



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 : 20230264SW000000D25A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2804/2022 / 8598-8602
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-155/2022-23  
दिनांक Date : 08-02-2023 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. 25/DC/Darshit Mahendrakumar/Div-6/A'bad South/KP/2022-23 दिनांक:  
26.05.2022 passed by Deputy Commissioner (Technical), CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Darshit Mahendrakumar Vasa  
104, Shiraj Apartment,  
B/H. Mansi Complex, Vastrapur,  
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, 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 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 हों।

(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.

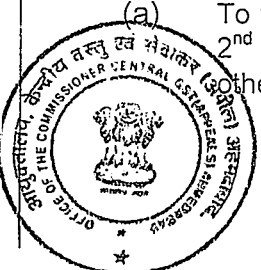
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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.

- 60 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:

- (xxv) amount determined under Section 11 D;  
(xxvi) amount of erroneous Cenvat Credit taken;  
(xxvii) 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."



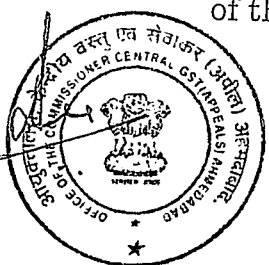
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Darshit Mahendrakumar Vasa, 104, Shriraj Apartment, Behind Mansi Complex, Vastrapur, Ahmedabad – 380 015 (hereinafter referred to as the “appellant”) against Order in Original No. 25/DC/Darshit Mahendrakumar /Div-6/A’bad South/KP/2022-23 dated 26.05.2022 [hereinafter referred to as “*impugned order*”] passed by the Deputy Commissioner (Technical), CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant was not registered with the Service Tax department. They were having PAN No. ACHPV5069R. As per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.11,17,356/- during F.Y. 2015-16. However, they did not obtain service tax registration and did not pay service tax on such income from service. The appellant was called upon to submit documentary evidence in respect of the income earned by them. The appellant, however, did not submit the called for documents and details. Therefore, the appellant was issued Show Cause Notice bearing No. V/WS06/O&A/SCN-371/2020-21 dated 24.12.2020 wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.1,67,603/- 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. Prescribed Late Fee should not be recovered from them for each ST-3 return filed late for the relevant period, under 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 :
- a) The demand of service tax amounting to Rs.1,67,603/- was confirmed along with interest.
  - b) Penalty amounting to Rs.10,000/- was imposed under Section 77 (1) (a) of the Finance Act, 1994.



c) Penalty amounting to Rs.1,67,603/- was imposed under Section 78 of the Finance Act, 1994.

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

- i. The adjudicating authority has erred in confirming the demand merely based on assumption that the income declared in the ITR becomes taxable under service tax despite the fact that one of the customers had deducted TDS on provisional basis before service gets completed and invoice and payment received. As per the Point of Taxation Rules, 2011, the taxability of such service falls in F.Y. 2016-17 and not in F.Y. 2015-16.
- ii. The demand has been confirmed without considering the fact that detailed reply to the SCN was submitted by them on 09.02.2021 along with reconciliation statement by describing proper facts of the case. But the reply filed by them was not taken on record.
- iii. The demand has been confirmed without giving proper opportunity of being heard and by sending email for PH notices on such email ID which is not on record with the department because they were not registered with the department. The emails were sent only to prove that they were given opportunity of being heard.
- iv. The adjudicating authority has not followed judicial discipline for sending adjudication letters through registered post or handing it over personally to them rather than sending through unregistered emails.
- v. The adjudicating authority has erred in confirming the demand without considering the threshold exemption benefit available to them as per Notification No.33/2012-ST dated 20.06.2012.
- vi. The adjudicating authority has erred in imposing penalty under Section 78 (1) of the Finance Act, 1994 despite there being no suppression on their part.

5. Personal Hearing in the case was held on 20.01.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted copies of Form 26AS and P&L Account for F.Y. 2014-15.



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 as to whether the impugned order confirming the demand of service tax by the adjudicating authority, in the facts and circumstances of the case, is legal and proper. The demand pertains to the period F.Y. 2015-16.

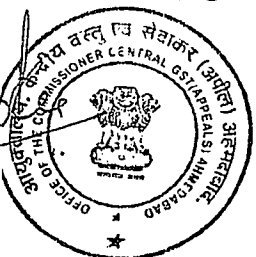
7. I find that the respondent was issued SCN on the basis of the data received from the Income Tax Department and the appellant respondent was called upon to submit documents/details in respect of the service income earned by them. However, the appellant failed to submit the same. Thereafter, the appellant 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 appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the appellant 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 it 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.”

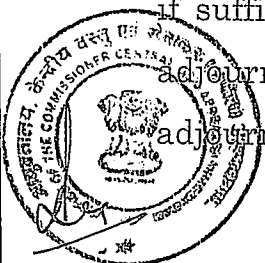
7.2 However, in the instant case, I find that no such exercise, as instructed by the Board, has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.



8. As regards the merits of the case, the appellants have contended that they are working as a Liaisoning Consultant and receiving income in the nature of Commission Charges. Being small service provider, they are exempted from paying service tax in terms of Notification No.33/2012-ST dated 20.06.2012. The appellant has also contended that out of the total income of Rs.11,17,356/-, an amount of Rs. 2 lakhs was pertaining to F.Y. 2016-17, as the invoice was issued by them on 11.04.2016 for an amount of Rs.2,03,594/- as the provision of service was completed in F.Y. 2016-17. However, the service recipient, on adhoc basis, deducted TDS on 31.03.2016 on the amount of Rs. 2 lakhs. As per Rule 3 of the Point of Taxation Rules, 2011, the service tax is to be paid in F.Y. 2016-17 and not F.Y. 2015-16. If this amount is excluded, the income earned from the services provided by them is Rs.9,17,356/-, which is below the threshold exemption limit of Rs. 10 lakhs. Hence, they are not liable to pay service tax.

9. It is observed that the above submissions and contention of the appellant have not been discussed or considered by the adjudicating authority in the impugned order. The adjudicating authority has recorded at Para 5 of the impugned order that the appellant has not submitted their reply to the SCN. Further, it has also been recorded that the appellant was called for personal hearing on three different dates and the notice for personal hearing was sent to the appellant at their registered e-mail ID. However, the appellant did not attend the personal hearing on any of the dates fixed. Therefore, the case was adjudicated ex-parte by the adjudicating authority. In this regard, the appellant have submitted that they had submitted their reply to the SCN on 09.02.2021 and have submitted a copy of the acknowledgment receipt. Further, as regards the notice of personal hearing, the appellant have contended that they had received only one letter regarding personal hearing and that too was received just one day before the date of hearing.

10. 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 three adjournments as contemplated in Section 33A of the Central Excise Act, 1944



were not been granted to the appellant. It is pertinent 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.”


10.1 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. The appellant is directed to file their written submissions before the adjudicating authority as well as submit all the relevant documents in support of their claim, within 15 day of the receipt of this order. The adjudicating authority shall consider the submissions as well as the documents submitted by the appellant and decide the case afresh after affording the appellant the opportunity of personal hearing.

11. In view of the above, the impugned order is set aside and the matter remanded back to the adjudicating authority for adjudication afresh in terms of the directions contained in Para 10.1 above. The appeal filed by the appellant is allowed by way of remand.

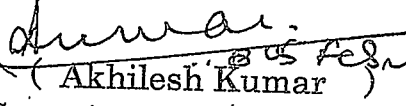
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

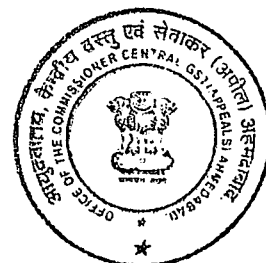
The appeal filed by the appellant stands disposed of in above terms.

Attested:

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

BY RPAD / SPEED POST

  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Date: 08.02.2023.





To

M/s. Darshit Mahendrakumar Vasa,  
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Behind Mansi Complex,  
Vastrapur, Ahmedabad - 380 015

Appellant

The Deputy 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.



