



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



**By SPEED POST**

DIN:- 20240564SW000000C890

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/990/2024 (५१०९ - ५१०९)
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-06/2024-25 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. CGST/WT07/HG/207/2022-23 dated 27.7.2022 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Alpana Jaykrishan Jha C-204, Shree Hari Residency New C. G. Road, Chandkheda Ahmedabad-382424

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, 4<sup>th</sup> 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 किसी भण्डागार में 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 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 रुपये 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.

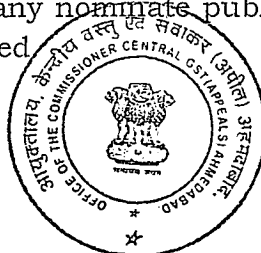
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, 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 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 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 और 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 अपील 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।

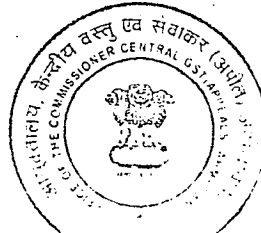
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Alpana Jaykrishna Jha, C-204, Shree Hari Residency, New C.G. Road, Chandkeda, Ahmedabad-382424 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/207/2022-23 dated 27.07.2022 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is engaged in providing taxable services without obtaining taxable service. They are holding PAN No. AGOPJ5059Q.

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. 2014-15 has earned substantial income on which no tax was paid. Letters were therefore issued seeking clarification and to produce evidences justifying the non-payment of tax. However, the appellant did not respond, therefore, the service tax liability of Rs.3,35,177/- was quantified considering the differential income of Rs.27,11,788/- as taxable income.

**Table-A**

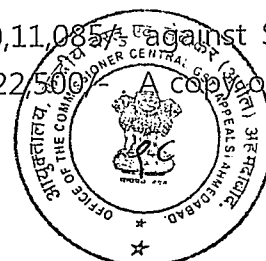
<b>F.Y.</b>	<b>Value Difference in ITR &amp; STR</b>	<b>S.Tax</b>	<b>Service tax payable</b>
2014-15	27,11,788/-	12.36%	3,35,177/-

2.1 A Show Cause Notice (SCN) No. CGST/AR-V/Div-VII/Abad North/TPD-UR/53/20-21 dated 26.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs.3,35,177/- not paid on the taxable income received during the F.Y. 2014-15 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Penalties under Section 77(1)(a), Section 77 (1)(c), 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.3,35,177/- was confirmed alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77(1)(a) & 77 (1)(c); penalty of Rs.5000/- u/s 77(2) and penalty of Rs.3,35,177/- 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;

- They claim that the appellant is in the Business of Printing and Stationery and has not provided any Service for the Printing Job. Appellant purchased own stationery and doing printing on it and supply the goods as per requirement of their clients. Hence, no Service Tax is not applicable in such case. The adjudicating authority has treated such business as Services which is not correct.
- During the year, they have made Purchases for Rs.30,11,085/- against Sale of Rs.27,11,620/- and also having a Closing Stock of Rs.7,22,500/- copy of Profit loss is submitted along with IT Return filed as proof.



- The Order is illegal and unlawful as the appellant has not received any written notice for presentation and not given sufficient time of being heard. Thus the order passed is against the principle of natural justice.
- The Penalty u/s 78 of the Finance Act, 1994 for Rs.3,35,177/-, Penalty U/S 77(1)(a) and 77(1)(c) for Rs. 1000/- and Penalty u/s 77(2) for Rs.5000/- is illegal and unlawful and unjustified and issue the stay order against the further recovery action.

5. Personal Hearing in the case was held 15.04.2024. Shri Devendra Patel, Advocate appeared for personal hearing on behalf of the appellant. He informed that the appellant does sale and purchase of stationary which is outside the purview of service tax. Further, he informed that on 12.04.2024 they have filed additional submissions which may be considered while deciding the appeal.

5.1 In the additional submission the appellant has submitted the copy of ITR, Balance Sheet and P&L Account for the period 01.04.2014 to 31.03.2015 and stated that the appellant is not service provider but has made actual sales and purchases. They also produced copy of sample bills, copy of Form-26AS. They also claim that they have not earned any income from services. All the income was from Sale & Purchase of Stationary.

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.3,35,177/- 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 2014-15.

6.1 The adjudicating authority confirmed the demand on the income of Rs.27,11,788/- declared in ITR on which no service tax was paid. The appellant however claim that they were engaged in trading activity (purchase & sale of stationary articles) which is not a taxable activity, hence, no tax is required to be paid.

6.2 I have gone through the documents submitted by the appellant. I find that as per the ITR, the appellant is a proprietor of M/s. Krishna Traders and have shown the gross total income of Rs.2,94,836/- for the F.Y. 2014-15. However, in their P&L Account they have shown total income of Rs.35,79,655/- (*Rs.9,14,260/- as Retail Invoice Sale plus Rs.26,65,395/- as Tax Invoice Sale*) As per Sale Register they have made sales of Rs.35,79,645/- and as per Purchase Register they have purchased goods worth Rs.28,51,475/-. They also submitted sample sales invoices wherein I find that they have discharged VAT. I find that the sales income is tallying with the income reflected in the P&L account, so I will consider the income of Rs.35,79,655/- and not the income of Rs.27,11,788/- which is not reflected in any of the documents like ITR, P&L Account pertaining to the F.Y. 2014-15.

6.3 In terms of clause (44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—



- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
- (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or
- (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force. 4) of Section 65B, the term 'service' is defined as;

6.4 In the instant case, I find that the appellant is in the business of printing of stationary items. They purchase the stationary items and carry out printing and subsequently sell these printed stationary to their clients as per their demand. It is observed that they are not charging for printing but are charging for the stationary as a whole. As there is transfer of goods by way of sale, such activity shall remain outside the purview of Service Tax. Thus, I find that the appellant is not rendering any taxable service instead are selling stationary items which is a trading activity and squarely covered under the negative list.

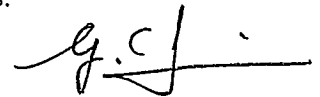
6.5 Under Section 66B of the Finance Act, service tax shall be levied on the value of all services, other than those service specified in the negative list. Negative list denotes the list of services on which no service tax is payable under Section 66B of the Finance Act, 1994. As per **Section 66D (e)** trading of goods is a service specified under the negative list. Accordingly, on the activity of trading of goods, no service tax is payable. Accordingly, I find that the appellant is not liable to pay service tax on the income of Rs.35,79,655/- or Rs.27,11,788 (as reflected in OIO) as the same was earned from trading activity carried out during the F.Y. 2014-15. In view of the above findings, I find that the demand of Rs.3,35,177/- is not legally sustainable.

7. When there is no demand, question of recovering the interest and imposition of penalty does not arise.

8. In light of above discussion and findings, I set-aside the impugned order.

9. 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.

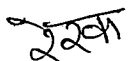


(ज्ञानचंद जैन)

आयुक्त(अपील्स)

Date: 19.4.2024

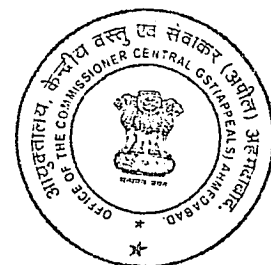
Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



**By RPAD/SPEED POST**

To,

M/s. Alpana Jaykrishna Jha,  
C-204, Shree Hari Residency,  
New C.G. Road, Chandkeda,  
Ahmedabad-382424

- **Appellant**

The Assistant Commissioner  
CGST, Division-VII,  
Ahmedabad North,

- **Respondent**

**Copy to:**

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

