



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 : 20230364SW000000A342

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3301/2022 /54 TO 58
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-202/2022-23
दिनांक Date : 30-03-2023 जारी करने की तारीख Date of Issue 31.03.2023.
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-161/AC-RAG/2022-23 दिनांक: 18.10.2022 passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Jigar Kalpeshbhai Shah
S/4, Panchtirth Apartment,
B/H Shukan Apartment, Nehru Park,
Ahmedabad – 380015
2. M/s Jigar Kalpeshbhai Shah
Office No. 901, Silicon Tower,
Above Freezland Restaurant,
Nr. National Handloom, Law Garden,
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 :

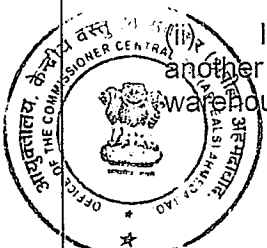
Revision application to Government of India:

(1) 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।

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 इका 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 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 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.

70 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:

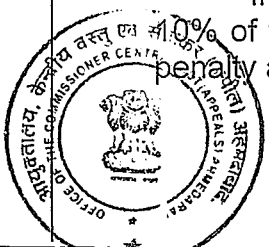
(cxviii) amount determined under Section 11 D;

(cxix) amount of erroneous Cenvat Credit taken;

(cxx) 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

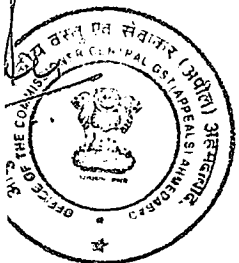
The present appeal has been filed by M/s. Jigar Kalpeshbhai Shah, S/4, Panchtirth Apartment, B/h Shukan Apartment, Nehru Park, Ahmedabad – 380015 (hereinafter referred to as “the appellant”) against Order-in-Original No. WS07/O&A/OIO-161/AC-RAG/2022-23 dated 18.10.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. CUXPS9875G. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned substantial income from services amounting to Rs. 16,83,685/- during the FY 2014-15. However, they did not obtain Service Tax Registration and nor did they 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.

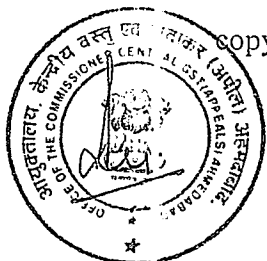
2.1 Therefore, the appellant was issued a Show Cause Notice No. V/WS07/O&A/SCN-207/CUXPS9875G/2020-21 dated 23.09.2020 demanding Service Tax amounting to Rs. 2,08,103/- for the period FY 2014-15 to FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 readwith Section 70 of the Finance Act, 1994; and imposition of penalties under Section 77(1) & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 31,692/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further (i) Penalty of Rs. 31,692/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 20,000/- was also imposed on the appellant under Section 70 of the Finance Act, 1994 readwith Rule 7C of the Service Tax Rules, 1994.

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



- The appellant are engaged in providing services of Information Technology Software Service and not registered with the service tax as threshold limit for taking service tax registration was not crossed by them during the relevant period.
 - The appellant has filed Income Tax Return for FY 2014-15 showing total receipt of Rs. 16,83,685/- against which domestic sale of services is Rs. 8,18,265/- and export sale of services of Rs. 8,65,420/- which was exempted in service tax, hence the taxable services provided by the appellant is below the threshold limit, the appellant was not liable to get Service tax number and pay tax and penalties and applicable interest thereon.
 - The appellant has rendered export services amounting to Rs. 8,65,420/- during the FY 2014-2015 against which invoices were provided for export of service of \$ 8,770, i.e. Rs. 4,27,274/- and of \$9,000, i.e. Rs.4,38,146/-. Later-on, there was some change in their project contract and client has given only one payment against Invoice raised of \$ 8770 and Second Invoice of \$ 9000 was cancelled and credit note was issued by the appellant.
 - The appellant has produced all the necessary documents before the adjudicating authority i.e Invoice of \$ 8770 and \$ 9000 issued by them, FIRC copy of Rs. 4,27,274 received in Bank account against invoice of \$ 8770 and Mail communication of change in contract and withheld the remaining project and cancel invoice of \$ 9000 by service recipient and credit note issued by the appellant to the recipient, but the adjudicating authority has not considered the documents provided later on with reference to Invoice of \$ 9000 and made an addition of such receipt in a domestic supply of service.
 - Hence, after taking effect of such export services of Rs. 4,38,146/- in domestic value of services, Gross receipt was exceeding of Rs. 10,00,000/- and Service tax demand was raised by the adjudicating authority against the appellant.
4. Personal hearing in the case was held on 03.03.2023. Shri Manish Agrawal, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He stated that he would submit documents related to export of service and of income tax as additional written submission.
- 4.1 Subsequently, the appellant submitted copy of bank statement, copy of Form 26AS, copy of Balance Sheet and Profit & Loss Account for the FY 2014-15. The appellant also



submitted copy of Invoice dated 10.02.2015 for \$ 8770; FIRC copy dated 28.02.2015 for Rs. 4,27,274 received in Bank account against invoice of \$ 8770; copy of Mail communication dated 09.05.2015 of change in contract and withheld the remaining project; and copy of Credit note dated 11.05.2015 issued by the appellant to their customer.

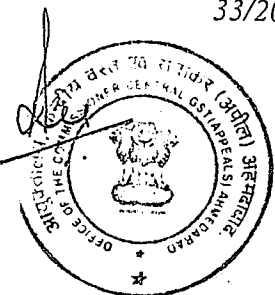
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. It is observed that the adjudicating authority, in the impugned order, has observed that the appellant had not submitted any documents with respect to the amount of Rs. 3,90,991/- (818265 -427274) in respect of export of service and therefore, he has confirmed the demand of service tax of Rs. 31,692/- on the total taxable value of Rs. 2,56411/- after extending the benefit of Notification No. 33/2012-ST dated 20.06.2012. The adjudicating authority in his finding discussed as under:

"5.2 The noticee appears to have provided software services to the customers outside India. As per written submission the noticee has provided Rs. 8,65,420/-, whereas documents has been provided of Rs. 4,27,274/- only and has also received payment in Foreign currency i.e. in USD during FY 2014-15. For the remaining amount of Rs. 3,90,991/- (818265 -427274) no documents have been submitted.

5.7 The noticee has contended that they have exported the services of Rs. 8,65,420/- but have produced FIRC of Rs. 4,27,274/-. Therefore the benefit of export of services is available to them for Rs. 4,24,274/- and they are required to pay service tax on remaining amount of Rs. 12,56,411/- (16,83,685 -4,27,274).

5.8 I find that the noticee has provided the services of Rs. 6,53,500/- in the year 2013-14. Therefore, they are eligible for the benefit of exemption of service tax upto Rs. 10 Lakhs as enumerated under Notification No. 33/2012 dated 20/06/2012, as the condition mentioned at Sr. No. VIII is fulfilled. Condition No VIII of Notification No. 33/2012-ST is as under:



(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

I find that the noticee is required to pay the service tax on the remaining amount of Rs. 256411/- which comes to Rs. 31692/- which is recoverable from them under Section 73(2) of the Finance Act, 1944."

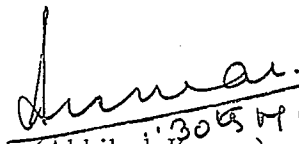
7. It is also observed that the main contention of the appellant is that the adjudicating authority has not considered the Mail communication of change in contract and withholding of the remaining project and cancel invoice of \$ 9000 by service recipient and credit note issued by the appellant to the recipient. The adjudicating authority had taken the said amount of Rs. 4,38,146/- in domestic value of services and, therefore, their gross receipt was exceeding Rs. 10,00,000/- and Service tax demand was confirmed by the adjudicating authority against the appellant.

8. The appellant have submitted mail communication and the credit note along with appeal memorandum and contended that the said documents were also submitted by them before the adjudicating authority. However, I find that in the impugned order, the adjudicating authority has not discussed the aforesaid documents and has not given any finding in this regard. Therefore, I am of the considered view that the adjudicating authority is the best placed to verify the documents submitted by the appellant, which was not done by him. Hence, the matter is required to be remand back to adjudicating authority to verify the authenticity of the documents submitted by the appellant and decide the case afresh by following the principles of natural justice.

9. In view of the above discussion, I set aside the impugned order and allowed the appeal filed by the appellant by way of reminding the matter back to the adjudicating authority for verification of the documents submitted by the appellant and pass a speaking order after following the principles of natural justice.

10. अपील कर्ता 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)
Commissioner (Appeals)



Attested

Date : 30.03.2023



(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Jigar Kalpeshbhai Shah,
S/4, Panchtirth Apartment,
B/h Shukan Apartment, Nehru Park,
Ahmedabad – 380015

Appellant

The Assistant Commissioner,
CGST, Division-VII,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South

(for uploading the OIA)

~~5) Guard File~~

6) PA file

