



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 : 20230364SW0000002E2E

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2784/2022 / 2022 - 16
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-174/2022-23  
दिनांक Date : 03-03-2023 जारी करने की तारीख Date of Issue 03.03.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 59/WS08/AC/HKB/2022-23 दिनांक: 29.06.2022 passed by Assistant Commissioner, CGST, TAR Section, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Tirth Construction  
Opposite H.P. Petroleum Pump,  
Near Ramjalaram Society,  
Jivraj Park, Ahmedabad - 380051

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।

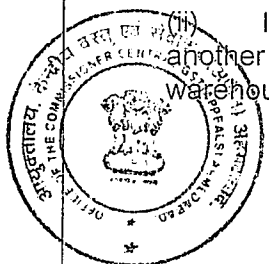
Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

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।

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 संलग्नरकम 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.

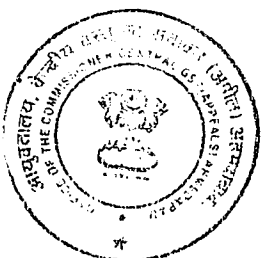
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.

17<sup>प</sup> 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.

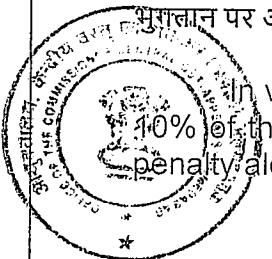
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (Ixi) amount determined under Section 11 D;
- (Ixii) amount of erroneous Cenvat Credit taken;
- (Ixiii) 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. Tirth Construction, Opposite H.P. Petroleum Pump, Near Ramjalaram Society, Jivraj Park, Ahmedabad-380 051 (hereinafter referred to as the "appellant") against Order in Original No. 59/WS08/AC/HKB/2022-23 dated 29.06.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, TAR Section, CGST, 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 are holding PAN No. AAGFT8197D. As per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.18,52,377/- during F.Y. 2014-15. 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 documents, however, they did not submit the called for documents and details. Therefore, the appellant was issued Show Cause Notice bearing No. CGST/Div-VIII/O&A/TPD/140/AAGFT8197D/2020-21 dated 21.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs.2,28,953/- 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), 77(2) and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein :

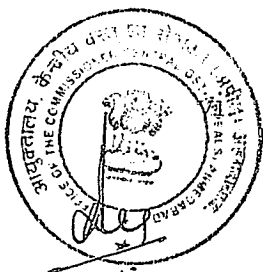
- I. The demand of service tax amounting to Rs.2,28,953/- was confirmed along with interest.
- II. Penalty amounting to Rs.10,000/- was imposed under Section 77(1) of the Finance Act, 1994.
- III. Penalty amounting to Rs.2,28,953/- was imposed under Section 78 (1) of the Finance Act, 1994.



4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds :

- i. They were working as a contractor of M/s.Swagat Infrastructure Pvt. Ltd. (SIPL) and had raised bills of labour with material of Rs.9,81,004/- during F.Y. 2013-14 and Rs.8,71,373/- during F.Y. 2014-15. They had received the total amount of Rs.18,52,377/- in F.Y. 2014-15 and, had, accordingly booked the income in F.Y. 2014-15 on cash basis. As per the provisions of service tax, they were liable for service tax on the billing basis as they were a contractor.
- ii. They had raised bills for Rs.9,81,004/- in F.Y. 2013-14, which was below the threshold limit and they were eligible for SSI exemption. Similarly, they had raised bills for Rs.8,71,373/- in F.Y. 2014-15, which was also below the threshold limit and they were eligible for SSI exemption.
- iii. While determining the service tax liability, the benefit of threshold exemption was not given.
- iv. From the provisions of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, it is clear that they being contract service provider, were eligible for abatement of 60% of the total value of service and were liable to pay service tax @ 40% of the total value of the service.
- v. They were also eligible for partial reverse charge to the extent of 50% of the service tax payable in terms of Notification No.30/2012-ST dated 20.06.2012.
- vi. The department has not considered the factual details while doing reconciliation of the income with Books of Accounts.
- vii. Reliance is placed upon the judgment in the case of Regional Manager, Tobacco Board Vs. Commissioner of C.Ex., Mysore – 2013 (31) STR 673 (Tri.-Bang.); Anvil Capital Management (P) Ltd. Vs. Commissioner of Service Tax, Mumbai – 2010 (20) STR 789 (Tri.-Mumbai); Commissioner of Service Tax, Ahmedabad Vs. Purni Ads. Pvt. Ltd. – 2010 (19) STR 242 (Tri.-Ahmd.); Sify Technologies Ltd. Vs. Commissioner of Service Tax, Chennai – 2009 (16) STR 63 (Tri.-Chennai); Bhogilal Chhagulal & Sons Vs. Commissioner of Service Tax, Ahmedabad – 2013 (30) STR 62 (Tri.-Ahmd.).

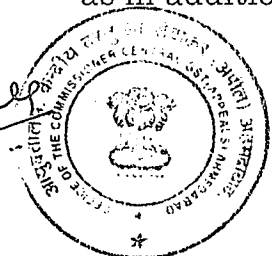
The SCN covers the period from 01.04.2014 to 31.03.2015 and was issued on 21.09.2020 by invoking the extended period of limitation. Extended



period cannot be invoked as there is no suppression, wilful mis-statement on their part. No case of suppression, wilful mis-statement has been made out in the SCN.

- vii. Penalty cannot be imposed under Section 78 of the Finance Act, 1994. They have demonstrated that they have not suppressed any information from the department and there was no wilful mis-statement on their part. The SCN has not brought any evidence which can establish that they had suppressed anything from the department. Hence, the present case is not the case of fraud, suppression, wilful mis-statement of facts etc. Hence, penalty under Section 78 cannot be imposed. They are entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the department. They rely upon the decision in the case of Steel Cast Ltd. – 2011 (21) STR 500 (Guj.).
- viii. Penalty cannot be imposed under Section 77 of the Finance Act, 1994 as there is no short payment of service tax. They have been and are under the bona fide belief that they are not liable to pay service tax. There was no intent to evade payment of service tax. Therefore, penalty is not imposable.
- ix. Reliance is placed upon the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa – AIR 1970 (SC) 253; Kellner Pharmaceuticals Ltd. Vs. CCE – 1985 (20) ELT 80; Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC) and CCE Vs. Chemphar Drugs and Liniments – 1989 (40) ELT 276 (SC).
- x. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon & Engg. Co Ltd. Vs. Commissioner of C.Ex., Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs. Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur – 2001 (129) ELT 458 (Tri.\_Del).

5. Personal Hearing in the case was held on 12.01.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum as well as in additional submission.

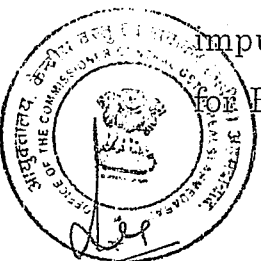


6. In the written submission filed during course of the personal hearing, the appellant basically reiterated the submissions made in the appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax amounting to Rs.2,28,953/-. The demand pertains to the period F.Y. 2014-15.

8. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. The appellant had, as per Form 26AS, received income amounting to Rs. 18,52,377/- and the same has been categorized under Section 194C of the Income Tax Act, 1961, which pertains to payments made to Contractors. The payments shown in Form 26AS are from SIPL. The appellant have contended that they are contractors for SIPL and have undertaken contract work of labour with material. The appellant have further contended that out of the total amount of Rs.18,52,377/-, an amount of Rs.9,81,004/- pertains to F.Y.2013-14, and Rs.8,71,373/- pertains to F.Y.2014-15 and that as the amount of Rs.18,52,377/- was received in F.Y. 2014-15, they had booked it as income in F.Y. 2014-15. The appellant have also contended that they are eligible for exemption available to small service providers as their income in both the financial years was less than the threshold limit of Rs.10 lakhs.

8.1 It is observed that the appellant had made these submissions before the adjudicating authority also but had not submitted any documents in support of their contention. The adjudicating authority has, at Para 16 of the impugned order, recorded his finding that "*I find that the said Noticee have not submitted relevant invoices raised to M/s. Swagat Infrastructure Pvt. Ltd.*". As regards the claim of the appellant for exemption under Notification No.30/2012-ST dated 20.06.2012, the adjudicating authority has observed at Para 19 of the impugned order that from the P&L account and Form 26AS of the appellant for F.Y. 2013-14, "*it is crystal clear that the total income in the F.Y. 2013-14*



*was above the threshold limit of Rs. Ten lakhs and therefore, they are not entitled to SSI exemption for F.Y. 2014-15."*

8.2 The appellant have in their appeal memorandum as well as in their additional written submissions merely reiterated the same contentions made by them before the adjudicating authority. They have not submitted the documents, the non-production of which had led the adjudicating authority to reject their contentions. In the absence of the relevant documents, it is not possible for this authority to examine and decide upon the contentions of the appellant. As the SCN and the impugned order has been issued on the basis of data provided by CBDT, it would be in the interest of justice to provide an opportunity to the appellant to submit a reconciliation statement along with supporting documents. Accordingly, I am of the considered view that the matter is required to be remanded back to the adjudicating authority. The appellant is directed to submit before the adjudicating, within 15 days of the receipt of this order, all the relevant documents in support of their contention that part of the income declared in F.Y.2014-15 pertains to F.Y. 2013-14. They should also submit the necessary documents in support of their claim for abatement as well as for SSI exemption. The adjudicating authority shall after examining the documents submitted by the appellant as well as their submissions, decide the matter afresh by following the principles of natural justice. In view thereof, the impugned order is set aside and the appeal filed by 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.

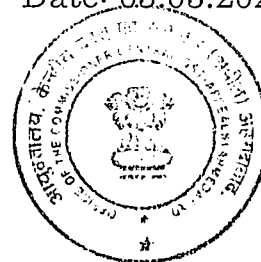
Attested:

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

BY RPAD / SPEED POST

To

*Akhil Kumar*  
3rd March, 2023.  
( Akhilesh Kumar )  
Commissioner (Appeals)  
Date: 03.03.2023





M/s. Tirth Construction,  
Opposite H.P. Petroleum Pump,  
Near Ramjalaram Society,  
Jivraj Park,  
Ahmedabad- 380 051

Appellant

The Assistant Commissioner,  
CGST, TAR Section,  
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.

