



सत्यमेव जयते

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

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



DIN : 20221264SW0000999AE2

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/199/2022 / 6661 - 65
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-117/2022-23
दिनांक Date : 29-12-2022 जारी करने की तारीख Date of Issue: 30.12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-187/AC-RAG/2021-22 दिनांक: 23.03.2022
passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VII, Ahmedabad South
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad

Respondent

- M/s Manibhadra Chemcast
J-61, Nandanvan IV,
Opposite Aangan Party Plot,
Satellite, Ahmedabad - 380015

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 मजिल, 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 प्रक्रिया 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.

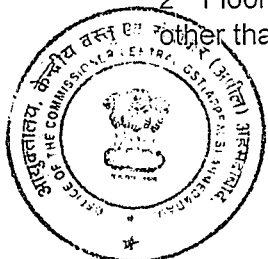
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अनुसूची-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.

3P 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.

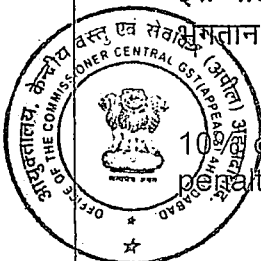
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (ccliii) amount determined under Section 11 D;
(ccliv) amount of erroneous Cenvat Credit taken;
(cclv) 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

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. 23/2022-23 dated 27.06.2022 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-187/AC-RAG/2021-22 dated 23.03.2022 [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. Manibhadra Chemcast, J-61, Nandanvan IV, Opposite Aangan Party Plot, Satellite, Ahmedabad-380 015 [hereinafter referred to as the "respondent"].

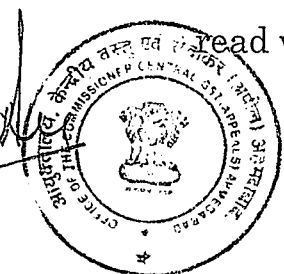
2. Briefly stated, the facts of the case are that the respondent was found to be not registered with the Service Tax department. As per the information received from the Income Tax Department, the respondent had earned substantial income from services amounting to Rs.26,74,533/- during F.Y. 2014-15. 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 respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-23/AAWFM4220G/2020-21 dated 23.09.2020 wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.3,30,572/- 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. Only on the basis of the submission of the respondent that they had undertaken the work of sub contractor and provided service to main contractor who had provided services to the Road and Building Department of Gujarat Government and without verification of any documents, the adjudicating authority has concluded that the main contractor had provided service to the Government of Gujarat.
- iii. The adjudicating authority has just mentioned Entry No.12 of Notification No.25/2012-ST dated 20.06.2012 and without recording any finding, held that the service provided by the main contractor is exempt from payment of service tax.
- iv. However, the adjudicating authority has not given any finding based on the documents examined by him to conclude that the main contractor had provided service to the Government of Gujarat, which is exempt.in respect of the services provided by the respondent and how the said services are exempted vide the said Notification.
- v. No finding has been recorded as to how he concluded that the respondent had provided service to the main contractor who in turn had provided service to the Government of Gujarat..

5. Personal Hearing in the case was held on 21.12.2022. Shri Ankur Shah, Karta of the HUF firm, appeared on behalf of the respondent for the hearing. He stated that he would submit copies of relevant work order and invoices as part of cross objection.



6. In the written submission filed on 20.12.2022, the respondent, contended, inter alia, that :

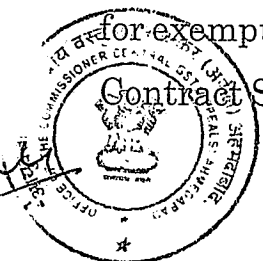
- Their firm provided services as sub contractor to the main contractor i.e. Katira Construction Limited in a Government project of building a Memorial Park in memory of those who died in the Earthquake at Bhuj in the name of Smritivan Earthquake Memorial Museum.
- Such service is exempt in terms of Entry No.12 of Notification No.25/2012-ST dated 20.06.2012. They submit copies of the Work Order and Invoices.

7. 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.3,30,572/-, in the facts and circumstances of the case, is legal and proper. The demand pertains to F.Y. 2014-15.

8. It is observed that the adjudicating authority had held that the Work Contract Services provided by the main contractor was exempted as per Entry No.12(a) of Notification No.25/2012-ST dated 20.06.2012 and accordingly, the Work Contract services provided by the respondent to the main contractor was exempted in terms of Entry No.29(h) of the said Notification. No.25/2012-ST dated 20.06.2012. It is, therefore, pertinent to refer to the said Entry No.29 (h) of the said Notification, which is reproduced below :

“(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;”

8.1 I find that Entry No.29 (h) of the said Notification only exempts Works Contract service provided by a sub-contractor to the main contractor providing Work Contact Services which are exempt. Therefore, to qualify for exemption under this Entry, the sub-contractor must be providing Works Contract Services. I have perused the invoices submitted by the respondent



and find that the same are issued for Labour Charges only. Therefore, the services provided by the respondent to the main contractor, being only labour services, can not be considered as exempted under the said Entry No.29 (h) of the said Notification.

8.2 To qualify as works contract, there has to be a transfer of property in goods involved in execution of the contract. The respondent have not submitted a complete copy of the Work Order/Contract issued to them by the main contractor. The Work Order dated 07.10.2014 submitted by them only mention the work to be done by them, the quantity and the date. It is not forthcoming from the Work Order submitted by the respondent whether the work contracted to them by the main contractor was inclusive of materials or whether the materials were to be supplied by them for executing the work order. Therefore, it is not possible to determine whether the service provided by the respondent was Works Contract Service or otherwise, and therefore, it is also not possible to ascertain whether the respondent are eligible for exemption in terms of Entry No.29 (h) of Notification No.25/2012-ST dated 20.06.2012.

9. It is further observed from Para 2 of the impugned order that Shri Yogeshchandra Mohanlal Shah, Karta of HUF of the respondent firm, had expired on 04.06.2015 and in the adjudication proceedings, the respondent was represented by the Wife of the main Partner. In the present appeal proceedings, the respondent was represented by the legal heir of Late Shri Yogeshchandra Mohanlal Shah HUF Karta. The constitution of the respondent firm, i.e. whether it is a HUF, Partnership firm or a Proprietary Firm, is not forthcoming from the material on record. Therefore, it is not possible to determine the legality of the proceedings initiated subsequent to the passing away of Shri Yogeshchandra Mohanlal Shah. The law provides for abatement of proceedings in certain cases. The adjudicating authority is also required to examine these aspects.

10. In view of the above facts and discussions, I am of the considered view that it would be in the fitness of things if the matter is remanded back to



the adjudicating authority. The respondent are directed to submit all the relevant documents in support of their claim for exemption before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the matter afresh in terms of the observations contained in Para 8.2 and 9 above after considering the documents submitted by the respondent and pass a speaking order by following the principles of natural justice.

11. In view of the facts discussed hereinabove, I set aside the impugned order and allow the appeal filed by the appellant department 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.

(Signature)
29th December,
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 29.12.2022.

Attested:

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



BY RPAD / SPEED POST

To

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

Appellant

M/s. Manibhadra Chemcast,
J-61, Nandanvan IV,
Opposite Aangan Party Plot,
Satellite, Ahmedabad-380 015

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.