



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 : 20230364SW00007757AE

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2783/2022 19380-8K
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-176/2022-23
दिनांक Date : 03-03-2023 जारी करने की तारीख Date of Issue 13.03.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-33/AC-RAG/2022-23 दिनांक: 22.06.2022 passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Devesh S Amin
11, Niyojan Nagar Society,
Opposite Manekbaug Hall,
Ambawadi, Ahmedabad

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 :

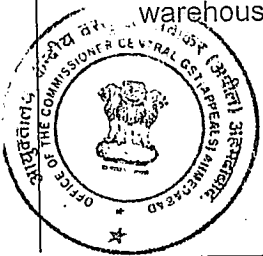
Revision application to Government of India:

(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 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 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 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 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 अनुसूचि-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.

21^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;
इप लिया गलत सेनवैट क्रेडिट की राशि;
बप 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.

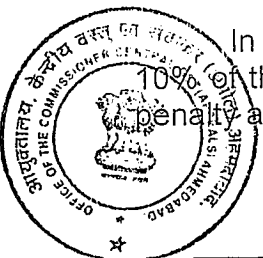
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxiii) amount determined under Section 11 D;
(lxxiv) amount of erroneous Cenvat Credit taken;
(lxxv) 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 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. Devesh S. Amin, 11, Niyojan Nagar Society, Opposite Manekbaug Hall, Ambawadi, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. WS07/O&A/OIO-33/AC-RAG/2022-23 dated 22.06.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-VII, 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. AACHD1855Q. As per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.23,97,597/- during F.Y. 2014-15, Rs.32,10,437/- during F.Y. 2015-16 and Rs.19,42,945/- during F.Y. 2016-17. 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 their income. However, they did not submit the called for documents and details. Therefore, the appellant was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-139/AACHD1855Q/2020-21 dated 23.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs.8,07,053/- 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 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 :

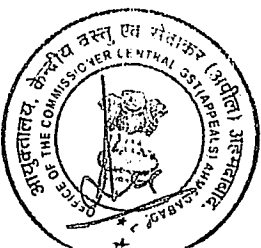
- I. The demand of service tax amounting to Rs.96,600/- was confirmed along with interest.
- II. Penalty amounting to Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.



- III. Penalty amounting to Rs.96,600/- was imposed under Section 78 (1) of the Finance Act, 1994.
- IV. Penalty amounting to Rs.80,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- V. The demand amounting to Rs.7,10,453/- was dropped.

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 are engaged in the construction of school, office, individual residential bungalow and projects provided by Trusts.
- ii. As per Rule 2A of the Service Tax (Determination of Value) Rules, 2006, when bifurcation of value of goods and services is available, the value should be determined in terms of Rule 2A(i) of the said Rules and for other scenarios, it should be determined as per Rule 2A(ii) of the said Rules.
- iii. In F.Y. 2015-16, of the total amount of Rs.32,10,437/-, Rs. 2,60,437/- pertains to Original Work of School, Rs. 2,50,000/- pertains to Original Work of individual Bungalow, and Rs.27,00,000/- pertains to Roller Skating Rink where bifurcation of material part is available.
- iv. The adjudicating authority has not given the benefit of material part in the said Works Contract service. After considering the material part, the total of F.Y. 2015-16 does not increase the limit of Rs. 25 lakhs. Therefore, the liability of service tax does not arise as the taxable value is below the threshold limit as per Notification No.33/2012-ST dated 20.06.2012.
- v. In F.Y. 2016-17, the adjudicating authority has confirmed demand of service tax on the taxable value amounting to Rs.11,64,736/-. However, the liability does not arise as they did not cross the threshold limit during F.Y. 2015-16.
- vi. The SCN is without application of mind and completely mechanical. Reliance is placed upon the judgment in the case of Commissioner of C.Ex., Bangalore Vs. Brindavan Beverages (P) Ltd. – 2007 (213) ELT 487 (SC); Mahadev Trading Company Vs. UOI – 2020-TIOL-1683-HC-AHM-GST; Principal Commissioner Vs. Shubham Electricals – 2016 (42) STR



J312 (Del.) and Order dated 05.04.2021 in the case of Back Office IT Solutions Pvt. Ltd. Vs. UOI in W.P (C) No.566/2019 and CM APPL No. 25101/2019.

- vii. They are not liable to take service tax registration as their taxable turnover is below the exemption limit. In this case, the relevant date will be the date on which service tax is to be paid. The SCN is time barred as there is no suppression.
- viii. Reliance is placed upon the judgment in the case of Cosmic Dye Chemical Vs. Collector of C.Ex., Bombay; Sunder System Pvt. Ltd. Vs, UOI and Ors. – MANU/DE/4374/2019.
- ix. The impugned order has been passed without following the principles of natural justice as the SCN is issued without mentioning the reason, which is considered non-est in law. Reliance is placed upon the judgment in the case of Sahibabad Printers Vs. Additional Commissioner CGST (Appeals) and 2 Others – 2020-TIOL-2164-HC-ALL-GST.
- x. For exemption in terms of Notification No.33/2012-ST dated 20.06.2012, reliance is placed upon the judgment in the case of Ashok Kumar Mishra Vs. CCE & ST – 2018-Tax Pub (ST) 0298 (CESTAT-All.).
- xi. Penalty is not imposable under Section 78 of the Finance Act, 1994 as there is no fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of tax. Reliance is placed upon the catena of judgments of judicial authorities in this regard.
- xii. They are eligible for benefit of cum duty valuation in terms of Section 67 (2) of the Finance Act, 1994 as they had not charged service tax from the receivers and they were under the bonafide belief that no service tax is payable. Reliance is placed upon the catena of judgments of judicial authorities in this regard.

5. Personal Hearing in the case was held on 12.01.2023. Ms. Priyanka Amin, Chartered Accountant, appeared on behalf of appellant for the hearing. She reiterated the submissions made in appeal memorandum as well as in additional submissions made during hearing.

6. In the written submission filed during course of the personal hearing, the appellant contended that :



- The total cost of the construction of Roller Skating Rink project was Rs.36,46,949/-. While preparing the bill details, the bifurcation of material and labour are separately mentioned. Copies are submitted.
- The project was completed in two years. In F.Y. 2015-16, they received Rs.27,00,000/- and the remaining amount of Rs.9,46,949/- was received in F.Y. 2016-17.
- The value of the materials is Rs.22,32,547/- and the value of services is Rs.4,67,453/-. Therefore, as the taxable value of service is below the exemption limit, they are not liable to service tax.

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.96,600/-. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

8. 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 the documentary evidences in respect of the income earned by them. However, the appellant did not submit the same. It is observed that no 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 services in their ITR.

8.1 It is observed that the appellant had, in their submissions before the adjudicating authority, contested the demand on various grounds. One of the grounds raised by the appellant was their eligibility to SSI exemption under Notification 33/2012-ST dated 20.06.2012. The adjudicating authority has considered the claim of the appellant and since their taxable income during F.Y. 2014-15 was below the threshold limit of Rs.10 lakhs, allowed exemption under the said Notification and dropped the demand of service tax for F.Y. 2014-15. However, since the taxable value of services provided during F.Y.



2015-16 was above the threshold limit, the adjudicating authority confirmed the demand of service tax on the taxable value above the threshold limit of Rs.10 lakhs. Consequently, the adjudicating authority has also confirmed the demand of service tax for F.Y. 2016-17 without giving the benefit of SSI exemption.

8.2 It is observed that the appellant have, in the course of the present appeal, submitted that during F.Y. 2015-16 they had undertaken original work of construction of Roller Skating Rink valued at Rs.27,00,000/-. However, since the value of materials and services are separately available, the appellant contended that they are covered by Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006. The appellant have further contended that the value of service in the said Original Work was amounting to Rs.4,67,453/-, which is below the threshold limit as per the said Notification and, accordingly, they are not liable to pay service tax. The appellant have, as part of the appeal memorandum and additional written submissions, submitted copies of Letter No. SF/Projects/2015/1013 dated 13.10.2015 issued by Shreyas Foundation, an unsigned document on a plain paper stating the terms and conditions and three letters of different dates addressed to Shreyas Foundation stating the total bill amount and the value of the materials. However, the appellant have not submitted the invoices or copy of the complete signed contract with Shreyas Foundation for construction of the Roller Skating Rink to substantiate their claim that the bifurcation of material part is available in the contract of Shreyas Foundation.

8.3 As regards the demand of service tax for F.Y. 2016-17, it is observed that the taxable value of the Original Work of construction of School and Roller Skating Rink provided by the appellant is amounting to Rs.11,64,736/-. The taxable value in respect of these Original Works Contract are required to be determined in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. Even if the value of material is not separately available, the appellant would be required to pay service tax only on 40% of the total taxable value, which clearly would be below the threshold limit of Rs.10 lakhs. However, the eligibility for SSI exemption for F.Y. 2016-17 would depend upon determination of the taxable value of the appellant in F.Y. 2015-16.



8.4 It is observed that the stand taken by the appellant before the adjudicating authority is different from the one taken in the appeal memorandum. The impugned order was passed considering the submission of the appellant during adjudication proceedings. The adjudicating authority did not have the opportunity of considering the submissions made in the course of the present appeal and also the documents now submitted by the appellant. In view thereof, I am of the considered view that it would be in the fitness of things that the matter is remanded back to the adjudicating authority for deciding the matter afresh. The appellant is directed to make their submissions before the adjudicating authority and submit the relevant documents within 15 days of the receipt of this order. The adjudicating authority shall decide the case considering the submissions of the appellant and after examination of the documents submitted by them. Needless to say, the principles of natural justice is be followed in the denovo proceedings. Accordingly, the impugned order is set aside the appeal filed by the appellant is allowed by way of remand.

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.

Attested:

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

BY RPAD / SPEED POST

To

M/s. Devesh S. Amin,
11, Niyojan Nagar Society,
Opposite Manekbaug Hall,
Ambawadi, Ahmedabad

The Assistant Commissioner,

Akhil Kumar
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 03.03.2023



Appellant

Respondent

Division- VII, CGST,
Commissionerate : Ahmedabad South.

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.

