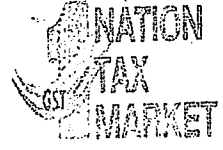




सत्यमेव जयते

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 : 20230364SW000000B2F4

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2806/2022 / 9534 - 38
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-187/2022-23
दिनांक Date : 15-03-2023 जारी करने की तारीख Date of Issue 16.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 55/WS08/AC/HKB/2022-23 दिनांक: 24.06.2022 passed by Assistant Commissioner, CGST, TAR Section, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Santa Softech
B/202, Kevalyadham Part-2,
Opposite Radio Mirchi Tower,
Vejalpur, 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, 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 भीतर प्रेषित आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ साथ इसका 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 हो तो 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 भंडार का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पत्राचार 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 शुल्क अधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित विधि अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक वार्ड पर प्रत्येक 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

23^प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का पूर्ण 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 जमा किया 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 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:

- (lxxxii) amount determined under Section 11 D;
(lxxxiii) amount of erroneous Cenvat Credit taken;
(lxxxiv) 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 मांग और दण्ड 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. Santa Softech, B/202, Kevalyadham Part-2, Opposite Radio Mirchi Tower, Vejalpur, Ahmedabad – 380 015 (hereinafter referred to as the “appellant”) against Order in Original No. 55/WS08/AC/HKB/2022-23 dated 24.06.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, TAR Section, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

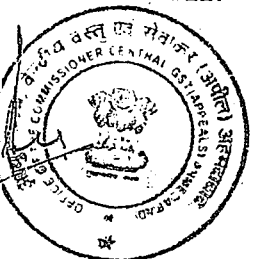
2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax department. They are holding PAN No. ABKFS9891E. As per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.14,66,393/- during F.Y. 2014-15 and Rs.1,99,548/- 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 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/332/ABKFS9891E/2020-21 dated 21.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs.3,86,780/- 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.2,63,181/- was confirmed along with interest.

II. Penalty amounting to Rs.10,000/- each, was imposed under Section 77(1) and 77(2) of the Finance Act, 1994.



III. Penalty amounting to Rs.2,63,181/- was imposed under Section 78 (1) of the Finance Act, 1994.

IV. The demand of service tax amounting to Rs.1,26,599/- 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 :

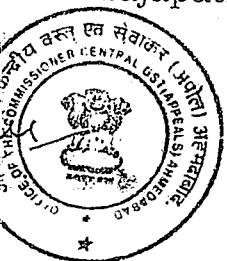
- i. The service tax liability has been determined merely by comparing the data shared by CBDT with the service tax returns without understanding the nature of business carried out by them and without proper inquiry, examination and verification of facts.
- ii. The demand has been raised in terms of Section 73(1) of the Finance Act, 1994. The said section can be invoked where any service tax has not been levied or paid. Hence, prior to issuance of Notice, the officer must have satisfied himself that the tax was either not levied or not paid. In the present case, no such satisfaction was made before issuance of Notice.
- iii. The information provided by CBDT was merely an amount disclosed by them in their ITR as sale of services. No other information was in possession of the department at the time of preliminary verification.
- iv. In the absence of relevant information such as nature of services, classification of services, applicability of Section 66D, exemption Notification No. 25/2012, it is not possible to decide whether the necessary concomitants of Section 73 (1) of the Act were present or not.
- v. The SCN has failed to prove that they had provided services which were liable to payment of tax. Nowhere in the Notice, the exact nature of services and taxability under the Act have been attributed as against the information received from CBDT.

Reliance is placed upon the judgment in the case of Deltax Enterprises Vs. CCE – 2018 (10) GSTL 392.



- vii. It is a settled position of law that no SCN can be issued on the strength of Income Tax data. Reliance is placed upon the judgment in the case of Go Bindas Entertainment Pvt. Ltd. Vs. CST – 2019 (27) GSTL 397 and Kush Constructions Vs. CGST – 2019 (24) GSTL 606 (Tri.-All).
- viii. Letter dated 24.07.2020 was issued for F.Y. 2014-15 requiring them to furnish certain information/records. However, no such letter was issued for F.Y. 2015-16. The proceeding initiated by way of letter shall be deemed to be in violation of the doctrine of *audi alteram partem* and, hence, considered as invalid and unreasonable.
- ix. The SCN has invoked the extended period of limitation alleging that they had suppressed facts with intent to evade payment of tax. The invoking of the extended period is mechanical, arbitrary and non-speaking. The department has not sufficiently and adequately established suppression on their part. In such circumstances, they are not to be attributed of grave charges of suppression.
- x. Reliance is placed upon the judgment in the case of Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC); CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC); Padmini Products Vs. CCE – 1989 (43) ELT 195 (SC); Continental Foundation Jt. Venture Vs. CCE – 2007 (216) ELT 177 (SC).
- xi. Demand of interest is not sustainable as the very demand fails to survive.
- xii. Penalties under Section 77 and 78 of the Act are not imposable looking to the facts and circumstances of the case. The grounds for imposition of penalty under Section 78 and the grounds for invocation of extended period of limitation under the proviso to Section 73 (1) are the same. Where larger period of limitation is not available, penalty under Section 78 cannot be imposed.

5. Personal Hearing in the case was held on 30.01.2023. Shri Sanket Prajapati, Chartered Accountant, appeared on behalf of appellant for the



hearing. He submitted copies of various documents during the hearing. He contested the demand on merit and limitation.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, 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 of service tax amounting to Rs.2,63,181/-. The demand pertains to the period F.Y. 2014-15 and F.Y. 2015-16.

7. 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. Subsequent to the receipt of the data from CBDT that the appellant had earned income from services, the appellant was called upon to submit the relevant documents. However, the appellant did not submit the called for documents. As part of their written reply to the SCN, the appellant submitted copies of P&L Account, Balance Sheet, Form 26AS etc. The adjudicating authority has, at Para15 of the impugned order, recorded his finding that "*the said Noticee have not made any substantial submission at any stage contending that they are not required to pay service tax of Rs. 3,86,780/- so demanded vide show cause notice under reference*". It has been further recorded at Para 13 of the impugned order that "*Further, regarding the copy of the Invoices issued and different Ledgers prepared, he expressed his inability to produce the same*".

8. It is further observed that none of the issues raised by the appellant in their appeal memorandum have been made before the adjudicating authority. The grounds of limitation raised in the submissions made in the course of the appeal were also not raised before the adjudicating authority. Therefore, the adjudicating authority did not have the opportunity of considering the contentions now raised by the appellant, in the course of the present appeal, and giving his findings on the same.

Accordingly, I am of the considered view that the matter is required to be



remanded back to the adjudicating authority for fresh adjudication. The appellant are directed to file their written submissions, along with all supporting documents, before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the case by considering the submissions of the appellant and by following the principles of natural justice. Consequently, I set aside the impugned order and allow the appeal filed by the appellant 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.

Akhilesh Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 15.03.2023

Attested:

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

BY RPAD / SPEED POST

To

M/s. Santa Softech,
 B/202, Kevalyadham Part-2,
 Opposite Radio Mirchi Tower,
 Vejalpur, Ahmedabad – 380 015

The Assistant Commissioner,
 CGST, TAR Section,
 Commissionerate : Ahmedabad South.

Appellant

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.

