



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20221264SW0000722939

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/220/2022 / 6188 - 92
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-104/2022-23
दिनांक Date : 19-12-2022 जारी करने की तारीख Date of Issue 21.12.2022
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-30/Praful Agarwal/AC/DAP/21-22 दिनांक: 24.03.2022
passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VI, Ahmedabad South
3rd Floor, APM Mall, Anand Nagar Road,
Satellite, Ahmedabad - 380015

Respondent

- M/s Praful Jagdishchandra Agarwal
4th Kadam, Judges Bungalow Road,
Bodakdev, Ahmedabad - 380054

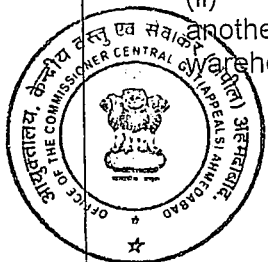
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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:

- 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 :
 - 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 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.



(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 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.

(2) 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 :-

(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 पंढी 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 शुल्कअधिनियम 1970 यथासंशोधित 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 कान्यायालय 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.

2^o सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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.

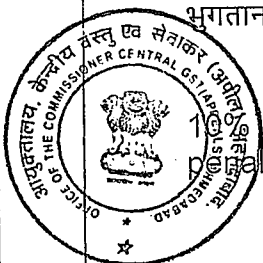
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (ccxx) amount determined under Section 11 D;
(ccxxi) amount of erroneous Cenvat Credit taken;
(ccxxii) 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 of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VI, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 27/2022-23 dated 15.07.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. CGST-VI/Dem-30/Praful Agarwal/AC/DAP/21-22 dated 24.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VI, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Praful Jagdishchandra Agarwal, 4th Kadam, Judges Bungalow Road, Bodakdev, Ahmedabad-380 054 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that the respondent was found to be not registered with the Service Tax department. As per the information received from the Income Tax Department, the respondent had earned substantial income from services amounting to Rs.3,40,54,253/- during F.Y. 2015-16. However, the respondent did not obtain service tax registration and did not pay service tax on the service income. The respondent was requested vide letters on different dates to submit the documentary evidence in respect of their income. However, the respondent failed to submit the required details/documents and neither was any explanation/clarification submitted regarding the income earned. Therefore, the respondent was issued Show Cause Notice bearing No. V/WS06/O&A/SCN-29/2020-21 dated 23.09.2020 wherein it was proposed to :

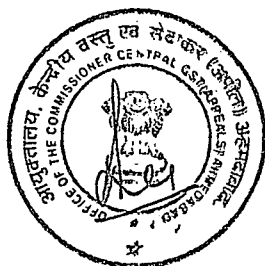
- A. Demand and recover the service tax amounting to Rs.42,09,106/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
 - B. Impose penalty under Sections 77(1) and 78 of the Finance Act, 1994.
 - C. Recover late fee in terms of Rule 7C of the Service Tax Rules, 1994
- Read with Section 70 of the Finance Act, 1994.



2. The SCN was adjudicated vide the impugned order and the proceedings initiated against the respondent were dropped.

3. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

- i. The findings of the adjudicating authority are based on the documents submitted by the respondent for F.Y. 2014-15 only. Therefore, the adjudicating authority has failed to give any findings for the respondent's liability of service tax for F.Y.2015-16 and F.Y. 2016-17. Without proper analysis and scrutiny the adjudicating authority has dropped the demand.
- ii. The adjudicating authority has concluded the matter by stating that the income earned by the respondent during the material period is from sale of land/immovable property which is non taxable in terms of Section 65B(44) of the Finance Act, 1994.
- iii. The adjudicating authority has failed to give findings based on the defense reply of the respondent that they are providing service in relation to construction of residential and commercial units and that the units were sold after obtaining BU permission.
- iv. The adjudicating authority has relied upon invoice dated 01.04.2015 issued by the respondent to Allwin Mills for sale of windmill and also relied upon the sale deed between the respondent and Shri Dilipkumar Baldevdas Patel for sale of land as well as the sale deed with Smt. Induben Patel and also other sale deeds. Based on these it has been concluded that the income earned by the respondent is from sale of land/immovable property which is non taxable.
- v. No findings have been given regarding the date on which the sale deeds were executed and whether the amount had been received during the period under dispute or not. Further, no findings have been given regarding the nature of the land/plot sold by the respondent. In case the plots were sold with development of amenities, it would



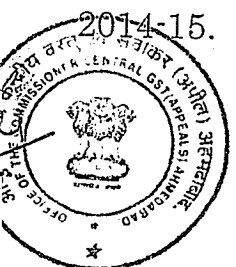
attract the provisions of 'works contract service' and liable to service tax.

4. Personal Hearing in the case was held on 09.12.2022. Shri Viral Hasmukhbhai Shah, Chartered Accountant, appeared on behalf of the respondent for the hearing. He submitted a written submission during hearing as cross-objection to appeal.

5. In the written submission filed on 09.12.2022, the respondent, contended, inter alia, that :

- He is a builder and developer engaged in providing services in relation to construction of residential and commercial units. He had made full disclosure regarding the income earned before the adjudicating authority vide letter dated 08.02.2022. The income representing sale of land/immovable property which was duly matched with his audited books of accounts was submitted to the adjudicating authority.
- As per Section 65B(44) of the Finance Act, 1994, service tax is not applicable in his case. However, due to wrong selection in the column in Profit and Loss Account, the income was filed under sale of service instead of sale of goods.
- He submits copies of Statement of Income along with ITR acknowledgment, Form 26AS, Audited Books of Accounts, summary of Sales Account, Purchase Account along with supporting documents regarding the transactions in the books of accounts. The documents are for F.Y. 2014-15 to F.Y. 2016-17.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the written submissions filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority dropping the demand of service tax amounting to Rs.42,09,106/-, in the facts and circumstances of the case, is legal and proper. The demand pertains to F.Y.



7. I find that the respondent was issued SCN on the basis of the data received from the Income Tax Department and the respondent was called upon to submit documents/details in respect of the service income earned by them, however, the respondent failed to submit the same. Therefore, the respondent was issued SCN demanding service tax by considering the income earned by them as income earned from providing taxable services. However, no cogent reason or justification is forthcoming for raising the demand against the respondent. It is also not specified as to under which category of service, the non payment of service tax is alleged against the respondent. The demand of service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the respondent had reported income from sale of services in their ITR. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

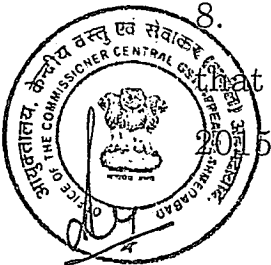
7.1. I find in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that :

“It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.”

7.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

8. It is observed that in the SCN and the impugned order, it is stated that the Income Tax Department shared the data for the Financial Year 2015-16 and F.Y. 2016-17. However, in the Table at Para 3 of the SCN, it is



mentioned that the respondent had earned income amounting to Rs.3,40,54,253/- from the service under the category of Builders during F.Y. 2014-15. Further, from the documents submitted by the respondent in the course of personal hearing, it is observed that the said income pertains to F.Y. 2014-15 only. The income earned from sales during F.Y. 2014-15 by the respondent is evidenced by their audited P&L Account and matches with income reported by the Income Tax department and stated in the SCN issued to the respondent. Therefore, the contention of the appellant department that the findings of the adjudicating authority are based on the documents pertaining to F.Y. 2014-15 does not have any merit inasmuch as the adjudicating authority has examined and based his findings on the documents pertaining to the period for which the demand of service tax was raised in the SCN. Further, as regards the contention of the appellant department that the adjudicating authority has not given any finding regarding the service liability for F.Y. 2015-16 and F.Y. 2016-17, it is observed from the SCN that the respondent had not earned any income from services during F.Y. 2015-16 and F.Y. 2016-17. When the SCN has not demanded any service tax in respect of these financial years, the question of the adjudicating authority examining the documents for these financial years or giving any finding in the impugned order does not arise. Clearly, this contention of the appellant department too is without any merit.

9. It is observed from the impugned order that the respondent had submitted the relevant documents before the adjudicating authority and it has been recorded at Para 7 of the impugned order that the adjudicating authority had gone through the documents submitted by the respondent i.e. the sale invoices as well as sale deeds. Thereafter, the adjudicating authority has concluded that the amount received by the respondent pertains to sale of land/immovable property and, accordingly, held that same is not taxable. The respondent has submitted their financial statements as part of their cross-objection to the appeal and it is seen that the value of sales reported in their Profit and Loss Account pertains to sale of land/immovable property and windmills. The appellant department has, on the other hand, not come forward with any document or evidence

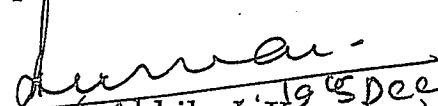


indicating that the conclusions arrived at by the adjudicating authority, after verification of the documents submitted by the respondent, are erroneous. Neither has the appellant department refuted or countered any of the findings of the adjudicating authority. Consequently, I am of the considered view that the appeal filed by the appellant department is devoid of merits.

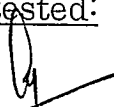
10. In view of the facts discussed hereinabove, I uphold the impugned order and reject the appeal filed by the appellant department.

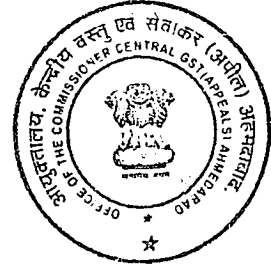
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 19.12.2022.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST, Division- VI,
Commissionerate : Ahmedabad South.

Appellant

M/s. Praful Jagdishchandra Agarwal,
4th Kadam, Judges Bungalow Road,
Bodakdev, Ahmedabad-380 054

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.

11

