



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 : 20230264SW000000E573

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2350/2022 / 2623-22
ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-153/2022-23
दिनांक Date : 06-02-2023 जारी करने की तारीख Date of Issue 21.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

- ग Arising out of OIO No. 06/AC/Parth Engimech/Div-VII/A'bad-South/2022-23 दिनांक: 25.04.2022 passed by Assistant Commissioner, CGST, HQ, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Parth Engimech Pvt Ltd
12, Kamdhenu Complex,
Near Panjrapole Cross Roads,
Ambawadi, 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 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 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 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.

- 8ण 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.

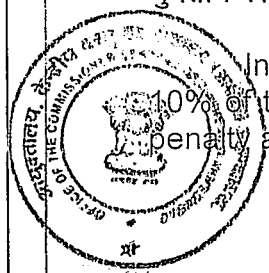
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xxxii) amount determined under Section 11 D;
(xxxiii) amount of erroneous Cenvat Credit taken;
(xxxiiii) 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. Parth Enginech Private Limited, 12, Kamdhenu Complex, Near Panjrapole Cross Roads, Ambawadi, Ahmedabad - 380015 (hereinafter referred to as the "appellant") against Order in Original No. 06/AC/Parth Enginech/Div-VI/A'bad -South/2022-23 dated 25.04.2022 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, H.Q., Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAHCP6678BSD001. As per the information received from the Income Tax Department, it was found that the appellant had declared different value in their ST-3 return and ITR for F.Y. 2015-16. Scrutiny of the data indicated that the appellant had declared lesser taxable value amounting to Rs.2,02,41,712/- in the ST-3 Returns on which service tax amounting to Rs.30,36,257/- was not paid. The appellant was called upon to explain the reasons for the difference and submit documents thereof. The appellant vide letter dated 22.12.2020 submitted their reply. However, from the documents submitted by the appellant, it could not be ascertained whether they had correctly discharged their service tax liability. The appellant had not submitted proper details/appropriate documents explaining the difference and, therefore, no detailed verification could be done in this regard.

2.1 Therefore, the appellant was issued Show Cause Notice bearing No. V/WS06/O&A/CN-564/2020-21 dated 30.12.2020 wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.30,36,257/- 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)(c), 77(2) and 78 of the Finance Act, 1994.



3. The SCN was adjudicated vide the impugned order wherein :
- The demand of service tax amounting to Rs.30,36,257/- was confirmed.
 - Interest was ordered to be recovered under Section 75 of the Finance Act, 1994.
 - Penalty amounting to Rs.30,36,257/- was imposed under Section 78 of the Finance Act, 1994.
 - Penalty amounting to Rs.10,000/- was imposed under Section 77(1) (c) of the Finance Act, 1994.
 - Penalty amounting to Rs.10,000/- was imposed (Section under which it is imposed has not been specified).

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

- They had already submitted all the details including proof of filing of half yearly ST-3 returns for both the half of F.Y. 2015-16. They had also submitted all Ledger Accounts of Sales made during F.Y. 2015-16 along with Form 26AS and audited accounts and reconciliation of Sales between Form 26AS, Books of Accounts and the T-3 returns.
- The adjudicating authority has erred in arriving at difference in taxable value of Rs.2,02,41,712/- despite having audited accounts submitted by them. In view of the technical error/site problem/computer data error, which is not in their hands, they had given online acknowledgment of the returns filed by them.
- The decision cited and relied upon by the adjudicating authority is not applicable to the facts and circumstances of the case.
- The adjudicating authority has erred in charging interest under Section 75 of the Finance Act, 1995.
- They had filed both the half yearly returns for F.Y. 2015-16 in time. However, the electronic data as per the service tax site does not show the ST-3 data of the second half i.e. October, 2015 to March, 2016. Therefore, there is a data mis-match between the ST-3 returns and the ITR data.

The adjudicating authority has erred in determining Works Contract Service 40% and exempted services as taxable services. In fact the



taxable services shown under Works Contract Service (40%) and services claimed exempted have been rightly shown and calculated in the Books of Accounts and ST-3 returns. All the proofs demanded were given, including confirmation from Torrent Power Ltd.

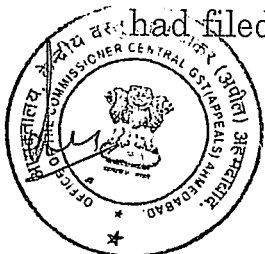
vii. The adjudicating authority has erred in imposing penalty under Section 77(1)(c), 77(2) and 78 of the Act.

5. Personal Hearing in the case was held on 20.01.2023. Shri Ajay R. Pandhi, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in the appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing and the materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming the demand of service tax amounting to Rs.30,6,257/- on the differential taxable value amounting to Rs.2,02,41,712/-, in the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

7. It is observed that the demand of service tax was raised against the appellant based on difference observed upon reconciliation of the value of services declared in their ITR, received from the Income Tax department, with the taxable value of services declared in their ST-3 returns. The appellant had submitted before the adjudicating authority that they had filed the ST-3 returns on time and paid service tax and interest and submitted a statement showing reconciliation between their ST-3 returns and the ITR. The adjudicating authority has, at Para 13 of the impugned order recorded, that only the ST-3 returns for the First Half of F.Y. 2015-16 is available on record and that there is no record in respect of the ST-3 returns for the Second Half of F.Y. 2015-16.

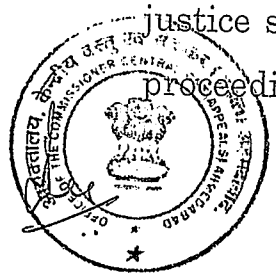
7.1 The appellant have in their appeal memorandum contended that they had filed the ST-3 return for the Second Half of F.Y. 2015-16 on time and



submitted copy of the online acknowledgment receipt. On perusal of the receipt, it is observed that it is dated 09.07.2016 and states that "*Your XML file has been uploaded successfully. Please view the status after one Business day. You can view the status of the uploaded XML through the navigational path RET > eFiling > View XML Status*". It is, therefore, apparent that the receipt is in respect of filing of ST-3 returns. However, it is observed that the adjudicating authority has not undertaken any verification to ascertain whether the ST-3 return, claimed to have been filed by the appellant, was actually filed. The appellant had also submitted copies of 42 Challans, bearing dates from June, 2015 to May, 2016, evidencing payment of service tax totally amounting to Rs.41,96,876/-. However, the adjudicating authority has without any verification, summarily rejected them on the ground that it is not forthcoming as to which period these payments have been made by the appellant.

7.2 It is also observed that the adjudicating authority has not given any finding on the contentions as well as the documents submitted by the appellant. The reconciliation statement submitted by the appellant too has been discarded by the adjudicating authority without assigning any justification.

8. The fact as to whether the appellant had filed their ST-3 return for the second half of F.Y. 2015-16 as well as the statement of reconciliation of the ST-3 and the ITR data requires verification by the adjudicating authority before the issue can be decided. Accordingly, I am of the considered view that the matter is required to be remanded matter back to the adjudicating authority for denovo adjudication after considering the submissions of the appellant as well as verifying the filing of ST-3 return by the appellant and thereafter passing a speaking order on the issues raised by the appellant in their defense. The appellant are directed to submit all relevant details and documents before the adjudicating authority within 15 days of the receipt of this order. Needless to state, the principles of natural justice should be adhered to by the adjudicating authority in the remand proceedings.



9. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

10. 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 Kumar
 06 February, 2023.
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 06.02.2023.

Attested:

(Signature)
 (N.Suryanarayanan. Iyer)
 Assistant Commissioner (In situ),
 CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Parth Engimech Private Limited,
 12, Kamdhenu Complex,
 Near Panjrapole Cross Roads,
 Ambawadi,
 Ahmedabad – 380015

Appellant

The Assistant Commissioner,
 CGST, Division- VI,
 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.