



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20240564SW00003353FB

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/656/2024 (1900-0900)
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-05/2024-25 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. 124/DC/D/VM/22-23 dated 27.2.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	I4U Security Services Shop No. 5, Ground Floor Eklingji Residency-2, Eklingji Road, Sanand, Ahmedabad-382110

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:

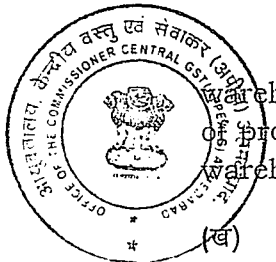
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 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.

(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 मामलों 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 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।

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 दिनांक 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 रुपये 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 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 :-

(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. 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 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 is 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 राशि;
- (3) 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।

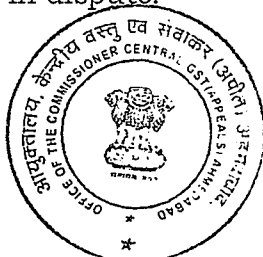
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

(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. I4U Security Services, 24, Aakar Arcade, Nr. SBI Bank, Sarkhej Highway, Sanand, Ahmedabad-382110 (hereinafter referred to as 'the appellant') have filed the present appeal against the Order-in-Original No.124/DC/D/VM/2022-23 dated 27.02.2023 (referred in short as 'impugned order') passed by the Deputy Commissioner, Central GST, Division-III, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'). The appellant is having Service Tax Registration No. AAFI0119PSD001.

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. 2016-17, it was noticed that the appellant has declared less taxable value in their ST-3 Return compared to the Sales / Gross Receipts from services shown in their ITR/Form-26AS. Letters were therefore issued seeking clarification and to produce evidences justifying such differences. However, the appellant did not respond, therefore, the service tax liability of Rs.4,45,640/- was quantified considering the highest differential income of Rs.29,70,930/- as taxable income.

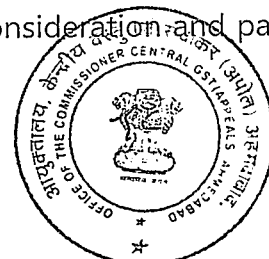
F.Y.	Sale of service as per Form26AS	Value in STR	Value Difference in Form 26AS & STR	S.Tax	Service tax payable
2016-17	39,42,754/-	9,71,824/-	29,70,930/-	15%	4,45,640/-

2.1 A Show Cause Notice (SCN) No. III/SCN/AC/I4U Security/139/2021-22 dated 21.10.2021 was issued to the appellant proposing recovery of service tax amount of Rs.4,45,640/- not paid on the differential income received during the F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Penalties under Section 77(1), 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 the service tax demand of Rs.4,45,640/- was confirmed alongwith interest. Penalty of Rs.10,000/- each was imposed under Section 77(1) & 77(2). Penalty of Rs.4,45,640/- 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 appellant was engaged in business activity of Security/Detective Agency Service / Manpower recruitment / Supply agency service / Cleaning services. During the F.Y 2016-17, they rendered services by way supply of manpower for security purpose to various corporate and non-corporate service recipients for Rs.40,70,990/- as mentioned in Audited Profit & Loss Statement. It includes the Security Contract receipts of Rs.36,41,423/- and Service Charge Income of Rs.4,29,567/-. Out of which Rs.32,39,740/- was from body corporate service recipients and Rs.8,31,250/- was from non-corporate service recipients. The appellant had filed Service tax returns for the year under consideration and paid the tax liabilities of Rs.11,15,302/-.



- TDS has been deducted by respective Limited & Private Limited Firms/Companies. The income from non-body corporates is Rs.8,35,450/- and from body corporates is Rs.31,07,304/- totaling to Rs.39,42,754/-. In terms of clause 1(ii)(B)(iii) of Notification No. 07/2015-ST dated 01.03.2015 (earlier Notification No.30/2012-ST), 100% liability to pay tax under RCM is on body corporates. Thus, the difference was arising due to such liability.
- It is trite law that figures of Form 26AS are not to be used for determining Service Tax liability unless there is proof to show that it was on account of any taxable service and relies on the order of the Tribunal (CESTAT Allahabad) in Kush Constructions vs CGST NACIN 2019 (34) GSTL 606 for the same.
- The Income Tax authorities cannot be used for determining Service Tax without evidence of taxable service and relies on the order of Tribunal in Synergy Audio Visual Workshop Pvt Ltd versus Commissioner of Service Tax Bangalore 2008 (10) STR 578 and in CCE Ludhiana vs Deluxe Enterprises 2011 (22) STR 203.
- Furthermore, in the recent case of M/s Luit Developers Private Limited vs. Commissioner of CGST & Central Excise, the Hon. Tribunal (CESTAT Kolkata) taken the similar view of the above cited case laws and also confirms that figures reflected in Form 26AS cannot be used to determine Service Tax liability unless there is any evidence shown that it was due to a taxable service as held in Kush Constructions.
- Also, figures shown to Income Tax authorities cannot be used to determine Service Tax as held in Synergy Audio Visual Workshop Pvt Ltd and Deluxe Enterprises. Also confirms that the Department cannot take a stand that it examined the factual position only on receiving details of Form 26AS for invoking extended period, as seen from CBEC Circular No.113/7/2009-S.T., dated 23-4-2009 vide F.No. 137/158/2008-CX. 4 and CBEC Circular No 185/4/2015-ST dated 30.6.2015 vide F.No.137/314/2012 which put a duty on the assessing officer to effectively scrutinize the returns at the preliminary stage. The same is supported by Gannon Dunkerley & Co Ltd vs CST(Adjudication) Delhi 2021(47)GSTL 35 (Tri-Del).
- There is no positive evidence like incriminating statements, recovery, Invoices, etc, to show any malafide intention to evade Tax and therefore extended period cannot be invoked. The law was settled by the order of the Hon'ble Supreme Court in Pushpam Pharmaceuticals Company vs CCE Mumbai 1995(78) 401.
- The recent order passed by Joint Commissioner, CGST & C.Ex., Ahmedabad North in the case of M/s Dolphin Security & Service vide F No. STC/15-72/OA/2020 DTD.24.11.2021 in which the disputes of 26AS/ITR and ST-3 database mismatches accepted due to the RCM on Security Services provided to body corporates vide Notification No.30/2012 and subsequent to Notification No.7/2015. In this case the honourable Joint Commissioner drop the proceedings initiated for recovery of Service tax, interests and penalties.
- The CBIC's Circular No.128/47/2019-GST Dtd.23.12.2019 states in Para 5 as below:



"5.The Board once again directs that any specified communication which does not bear electronically generated DIN and is not covered by the exceptions mentioned in paragraph 3 of the Circular No.122/41/2019-GST dated 05.11.2019, shall be treated as invalid and shall be treated as invalid and shall be deemed have never been issued."

5. Personal Hearing in the case was held on 08.04.2024. Shri Nikunj Thakkar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He stated that his client is providing security services to corporate clients who are liable to pay service tax under RCM. The differential income pertains to the income where liability to pay service tax is on the service recipient and not on the appellant.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.4,45,640/- confirmed alongwith interest, and penalties vide 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. 2016-17.

6.1 The entire demand has been raised on the differential income noticed in reconciliation of Form-26AS/ITR & STR. I have gone through the P&L Account, ITR, Form-26AS, STR, reconciliation statement provided by the appellant. In the P&L account the appellant has shown the income of Rs.36,41,423/- as 'Contract Receipt' and income of Rs.4,29,567/- as 'Service Income'. Thus, total income of Rs.40,70,990/- was shown as receipt. In the Form-26AS, TDS is deducted on the income of Rs.39,42,754/-, out of which Rs.8,35,450/- was received from (M/s. Durgabha Associates & M/s. Mahir Buildcon), which are not body corporates and income of Rs.31,07,304/- was received from Body Corporates. The appellant have claimed that their liability to pay tax is only on the income received from non-body corporates as in terms of clause 1(ii)(B)(iii) of Notification No. 07/2015-ST dated 01.03.2015. 100% liability to pay tax under RCM shall be on the service recipient. They claim they have already discharged the tax liability on the income of Rs.9,71,824/- and reflected the same in their ST-3 Return. Hence, they are not required to pay any tax.

6.2 To examine their above claim, relevant text of the notification is re-produced below;

Notification No. 25/2012-ST dated 20.06.2012

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service



8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
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The above entry was substituted vide **Notification No.07/2015 dated 01.03.2015** as,

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	Nil	100%

6.3 I find that the appellant is a Partnership firm and was providing services by way of supply of manpower for security purpose. Hence, considering the period involved, I find that in terms of clause (v) of basic Notification No.25/2012-ST read with amending Notification No.07/2015, there won't be any tax liability on the appellant, if the service has been provided to body corporates. Relevant clause (v) is also re-produced below:

*(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or **supply of manpower for any purpose** or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a **business entity registered as body corporate**, located in the taxable territory.*

6.4 The appellant in Form 26AS has total income of Rs.39,42,754/- out of which the taxable services valued at Rs.31,07,304/- was rendered to body corporates hence on such income, under RCM there is no tax liability on the appellant. However, on the income of Rs.8,35,450/- received from (M/s. Durgabha Associates & M/s. Mahir Buildcon) which are not body corporates, the liability shall be on the appellant. Further, I find that the appellant has already discharged the tax liability on the income of Rs.9,71,824/- and reflected the same in their ST-3 Return. So, after deducting the income from body corporates from the total income reflected in Form-26AS, the net income arrived is Rs.8,35,450/- (Rs.39,42,754/- minus Rs.31,07,304/-), which tallies with the income received from non-body corporates and on which, I find that the appellant has already discharged the tax liability and reflected the same in their ST-3 Return. Accordingly, I find that the appellant is not required to discharge any tax liability as the differential income pertains to the income on which under RCM the liability to pay tax is on the service recipient being a body corporate. I find that the appellant is not required to discharge any tax on the disputed income of Rs.29,70,930/- earned during the F.Y. 2016-17 in terms of Notification No.07/2015-ST dated 01.03.2015. Accordingly, I set-aside the total service tax demand of Rs.4,45,646/-



8. When the demand is not sustainable the question of recovering the interest and penalty also does not arise. Hence, the same are also set-aside.
9. In light of above discussion and findings, the impugned order is set-aside.
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

(ज्ञानचंद जैन)

आयुक्त(अपील्स)

Date: 19.4.2024

Attested

(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

M/s. I4U Security Services,
24, Aakar Arcade, Nr. SBI Bank,
Sarkhej Highway, Sanand,
Ahmedabad-382110

Appellant

The Deputy Commissioner
CGST, Division-III,
Ahmedabad North

Respondent**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Ahmedabad (Appeals) for uploading the OIA
4. Guard File.

