% | 64,09,525 |
| 2016-17 | 0/- | 4,57,03,653 | 4,57,03,653 | 15% | 68,55,547 |
| **TOTAL** | | | | | **1,32,65,073** |

**2.1** A Show Cause Notice (SCN) No. STC/15-116/OA/2021 dated 23.04.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs.1,32,65,073/- not paid on the taxable income received during the F.Y. 2015-16 & 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Penalties under Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

**3.** The said SCN was adjudicated vide the impugned order, wherein out of the total demand of Rs.1,32,65,073/-, the adjudicating authority dropped the demand of Rs.1,32,37,135 (Rs.63,99,421/- plus Rs.68,37,714/-) and confirmed the service tax demand of Rs.27,938/- alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77(2) and penalty of Rs.27,938/- was also imposed under Section 78.

**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 provisions of the Finance Act, 1994 were repealed from with effect from 01.07.2017. The subject show cause notice having been issued under the provision of an Act, which was not in force on the date of issuance of the show cause. notice, the entire proceedings are without authority of law. Consequently, any orders

issued under the said repealed law is also without authority of law and the same deserves to be quashed and set aside without going into the facts and merits of the case.

- It was incumbent on the part of the department to have verified the exact nature of services provided and the consideration received for the said service provided before proceeding to demand any tax from the appellant. The entire proceedings having been initiated without any verification based on mere presumption and assumptions, unsupported by facts, is vitiated by an error of law. No tax can be demanded on such assumption and presumption. As such, the said order demanding tax from the appellant is legally not sustainable.

- The appellant had filed the ST3 Return for the periods under consideration within the relevant date, as the adjudicating authority while dealing the matter in his findings has observed that the ST3 Returns were filed. It is noticed that the entire demand of service tax has been made and confirmed by invoking the extended period of limitation. The proviso to section 73 ( 1) of the said Act provides that the tax could be demanded within a period of 5 years if there was any suppression of fact, wilful misstatement, and fraud with an intention to evade the payment of tax. In the subject show cause notice the allegation of suppression of fact with an intent to evade the payment of tax was made, without bringing on record as to which facts were supressed by the appellant. The above Table clearly shows that the appellant had filed the statutory ST3 returns regularly revealing the details of value of services provided and the tax paid thereon. That being so, it cannot be alleged that the appellant had suppressed any fact. Even otherwise it's a settled law that when the returns were being filed regularly by the assesse, demand of any tax by invoking extended period of limitation was not available to the department. In support of above contention, the appellant places reliance on following decisions;
    - CCE Vs KPTCL reported at 2010 (250) ELT 572 (Tri.-Bang.)
    - Chemphar Drugs and liniments reported at 1989 (40) ELT 276 (SC)
    - Padmini Products reported at 1989 (43) ELT 195 (SC),

- The entire value having been taken from IT returns has to be considered as cum tax value. The impugned order confirming the demand of tax is thus legally not sustainable.

- The adjudicating authority has imposed a penalty of 27,938/- under section 78(1) of the said Act for not disclosing to the department that they had provided services to their customers on which income was earned by it. At this stage, the appellant refers to the subject how cause notice, wherein also the suppression of details of services provided have not been brought on record. As such, the said findings of the adjudicating authority are without any basis and evidence on record, consequently, the imposition of equal amount of penalty is not warranted and justified.

- The Hon'ble Supreme Court in case of Hindustan Steel Ltd. Vs. State of Orissa reported in AIR 1970 SC (253) (1979 ELT (J402) has held that for imposition of penalty it is to be brought on record that the party had acted deliberately in defiance of the law. In the present case, no evidence has been brought on record to show that the difference in the accounts maintained for income tax purpose and returns submitted thereon and the value as shown in the ST3 Returns, was on account of the services provided by the appellant, and therefore it cannot be said from the records that the appellant had acted in any way in defiance of Law.

- There being no liability to pay the service tax, the question of payment of interest under Section 75 of the said Act does not arise. The impugned order directing to pay interest under Section 75 is thus not sustainable.

**5.** Personal Hearing in the matter was held 15.04.2024. Shri N:K.Tiwari, Consultant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal.

**6.** I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of **Rs.27,938/-** against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period F.Y 2015-16 & 2016-17.

**6.1** The adjudicating authority confirmed the demand on the grounds that the appellant has less declared the taxable income of Rs.1,18,887/- in ST-3 Return and consequently short paid the service tax of Rs.27,938/-. The appellant however are contesting the demand strongly on limitation and on merits they contended that demand cannot be raised based on income reflected in ITR.

**6.2** Firstly, I will take up the issue of limitation. The appellant claim that they have filed the statutory returns and therefore department cannot allege suppression of facts. The adjudicating authority observed that the appellant in their ST-3 Returns have shown less taxable value compared to the value shown in their ITR, hence they have suppressed the taxable value with an intent to evade taxes. The demand in the instant case has been raised on the differential value which has been declared in the ITR but not declared in ST-3 Return. In terms of Section 68 of the F.A., 1994, every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. Further Section 70 stipulates that every person liable to pay the service tax shall himself assess the tax due on the services provided by him. However, the appellant has failed to self-assess the service tax liability. Differential income and short payment of tax on such income came to the knowledge of the department when the data was shared by CBDT. Whatever value is declared by a assesse

is considered to be true and best to their knowledge. Hence there is no chance of skeptical.

**6.3** In the case of *Maruti Udyog Ltd.* v. *CCE, New Delhi,* 2001 (134) E.L.T. 269, the Tribunal has held that the theory of universal knowledge cannot be attributed to the department in the absence of any declaration. The appellant never declared in their ST-3 Return the correct taxable income. It is not the case of the appellants that the material information available in the form of various contracts/agreements and balance sheets/ledgers have been submitted to the Department suo motu by the appellants. Even at the appellate stage the appellant failed to produce any convincing grounds for the short payment of tax or short declaration in the ST-3 Returns, which clearly bring out their intent to evade the payment of tax. Thus, I find that the suppression has been rightly invoked.

**7.** Coming on merits of the case, I find that the appellant have not provided any justification for the non-payment of tax on the differential income, nor did they provide any supporting documents justifying such non-payment. There was failure on the part of the appellant to pay full service tax. This failure was not due to reasonable cause and, therefore, suppression is invokable. The onus is upon the appellant to prove "reasonable cause" for such failure. However, the appellant failed to establish the same either before the adjudicating authority or at the appellate stage. They failed to show that there was sufficient and proper reasons which occasioned them to make short deposits of service tax than required under the provisions of the Act. If the appellant can show that the manner in which they were making the deposits of the service tax was *bona fide* i.e., in good faith, it would amount to 'reasonable cause'. I find that in the instant case, the appellant has not been able to prove its *bona fides*. Hence, I do not find any infirmity in the findings of the adjudicating authority. Accordingly, I find that the service tax demand of **Rs. 27,938/-** is legally sustainable.

**8.** When the demand sustains there is no escape from the interest liability and the same is also recoverable.

**9.** The appellant has not declared the correct taxable value/income in the ST-3 return nor did they produce any evidence for such act. These acts thereby led to suppression of the value of taxable service and non-payment of service tax. All these acts undoubtedly bring out the will-ful mis-statement and fraud with intent to evade payment of service tax. Hence, I find that the extended period of limitation has been rightly invoked. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above. Therefore, the appellant is also liable for equivalent penalty of **Rs.27,938/-** under Section 78.

**10.** As regards, the penalty of Rs.10,000/- imposed under Section 77(2) is concerned; I find that the same is imposable as the appellant has failed to determine the correct taxable value and mis-declared the income in ST-3 Return.

**11.** In view of the above discussion and findings, I uphold the service tax demand alongwith interest and penalties.

**12.** **अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।**

The appeals filed by the appellant stands disposed of in above terms.

(ज्ञानचंदजैन)

आयुक्त(अपील्स)

Date:19.4.2024

Attested

(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद

**By RPAD/SPEED POST**

To,

M/s. Truptiben Harshadbhai Gediya, - **Appellant**

2269, Kumbhar Vas, Shakti Estate,

Chenpur Road, Gota,

Ahmedabad-382481

The Joint Commissioner - **Respondent**

CGST Ahmedabad North

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner, CGST, Division-VII, Ahmedabad North.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
   (For uploading the OIA)
5. Guard File.