



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

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- टेलीफैक्स 07926305136



DIN : 20230364SW00003833F0

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2781/2022 / 9886-90
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-193/2022-23
दिनांक Date : 24-03-2023 जारी करने की तारीख Date of Issue 27.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-010/AC-RAG/2022-23 दिनांक: 22.05.2022
passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Archi Finmark and Communication Ltd
311/313, Nalanda Enclave,
Opposite Sudama Resort,
Pritamnagar, Ellisbridge,
Ahmedabad - 380006

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.



(3) 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 मूल-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 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 शुल्क अधिनियम 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 का न्यायालय 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.

25P 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)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- इए लिया गलत सेनवैट क्रेडिट की राशि;
- बए 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.

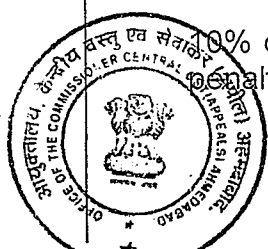
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xci) amount determined under Section 11 D;
- (xcii) amount of erroneous Cenvat Credit taken;
- (xciii) 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. Archi Finmark and Communication Ltd., 311/313, Nalanda Enclave, Opposite Sudama Resort, Pritamnagar, Ellisbridge, Ahmedabad- 380 006 (hereinafter referred to as the "appellant") against Order in Original No. CGST/WS07/O&A/OIO-010/AC-RAG/2022-23 dated 22.05.2022 [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. AABCA3094N. As per the information received from the Income Tax Department, the appellant had earned income from services amounting to Rs.13,31,801/- 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 were issued Show Cause Notice bearing No. V/WS07/O&A/SCN-378/AABCA3094N/2020-21 dated 29.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs.1,64,611/- 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) Prescribed late fee should not be recovered from them 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.36,499/- was confirmed along with interest.

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



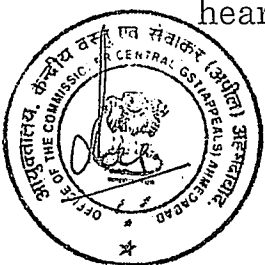
- III. Penalty amounting to Rs.36,499/- was imposed under Section 78 (1) of the Finance Act, 1994.
- IV. Penalty amounting to Rs.20,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- V. The demand of service tax amounting to Rs.1,28,112/- was 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 impugned order is against facts, equity and law and therefore, is bad and illegal.
- ii. The adjudicating authority has erred in imposing penalty on whole income of Rs.13,31,801/- by completely misconstruing the facts.
- iii. Invocation of extended period of limitation is wholly without jurisdiction, arbitrary and illegal.
- iv. They are not liable to pay tax under the Finance Act, 1994 as the services provided by them are covered under Notification No. 33/2012-ST dated 20.06.2012. Therefore, the question of filing of returns does not arise.
- v. The imposition of penalty under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 is bad and illegal.
- vi. They are not involved in providing any taxable services and therefore, are not required to take service tax registration. The imposition of penalty under Section 77(1) of the Act for not taking registration is bad and illegal.

5. Personal Hearing in the case was held on 10.02.2023. Shri Hardik H. Shah, Chartered Accountant, appeared on behalf of appellant for the hearing. He submitted a written submission during hearing. He reiterated the submissions made in appeal memorandum.

6. In the written submission dated 09.02.2023 filed during the personal hearing, the appellant contended have, inter alia, as under :



- They were in the business of publication of Magazine in the name of 'Smart Magazine' which is circulated on weekly basis. Hence, it is said to be Print Media. They are having income from sale of Magazine and other service income. For the service income, they are under the bona fide belief that the same is not covered under service tax.
 - In their written submission dated 24.09.2020, they had mentioned that there are two sources of service income. One from sale of space for advertisement income and another Lavajam of Online subscription.
 - They are under the bona fide belief that income from sale of space for advertisement in print media is not taxable under Section 65(105)(zzzm).
 - In Para 6.1 of the impugned order it is mentioned that they had not produced any evidence. But they had submitted and complied with all the notices issues by the adjudicating authority and they have not been asked for submission of proof of income or any such other information.
 - As part of their appeal memorandum, they have submitted sample copies of invoices of income generated from Sale of Space for advertisement in print media and ledger of income from Sale of Space for advertisement in print media totaling Rs.6,38,566/-.
 - It is wrongly stated in the impugned order that they have not submitted the requisite information and suppressed facts from the department. They had not filed ST-3 returns as they were of the bona fide belief that their services are not taxable and covered by Notification No. 33/2012-ST and, hence, not required to take service tax registration.
 - Their services may be held as not taxable as they are covered by the Negative List of services.
 - They have not suppressed any facts and there is no intention to evade payment of tax on their part.
 - The services provided by them are reflected in their books of accounts, audited financial statements and ITR. This shows that there is no suppression of facts.
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- There was scope of doubt whether service tax was payable or not and it is settled law that where there was scope of doubt whether duty was payable or not, it is not intention to evade payment of tax. Reliance is placed on the judgment in the case of Tamilnadu Housing Board Vs. CCE – 1994 (74) ELT 9 (SC).
- The demand is for F.Y. 2014-15 and the SCN was issued on 29.09.2020. Due date for filing ST-3 return for April to September, 2014 is 25.10.2014 and thus is relevant date. Five years from this date ended on 25.10.2019. Hence, the demand confirmed for April to September, 2014 is illegal as no demand can be made beyond five years.
- As there is no suppression of facts with intent to evade payment of tax, extended period of limitation cannot be invoked. The SCN issued after expiry of normal period of limitation is time barred.
- As there is no service tax liability and there is no suppression of facts or violation of the provisions of the Finance Act, 1994, no penalty can be imposed under Section 70, 77(1) and 78(1) of the Finance Act, 1994.

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. 36,499/-. The demand pertains to the period F.Y. 2014-15.

8. It is observed that out of the total income from services amounting to Rs. 13,31,801/-, the appellant had contended before the adjudicating authority that an amount of Rs. 6,38,566/- is from sale of space for advertisement in print media, which is exempted from payment of service tax. The adjudicating authority, however, rejected the contention of the appellant on the grounds that *“Although the noticee mentioned in its reply dated 24.09.2020 that sample invoices enclosed are not furnished by them on purpose, and hence, I hold that the noticee is required to pay Service Tax on the amount which is in excess of Rs. 10 Lakhs earned as sale of service*



income in FY 2014-15". Therefore, the only ground, on which the contention of the appellant regarding sale of space for advertisement was not accepted by the adjudicating authority, was the non submission of documents by the appellant.

8.1 The appellant have as part of their additional written submissions filed during course of the persons hearing submitted sample copies of the invoices pertaining to sale of space for advertisement and also copy of the ledger account pertaining to advertisement space sales. I have perused the documents submitted by the appellant and find that the appellant have, during F.Y. 2014-15, earned income amounting to Rs. 6,38,566/- from sale of space for advertisement. At this juncture, I find it pertinent to refer to Section 66D(g) of the Finance Act, 1994, which is reproduced below :

"selling of space or time slots for advertisements other than advertisements broadcast by radio or television;"

8.2 Sub-section (g) of Section 66D of the Finance Act, 1994 was amended by the Finance (No.2) Act, 2014, w.e.f 01.10.2014 to read as :

"selling space for advertisements in print media".

8.3 It is observed that the appellant are engaged in the publishing of a Weekly magazine in the name of 'Smart Magazine'. In terms of Section 66D (g) of the Finance Act, 1994, selling of space for advertisements is not taxable by virtue of it being in the Negative List of Services. The documents submitted by the appellant show that income amounting to Rs.6,38,566/- was earned by sale of space for advertisement in print media, which falls within the ambit of Section 66D(g) of the Finance Act, 1994. Consequently, the same is not chargeable to service tax.

8.4 The total income from services provided by the appellant during F.Y. 2014-15 is Rs.13,31,801/-. The adjudicating authority has, in the impugned order, held that the appellant are eligible for benefit of threshold exemption in terms of Notification No. 33/2012-ST dated 20.06.2012. Since the income amounting to Rs. 6,38,566/- is exempted from payment of service tax, the same is to be excluded for arriving at the taxable value of services provided by the appellant and by excluding this amount, the taxable value of the

