



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 : 20230164SW000000C86D

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2690/2022 / 9/22 - 26
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-124/2022-23  
दिनांक Date : 09-01-2023 जारी करने की तारीख Date of Issue 11.01.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-007/AC-RAG/2022-23 दिनांक: 17.05.2022  
passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Pranav S Raval  
A-204, Dev Archan Flat,  
Near Bonny Travels,  
Opposite Kochrab Ashram,  
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, 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 :

(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.

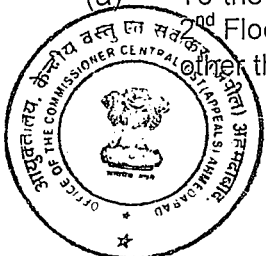
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

(a) 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 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.

- 11प 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.

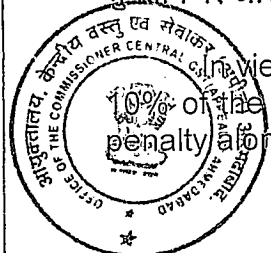
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cclxviii) amount determined under Section 11 D;  
(cclxix) amount of erroneous Cenvat Credit taken;  
(cclxx) 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."



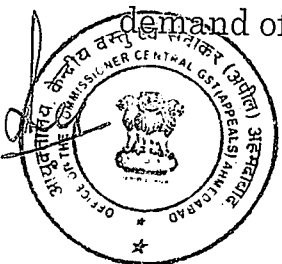
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Pranav S. Raval, A-204, Dev Archan Flat, Near Bonny Travels, Opposite Kochrab Ashram, Paldi, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. CGST/WS07/O&A/OIO-007/AC-RAG/2022-23 dated 17.05.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant was found to be not registered with the Service Tax department. As per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.16,40,760/- during F.Y. 2014-15. However, the appellant did not obtain service tax registration and did not pay service tax on the service income. Therefore, the appellant was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-223/AEGPR5859E/2020-21 dated 23.09.2020 wherein it was proposed to :

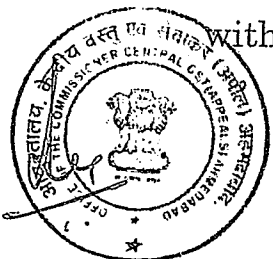
- A. Demand and recover the service tax amounting to Rs.2,02,798/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- B. Impose penalty under Sections 77(1) and 78 of the Finance Act, 1994.
- C. Recover late fee in terms of Rule 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 wherein the demand of service tax amounting to Rs.70,486/- was confirmed along with interest. Penalty equivalent to the service tax amount confirmed was imposed under Section 78 of the Finance Act, 1994. Penalty amounting to Rs.10,000/- was imposed under Section 77 (1) (a) of the Finance Act, 1994. Penalty amounting to Rs.40,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. The demand of service tax amounting to Rs.1,32,312/- was dropped.



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

- i. The SCN demanding service tax was issued merely on the details obtained by the department from the Income Tax department and while issuing the SCN, it was presumed that the income declared by them in the ITR was towards rendering of taxable service.
- ii. The impugned order has been issued in violation of the principles of natural justice. Regarding letters dated 15.02.2022, 07.03.2022 and 14.03.2022 communicating dates of personal hearing, it is submitted that they had received letter dated 28.02.2022, however, none of the other three letters were received by them and they could not remain present for the hearing.
- iii. In terms of Section 33 of the Central Excise Act, 1944 three opportunity of personal hearing is to be given and has to be served as provided in Section 37C of the Central Excise Act, 1944, however, the adjudicating authority has failed to do so.
- iv. Reliance is placed upon the judgment in the case of Ashesh Goradia Vs. Commissioner of Central Excise, Mumbai-II – 2013 (295) ELT 547 (Tri.-Mumbai) and V.K. Thampi Vs. Collector of Customs and Central Excise, Cochin – 1988 (33) ELT 424 (Tribunal).
- v. They were derived from availing sufficient opportunity of personal hearing and accordingly, the impugned order is issued without observing the principles of natural justice.
- vi. During F.Y. 2014-15, they were engaged in providing Tuitions to students and is categorized as 'service' in terms of Section 65B (44). However, the adjudicating authority has erred in holding sales of 'Khakra' amounting to Rs.6,98,600/- as service and accordingly, demand of service tax amounting to Rs.70,486/- has been confirmed.
- vii. It is submitted that Khakra were cooked using material which were purchased for their daily household use. Such purchases are made in lump sum from the grocery shop on yearly basis out of cash available with them. Hence, purchase invoices are not available.



- viii. Preparation of Khakra is in the nature of manufacturing and amounts to manufacture, which is exempted under Central Excise Chapter Heading No. 19059090. The production and processing of goods is covered under the Negative List clause (f) of Section 66D of the Finance Act, 1994 and hence, is not taxable. Clause (f) was omitted by Finance Act, 2017 and corresponding Entry No. 30 was introduced in Notification No.25/2012-ST dated 20.06.2012. Hence, no service tax is payable by them on Khakra manufactured and sold.
- ix. As regards evidence for purchase of raw material used for preparation of Khakra, it is submitted they are not required to keep any records under Section 44AD of the Income Tax Act, 1961 where under their Income Tax Returns are assessed.
- x. The adjudicating authority has considered income under Tuition Fees without any invoices and the same has to be applied even in the case of sale of Khakra also.
- xi. They had in the Profit and Loss Account declared income of Rs.9,42,160/- towards Tuition Fees and Rs.6,98,600/- under the head of Other Income, with the sub-head as Gruh Udyog Income and their ITR is submitted accordingly by making assessment under Section 44AD of the Income Tax Act, 1961.

5. Personal Hearing in the case was held on 05.01.2023. Shri Vijay N. Thakkar, Consultant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He stated that the other income pertain to sale of Khakra, which is exempt from service tax.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issue before me for decision is as whether the impugned order confirming the demand of service tax amounting to Rs.70,486/-, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to F.Y. 2014-15.



7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing as well as materials available on records. The have in their appeal memorandum stated that the personal hearing was fixed on three different dates viz. 15.02.2022, 07.03.2022 and 14.03.2022, however, only letter dated 28.02.2022 for personal hearing on 07.03.2022 was received by them. The appellant have contended that the impugned order was passed in violation of the principles of natural justice and it not sustainable in law.

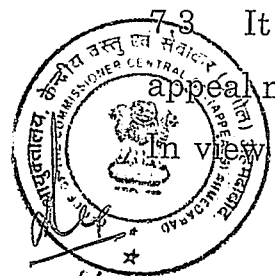
7.1 I find that in the impugned order, it has been recorded at Para 5.1 that the opportunity of personal hearing was granted on 15.02.2022, 07.03.2022 and 14.03.2022 but nobody attended the hearing. Accordingly it was presumed that the appellant did not want add anything else that what was submitted in their written replies and the case was adjudicated ex-parte.

7.2 In terms of Section 33A (1) of the Central Excise Act, 1944, the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that in the instant case, three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. I find it relevant to refer to the judgment of the Hon 'ble High Court of Gujarat in the case of Regent Overseas Pvt Ltd. Vs. UOI – 2017(6) GSTL 15(Guj) wherein it was held that :

“12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.”

7.3 It is further observed that the appellant have made submissions in their appeal memorandum, which were not made before the adjudicating authority.

In view of the above, I am of the considered view that in the interest of the



principles of natural justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of personal hearing.

8. In view of the above, the impugned order is set aside and the matter remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to appear before the adjudicating authority as and when personal hearing is fixed by the adjudicating authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.

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.

*(Signature)*  
(Akhilesh Kumar) 09.01.2023.  
Commissioner (Appeals)  
Date: 09.01.2023.

Attested:

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



**BY RPAD / SPEED POST**

To

M/s. Pranav S. Raval,  
A-204, Dev Archan Flat,  
Near Bonny Travels,  
Opposite Kochrab Ashram,  
Paldi, Ahmedabad

Appellant

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

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.