



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 : 20230364SW000000B9FB

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2739/2022 / १००१ - ०५
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-170/2022-23
दिनांक Date : 28-02-2023 जारी करने की तारीख Date of Issue 01.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-33/Saurabh Soni/AC/DAP/2022-23 दिनांक: 15.06.2022
passed by Assistant Commissioner, CGST, Division-VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Saurabh Nanalal Soni
201, Crystal Arcade,
Next to Telephone Exchange,
C.G. Road, Ahmedabad - 380009

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) केंद्रीय 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 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, अपीलों 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 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.

- 16^प 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.

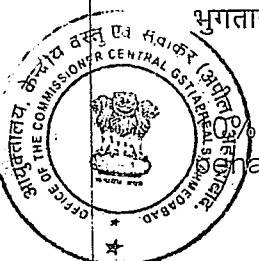
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (iv) amount determined under Section 11 D;
(lvi) amount of erroneous Cenvat Credit taken;
(lvii) 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 of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



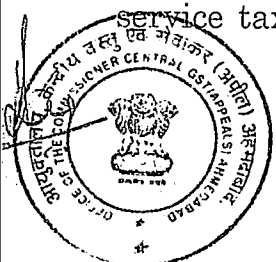
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Saurabh Nanalal Soni, 201, Crystal Arcade, Next to Telephone Exchange, C.G. Road, Ahmedabad – 380 009 (hereinafter referred to as the “appellant”) against Order in Original No. CGST-VI/Dem-33/Saurabh Soni/AC/DAP/2022-23 dated 15.06.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division-VI, Commissionerate Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax Department. They were holding PAN No. ACMPS6146D. As per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.79,41,464/- during F.Y. 2014-15. However, the appellant did not obtain service tax registration and did not pay service tax on the service income. The appellant was requested vide letters on different dates to submit the documentary evidence in respect of their income. However, the appellant failed to submit the required details/documents and neither was any explanation/clarification submitted regarding the income earned. Therefore, the service income earned by the appellant was considered as taxable value and it appeared that the appellant had failed to pay the service tax amounting to Rs.9,81,565/- on the said amount. Therefore, the appellant was issued Show Cause Notice bearing No. V/WS06/O&A/SCN-67/2020-21 dated 23.09.2020 wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.9,81,565/- 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.

2. The SCN was adjudicated vide the impugned order wherein the demand of service tax was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78 (1) of the Finance Act,



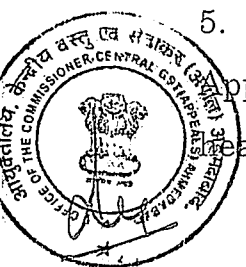
1994. Penalty amounting to Rs.10,000/- was imposed under Section 77(1) of the Finance Act, 1994. Late Fee amounting to Rs.40,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

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

- i. The service of job work on Gold and other precious jewellery is exempted under Notification No.25/2012-ST dated 20.06.2012. The service provided by them is exempt as per Entry No.30 of the said Notification.
- ii. They receive Gold Bar and alloy from the service recipient and provided job work/labour services by converting the Gold in to articles of jewellery. They are not the owner of any of the goods provided by the principal, rather they are providing only job work services to the principal manufacturer.
- iii. They submit copies of the Labour/Job-work Ledger, Principal Manufacturer's labour issue voucher along with their receipt voucher for fine gold, principal manufacturer's labour receipt vouchers along with their labour bill. From these it can be seen that they had provided on work service in relation to article of jewellery falling under Chapter 71 which is covered by Entry No.30 of the said exemption Notification.
- iv. As per Notification No.33/2012-ST dated 20.06.2012 they are not liable to pay service tax as the service provided by them is fully exempted service. Consequently, they are also not liable to get registered under service tax law.
- v. When there is no liability to collect and pay service tax, the demand of interest or any penalty does not arise.

4. Personal Hearing in the case was held on 12.01.2023. Shri Meet Jadawala, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the appeal Memorandum, the submissions made in the course of the personal hearing and the materials available on records. The issue before me for



decision is as to whether the impugned order passed by the adjudicating authority confirming the demand of service tax amounting to Rs.9,81,565/-, in the facts and circumstances of the case, is legal and proper. The demand pertains to the period F.Y. 2014-15.

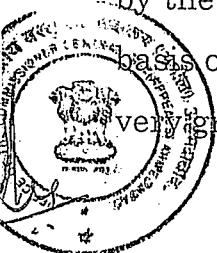
6. I find that the appellant was issued SCN on the basis of the data received from the Income Tax Department. It is stated at Para 3 of the SCN that the appellant was called upon to submit documents/details in respect of the service income earned by them, however, the appellant failed to submit the same. It is observed that in the SCN except for stating that "*the nature of activities carried out by the said Service Provider appears to be covered under the definition of service and appears that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in Section 66E of the Finance Act, 1994*", no other cogent reason or justification is forthcoming in the SCN 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.

6.1. I find in 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."

6.2 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.



7. Coming to the merits of the case, it is observed that the adjudicating authority has at Para 8 of the impugned order recorded his finding that the appellant is engaged in providing labour service for manufacturing of gold jewellery/ornament from the gold bars supplied by the service recipients. Accordingly, the adjudicating authority has held that the labour service provided by the appellant needs to be classified as Business Auxiliary service provided in relation to production or processing of goods, instead of job work as claimed by the appellant.

8. The appellant have, on the other hand, claimed that the job work services provided by them is exempted in terms of Entry No.30 of Notification No.25/2012-ST dated 20.06.2012. It is pertinent to refer to Sr. No. 30 of Notification No.25/2012-ST dated 20.06.2012 as it stood at the relevant point of time, which is reproduced below :

“Carrying out an intermediate process as job work in relation to –

(a)

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of Central Excise Tariff Act, 1985 (5 of 1986);”

8.1 From a plain reading of the above Entry 30 of the said Notification, it is clear that only intermediate process carried out as job work is exempted. The appellant have along with their appeal memorandum, submitted copies of the labour bills raised by them as well as labour receipt vouchers issued by the principals. On perusing the same, it is observed that the appellant is engaged in making ornaments from the gold supplied by the principals on job work basis for which they are paid labour charges. In the instant case, it is observed that the appellant are manufacturing Gold Ornaments/Jewellery on job work basis. The job work carried out by the appellant amounts to manufacture of Gold Ornaments as can be seen from the Labour Receipt Vouchers as well as the Labour Bills submitted by the appellant as part of the appeal memorandum. Since the activity carried out by the appellant results in manufacture of Gold Ornaments, from the Gold supplied by their principals, it cannot be said that the activity undertaken by the appellant is an intermediate production process. Consequently, the appellant are not eligible to exemption in terms of the said Entry No.30 of Notification No.25/2012-ST dated 20.06.2012.

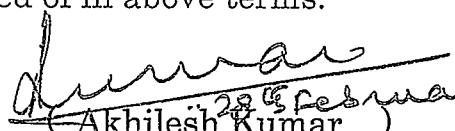


8.2 It is further observed that Section 66D (f) of the Finance Act, 1994 as it stood at the relevant point of time was in respect of "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption". Since appellants are undertaking manufacture of gold ornaments/jewellery on job work basis, the same falls within the Negative List of services in terms of 66D(f) of the Finance Act, 1994. Accordingly, the appellants are not liable to pay service tax on the manufacture of gold ornaments/jewellery on job work basis.

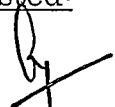
9. In view of the facts discussed hereinabove, I set aside the impugned order and allow the appeal filed by the appellants.

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

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 28.02.2023.

Attested:


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



BY RPAD / SPEED POST

To

M/s.Saurabh Nanalal Soni,
201, Crystal Arcade,
Next to Telephone Exchange,
C.G. Road, Ahmedabad – 380 009

Appellant

The Deputy Commissioner,
CGST, Division- I,
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.