



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 : 20221264SW0000278368

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/172/2022 / 6981 - 85
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-115/2022-23
दिनांक Date : 28-12-2022 जारी करने की तारीख Date of Issue 29.12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-178/AC-RAG/2021-22 दिनांक: 22.03.2022
passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

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

Respondent

- M/s Maulesh Pravinchandra Shah, HUF
401, Shalyavan Apartments, Mahalaxmi Society,
Near Mahalaxmi Temple, Paldi, 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 :

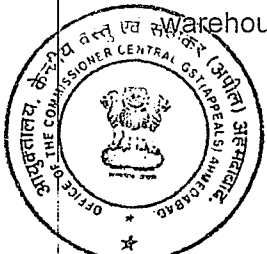
Revision application to Government of India:

(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 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।

(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.



(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 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 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.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.

3^ण 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.

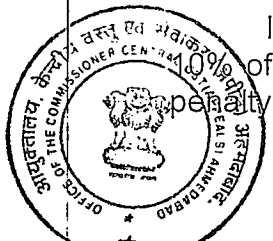
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (ccxxvi) amount determined under Section 11 D;
(ccxxvii) amount of erroneous Cenvat Credit taken;
(ccxxviii) 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."

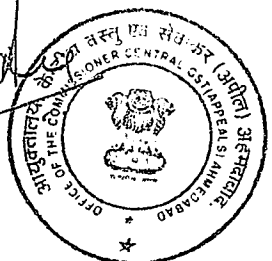


ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VII, Commissionerate Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 17/2022-23 dated 15.06.2022 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/WS07/O&A/OIO-178/AC-RAG/2021-22 dated 22.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Maulesh Pravinchandra Shah, HUF, 401, Shalyavan Apartments, Mahalaxmi Society, Near Mahalaxmi Temple, Paldi, Ahmedabad [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that as per the information received from the Income Tax Department, the respondent had earned substantial income from services amounting to Rs.20,74,315/- during F.Y. 2014-15. 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 service income earned by the respondent was considered as taxable value and it appeared that the respondent had failed to pay the service tax amounting to Rs.2,56,385/- on this income. Therefore, the respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-262/AADHS2330C/2020-21 dated 23.09.2020, wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.2,56,385/- 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.

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

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

- i. The adjudicating authority has erred in dropping the demand of service tax without recording any finding on the merits of the case and the impugned order is a non-speaking order.
- ii. The adjudicating authority has recorded finding that the services provided by the respondent is exempted by virtue of Entry No. 30 (ii)(a) of Notification No.25/2012-ST dated 20.06.2012. However, the adjudicating authority has not given any finding in respect of the services provided by the respondent and how the said services are exempted vide the said Notification.
- iii. Exemption in terms of the said Notification is available to "Services by way of carrying out any intermediate production process as job work not amounting to manufacture or production in relation to agriculture, printing or textile processing". No finding has been given as to what intermediate process is being carried out by the respondent and how the same is exempted.

5. Personal Hearing in the case was held on 16.12.2022. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the respondent for the hearing. He stated that the adjudicating authority had examined the invoices and Form 26AS and other relevant documents and correctly dropped the demand. He stated that he would submit copies of the documents as written submission.

6. The respondent vide letter dated 27.12.2022 submitted copies of Debit Notes issued by them and also a copy of Form 26AS.

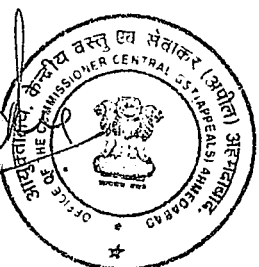


7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order dropping the demand of service tax amounting to Rs.2,56,385/-, in the facts and circumstance of the case, is legal and proper. The demand pertains to F.Y. 2014-15.

8. I find that the respondent was issued SCN on the basis of the data received from the Income Tax Department. It is stated at Para 3 of the SCN that 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. It is observed that in the impugned order, it is mentioned at Para 2.3 that the respondent had submitted vide letter dated 20.10.2020 that they are doing the supervising, monitoring and designing of the various job involved in textile processing done by processor on various job work given by exporter. Based on the submission of the respondent, the adjudicating authority has concluded at Para 4.2 of the impugned order that the respondent had done job work in the field of textile industries and the services are exempted in terms of Entry No. 30 (ii) (a) of Notification No.25/2012-ST dated 20.06.2012. Accordingly, the proceedings initiated against the respondent was dropped.

9. The appellant department has contended that the adjudicating authority has not recorded any finding as to what intermediate process is being carried out by the respondent and how the same is exempted in terms of the said Notification. In this regard, I find from the Debit Notes submitted by the respondent are in respect of 'Charges for supervision and monitoring of printing and designing for various cloth'. Since the adjudicating authority has held that the activity carried out by the respondent are exempted in terms of Serial No.30 (ii)(a) of Notification No.25/2012-ST dated 20.06.2012, it would be pertinent to refer to the same, the text of which is reproduced below:

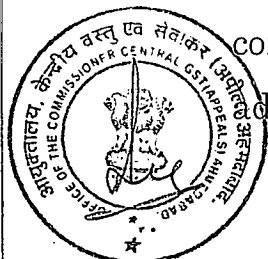
“(ii) any intermediate production process as job work not amounting to manufacture or production in relation to-
(a) Agriculture, printing or textile processing:”



9.1 From the description of the activity mentioned in the Debit Notes, I find that 'supervision and monitoring of printing and designing' does not amount to any production process, intermediate or otherwise and neither can it be termed as job work. Consequently, in my considered view, the benefit of exemption in terms of Entry No.30 (ii) (a) of Notification No.25/2012-ST dated 20.06.2012 is not admissible to the respondent.

10. The respondent have vide letter dated 27.12.2022 submitted a copy of Form 26AS pertaining to F.Y. 2014-15. On perusal of the same, I find that the TDS has been deducted/paid under Section 194A and 194H of the Income Tax Act, 1961. It is observed that Section 194A pertains to 'Interest other than Interest on Securities' while Section 194H pertains to 'Commission or brokerage'. The income liable to TDS under Section 194A of the Income Tax Act, 1961 clearly does not pertain to any taxable service. However, the activity for which commission or brokerage is paid amounts to a service and in terms Section 65B (44) of the Finance Act, 1994, service means any activity carried out by a person for another for consideration. In the instant case, the Debit Notes and Form 26AS submitted by the respondent clearly indicate that they have not carried out any intermediate process on job work basis but had actually provided service to their customers, which is neither in the Negative List of Services and nor is it exempted by any Notification.

10.1 Having considered the documents submitted by the respondent i.e. the Debit Notes and Form 26AS, I find that there is merit in the contention of the appellant department that the adjudicating authority has not given any findings on the merits of the case and has also not given any finding as to what intermediate production process is being carried out by the respondent and how the same is exempted. It is also observed that the adjudicating authority has not considered Form 26AS of the respondent for the period under dispute. Accordingly, I am of the considered view that the matter is required to be re-examined by the adjudicating authority by considering the Debit Notes/Invoices as well as Form 26AS and thereafter adjudicate the matter by recording his findings on the admissibility of



exemption in terms of Entry No. 30 (ii) (a) of Notification No. 25/2012-ST dated 20.06.2012. Needless to say, the principles of natural justice are to be followed in the denovo proceedings.

11. In view of the facts discussed hereinabove, the impugned order is set aside and the appeal filed by the appellant department is allowed by way of remand.

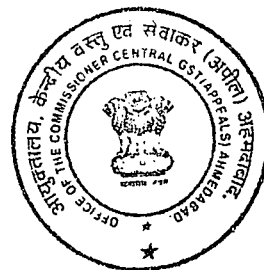
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhil
28th December,
(Akhilesh Kumar)
Commissioner (Appeals)
Date: .12.2022.

Attested:

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



BY RPAD / SPEED POST

To

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

Appellant

M/s. Maulesh Pravinchandra Shah HUF,
401, Shalyavan Apartments,
Mahalaxmi Society,
Near Mahalaxmi Temple,
Paldi, Ahmedabad

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.