



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 : 20230264SW0000000F78

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/149/2022 / 8444-NS
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-157/2022-23
दिनांक Date : 09-02-2023 जारी करने की तारीख Date of Issue: 20.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-176/AC-RAG/2021-22 दिनांक: 21.03.2022
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 Arvindbhai Ambalal Patel
A/19, Satellite Bungalow, Opp. Sarthak Tower,
Ramdevnagar Road, 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:

(i) 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 पट्टी 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.

2^o 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.

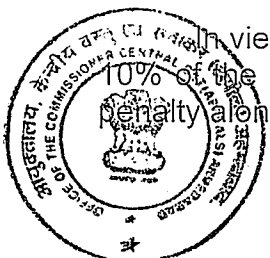
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xix) amount determined under Section 11 D;
(xx) amount of erroneous Cenvat Credit taken;
(xxi) 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 one 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. 22/2021-22 dated 17.06.2022 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-176/AC-RAG/2021-22 dated 21.03.2022 [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. Arvindbhai Ambalal Patel, A/19, Satellite Bungalow, Opposite Sarthak Tower, Ramdevnagar, Ahmedabad – 380015 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case are that the respondent was 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.34,11,051/- during F.Y. 2015-16. However, the respondent did not obtain service tax registration and did not pay service tax on these service income. Therefore, the respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-792/(FY 2015-16)/2020-21 dated 24.12.2020 wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.4,94,602/- 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 on the grounds that the Preventive Section of Headquarter, Ahmedabad South had



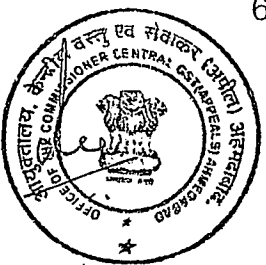
enquired the matter and the respondent was informed about the conclusion of the enquiry for the period from F.Y. 2013-14 to F.Y. 2016-17.

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.
- ii. The only finding given by the adjudicating authority is at Para 5.1 of the impugned order and only on that basis and without any verification, the adjudicating authority has concluded the proceedings in favour of the respondent.
- iii. No findings has been recorded as to whether the issue involved in the enquiry conducted by Preventive Section of Headquarter and the issue in the impugned SCN are the same.
- iv. No finding has been recorded as to whether the amount involved in the enquiry conducted by Preventive Section is inclusive of the amount involved in the SCN.
- v. The only basis on which the issue has been decided is that the matter was enquired by Preventive Section and the respondent was informed about conclusion of the enquiry for F.Y.2013-14 to F.Y. 2016-17.

5. The respondent have filed their cross-objection to the appeal on 05.01.2023, wherein it was contended that :

- They are in the business of export of services to foreign university and colleges. The had filed ITR for F.Y. 2015-16 declaring the receipts amounting to Rs.34,11,051/-.
- Export of Service Rules were in force wherein it was specifically provided that no service tax shall be leviable on export of a taxable service. From 01.07.2012, the Export Rules were rescinded and henceforth, the location of a taxable service was to be determined in accordance with the Place of Provision of Service Rules, 2012 and Rule 6A of the Service Tax Rules, 1994.

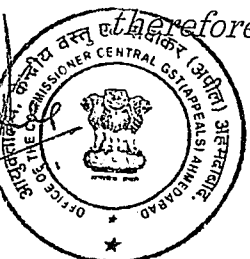


- The income received in the nature of remittance received from outside India satisfies all the conditions of Rule 6A and, hence, to be treated as export of service.
- The Commission income amounting to Rs.9,21,714/- is in the nature of Income from Other Sources and the same has been wrongly clubbed under Profits and gain from business and profession while filing income tax return. Thus, the total receipts would amount to Rs.9,00,000/-.
- As their taxable turnover was Rs.9,00,000/- during F.Y.2015-16, they were not required to get themselves registered under the provisions of Section 69 (2) of the Finance Act, 1994.
- The impugned order has been passed taking into consideration all the necessary documents and evidences.

6. Personal Hearing in the case was held on 20.01.2023. Shri Rushikesh Sheth, Chartered Accountant, appeared on behalf of the respondent for the hearing. He reiterated the submissions made in cross-objection to appeal. He stated that he would submit a written submission w.r.t. the commission income earned by them. However, the respondent have failed to submit the written submissions as stated by them.

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 materials available on records. The issue before me for decision is whether the impugned order dropping the demand of service tax amounting to Rs.4,94,602/-, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to F.Y. 2015-16.

8. It is observed from the materials available on record that the proceedings against the respondent were dropped on the grounds that "*the matter was also enquired by the Preventive Section of Headquarter of CGST, Ahmedabad South and Superintendent of CGST has informed the noticee about conclusion of the enquiry for the period 2013-14 to 2016-17. I therefore do not find any other reasons to continue with the Show Cause*



Notice". However, the adjudicating authority has not recorded any findings as to whether the issue involved in the matter enquired by the Preventive Section was the same as that in the SCN issued to the respondent. Further, while the adjudicating authority has not recorded any findings on the merits of the case, the respondent have, in the cross-objections filed by them, made submissions on the merits of the issue involved. These submissions appears to have been not made before the adjudicating authority.

8.1 In view of the fact that the adjudicating authority has not given any findings on the issues involved and the merits thereof and neither has he given any finding on whether the issue involved in the impugned SCN is the same covered by the enquiry of Preventive Section of CGST, Ahmedabad South Commissionerate, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for denovo proceedings for passing a speaking order on the merits of the issues involved. Needless to state, the principles of natural justice are to be adhered to in the remand proceedings.

9. 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.

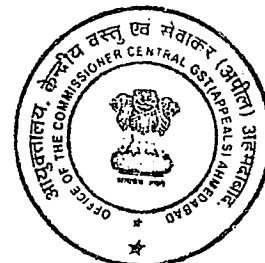
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhilesh Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 09.02.2023.

Attested:

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



BY RPAD / SPEED POST

To

The Assistant Commissioner,

Appellant

CGST, Division- VII,
Commissionerate : Ahmedabad South.

M/s. Arvinbhai Ambalal Patel,
A/19, Satellite Bungalow,
Opposite Sarthak Tower,
Ramdevnagar, Ahmedabad – 380015

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.

