
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवी मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलिफेक्स : 079 - 26305136
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)45/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-060-2018-19
दिनांक Date : 13-09-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/DEM/01/PV/AC/D-VIII/18-19 दिनांक: 25.04.2018 issued
by Assistant Commissioner, Div-VIII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Kartik Bijlani & Associates
Ahmedabad

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.
- (b) 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।



(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।

(b) 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।

(c) 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।

(d) 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 ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 अनुसूची-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.

- (6) 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. Kartik Bijlani & Associates, 403, Landmark Building, Opp. Seema Hall, Nr. Titanium City Center, 100 ft. Anandnagar Road, Satellite, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number CGST/DEM/01/PV/AC/D-VIII/18-19 dated 25.04.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants are engaged in providing service that falls under the category of Architect Service. On the basis of intelligence, a search was conducted by the officers of Preventive Wing, Service Tax, Ahmedabad. During the course of search, it was noticed that the appellants were neither registered with the Service Tax department nor had paid Service Tax on their taxable income received. During further investigation, the appellants accepted their initial Service Tax liability amounting to ₹ 11,96,386/- and agreed to pay the same at the earliest. However, they had only paid ₹ 50,000/- out of the above mentioned amount. Thus, after the completion of the investigation, a show cause notice dated 20.12.2016 was issued to the appellants which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 15,34,533/-, under Section 73(1) read with Section 68 of the Finance Act, 1994, for the period 2011-12 to 2014-15. The adjudicating authority did not appropriate ₹ 50,000/- paid by the appellants as the latter had already utilized the same for the period 2015-16. The adjudicating authority further, demanded interest under Section 75 at appropriate rate and imposed penalty under Sections 77(1)(a), 77(1)(b), 77(1)(c), 77(2) and 78 of the Finance Act, 1994 amounting to ₹ 10,000/- each under the first four penal sections and ₹ 15,34,533/- under the last penal section mentioned above.

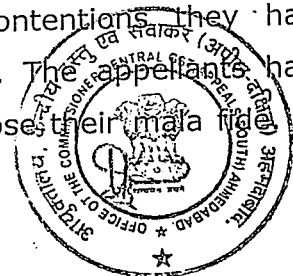
3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority has not considered the submissions made by them. They stated that while quantifying the taxable amount, the department has considered certain bills twice and in some cases, the bills were not even final. The department has further not considered the sum of ₹ 2,45,000/- given by father during cash crunch. The appellants further contended that they are eligible for SSI exemption vide Notification number 33/2012 dated 20.06.2012 and thus, for the year 2011-12, no tax liability arises. In certain case, the appellants had not received any amount as the services were not provided and only quotation was given to the client.



4. Personal hearing in the case was granted on 21.08.2018 wherein Shri Gunjan Shah, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of the grounds of appeal. Shri Shah informed that their reply was not been considered by the adjudicating authority. He quoted 2nd proviso of Rule 6 of Service Tax Rules, 1994 and submitted that their total transaction in previous year was less than ₹ 50 lakhs and despite Income Tax statement, their arguments had not been considered. Shri Shah requested to remand back the case.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants have, in their grounds of appeal, time and again alleged that the adjudicating authority did not consider their submission and the department has grossly erred while quantifying the taxable amount. In serial number VIII of paragraph 3 of the impugned order, I find that the Superintendent of the Preventive Wing had repeatedly issued summons, dated 03.11.2015, 07.12.2015, 17.12.2015 and 05.01.2016, to the appellants for submission of documents viz. copies of Balance Sheet along with schedules and ledgers, P & L statements, Income Tax returns, Form 26AS, Agreements/Contracts, Bills/Invoices, ST-2, ST-3 etc. but the appellants neither appeared for giving statement nor submitted the documents called for. Now, surprisingly, they are crying hoarse that their submissions were not considered. In their grounds of appeal, the appellants nowhere mentioned any reason why they choose to dishonor the said summons issued and failed to submit required documents as called for vide the above summons. In paragraph 14 and 15 of the grounds of appeal, the appellants mentioned that the department had considered the amount mentioned in quotations given to their respective clients. This is a very juvenile allegation on the part of the appellants and clearly sounds like afterthought. In paragraph 13 of the impugned order, the adjudicating authority alleged that the appellants tried to misguide the department by not producing documents which could differentiate all duplicate entries. The major question that remains unanswered is that why the appellants did not submit required documents when the Preventive Officers were undergoing investigation of the case. In serial number VI.(v) of paragraph 2 of the impugned order, I find that the appellants had accepted their initial Service Tax liability amounting to ₹ 11,96,386/-. The appellants are silent on this part too.

7. In view of above, I find that the there are lots of ambiguity in the argument of the appellants. Further, whatever contentions they have submitted, are juvenile, laughable and questionable. The appellants have very astutely avoided all those issues that could expose their mala fide. On



this ground itself, I could have rejected their appeal. However, as requested by them during the course of personal hearing, I remand the case back according to the principles of natural justice. Accordingly, I remand the case back to the adjudicating authority for scrutiny of the defense reply of the appellants, once again. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all the genuine documents, which are presently available with them, during the proceeding for which the case is remanded back.

8. The appeal is disposed off as per the discussion held above.
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 22/10/18

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. Kartik Bijlani & Associates,
403, Landmark Building, Opp. Seema Hall,
Nr. Titanium City Center, 100 ft. Anandnagar Road,
Satellite,
Ahmedabad-380 015

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, Central Tax, Div-VIII, Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (South).
- 5) Guard File.
- 6) P.A. File.

