



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 - टेलीफैक्स 07926305136



DIN : 20221164SW0000018616

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/126/2022 /5011 - 15
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-079/2022-23  
दिनांक Date : 22-11-2022 जारी करने की तारीख Date of Issue 23.11.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-105/AC-RAG/2021-22 दिनांक: 23.02.2022 passed by  
Assistant Commissioner, CGST, Division VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

1. The Assistant Commissioner  
CGST, Division VII, Ahmedabad South  
3<sup>rd</sup> Floor, APM Mall, Anand Nagar Road,  
Satellite, Ahmedabad - 380015

**Respondent**

1. M/s Murari Saravarmal Todi  
Todi Bhavan, Opposite Doctor House,  
Ambawadi, 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, 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 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 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 रूपये या उससे कम होतो रूपये 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.

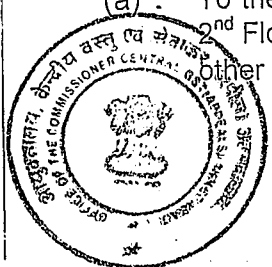
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 अनुसूची-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.

20 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.

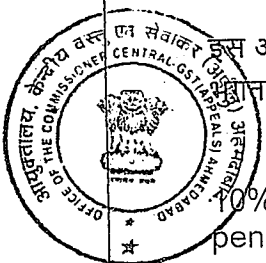
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxlviii) amount determined under Section 11 D;  
(cxlix) amount of erroneous Cenvat Credit taken;  
(cl) 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 the Assistant Commissioner, CGST, Division-VII, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 11/2022-23 dated 23.05.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. WS07/O&A/OIO-105/AC-RAG/2021-22 dated 23.02.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Murari Sanwarmal Todi, Todi Bhavan, Opposite Doctor House, Ambawadi, Ahmedabad - 380 015 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that as per the information received from the Income Tax Department, the respondent had earned substantial service income amounting to Rs.29,27,710/- during F.Y. 2014-15 to F.Y. 2016-17, however, the respondent did not obtain service tax registration and did not pay service tax on the service income. The respondent was requested vide letters on different dates to submit the documentary evidence in respect of their income. However, the respondent failed to submit the required details/documents and neither was any explanation/clarification submitted regarding the income earned. Therefore, the service income earned by the respondent was considered as taxable value and it appeared that the respondent had failed to pay the service tax amounting to Rs.3,61,865/- on the said income. Therefore, the respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-233/AABPT7418A/2020-21 dated 23.09.2021 wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.3,61,865/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

Impose penalty under Sections 77(1) and 78 of the Finance Act, 1994.



C. Recover late fee in terms of Rule 70 of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994:

2. The SCN was adjudicated vide the impugned order and the proceedings initiated against the respondent were dropped.

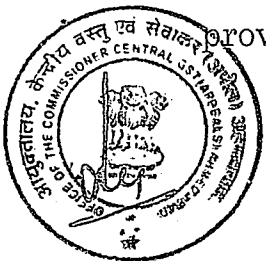
3. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

i. The adjudicating authority has erred in dropping the demand of service tax without recording any finding on the merits of the case and the impugned order is a non-speaking order.

ii. The adjudicating authority has erred in dropping the demand by merely relying upon the submission of the respondent wherein it was contended that they are engaged in sale and purchase of goods i.e. trading of goods which falls under the Negative List of Services in terms of Section 66D of the Finance Act, 1994. The respondent had contended that inadvertently the income was shown under sale of services in the ITR.

iii. The adjudicating authority has erred in concluding that the respondent was engaged in trading of goods just on the basis of the submission of the respondent which is not backed by any documentary evidence. No findings have been given by the adjudicating authority as to how it was concluded that the respondent were engaged in trading of goods.

4. Personal Hearing in the case was held on 22.11.2022. Shri Murari Sanwarmal Todi, the respondent, appeared in person for the hearing. He submitted a written submission during the hearing as cross-objection along with copies of Income Tax Returns as well as audited Balance Sheet. He stated that they are engaged in trading of goods and no services were provided by them.

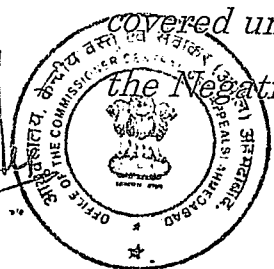


5. The respondent has in the cross-objections filed on 22.11.2022, inter alia, contended that :

- During F.Y. 2014-15, he had made sale of textile fabric worth Rs.29,27,710/-. However, while filing Income Tax return, the sale data was inadvertently punched in the column of 'Sale of Services' due to data entry error. Attention is drawn towards column 1 of "Part A P&L" of the Income Tax return wherein the sale of services is mentioned right below sale of goods.
- In column 6 of "Part A P&L" and amount of Rs.29,19,600/- has been shown under purchases. In column 3(a)(i) of "Part A BS", the inventory as on 31.03.2015 was shown as Nil. This proves that they had indulged in Purchase and Sale of Goods.
- In the Audited Balance Sheet for F.Y. 2014-15, an amount of Rs.29,27,710/- has been mentioned against Sales Trading of Goods while an amount of Rs.29,19,600/- has been mentioned against Purchase Trading of Goods. Copy of the Audited Balance Sheet is submitted.
- They have not provided taxable services above Rs. 10 lakhs during the year to avail Service Tax Registration and pay service tax.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order dropping the demand of service tax amounting to Rs.3,61,865/- is legal and proper. The demand pertains to F.Y. 2014-15.

7. I find that the respondent 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 respondent was called upon to submit documents/details in respect of the service income earned by them, however, the respondent failed to submit the same. It is observed that in the SCN except for stating that "*the nature of activities carried out by the said Service Provider appears to be covered under the definition of service and appears that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and*



also declared services given in Section 66E of the Finance Act, 1994' no other cogent reason or justification is forthcoming in the SCN for raising the demand against the respondent. It is also not specified as to under which category of service the non payment of service tax is alleged against the respondent. The demand of service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the respondent had reported income from sale of services in their ITR. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

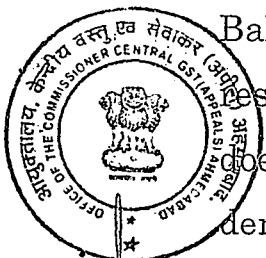
7.1. I find in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that :

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

7.2 However, in the instant case, I find that no such exercise as instructed by the Board has been undertaken and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

8. It is observed that the adjudicating authority has reproduced the submission dated 07.10.2020 made by the respondent wherein it was contended that the income was earned from sale of Textile Fabrics valued at Rs.29,77,710/- and that the Profit and Loss Account shows Purchases valued at Rs.29,19,600/-. The respondent had also submitted copies of their Balance Sheet for F.Y. 2014-15. Having considered the submissions of the respondent, the adjudicating authority had concluded that trading of goods does not come under the ambit of service tax and, accordingly, dropped the demand of service tax. As against the submission of the respondent which



is supported by their Financial Statements, the appellant department have not put forth any evidence which refutes the submissions of the respondent or the findings of the adjudicating authority.

8.1 The respondent have along with their cross-objections submitted copies of the Income Tax Return and Audited Balance Sheet for F.Y. 2014-15. On perusal of the Audited Balance Sheet submitted by the respondent, it is observed that the respondent has declared purchase and sales of goods in the Profit and Loss Account for F.Y. 2014-15. Therefore, I find substance in the contention of the respondent that due to data entry mistake, the Sale of Goods was incorrectly shown under Sale of Services in their Income Tax returns. In view thereof, I find that there is no grounds in the appeal filed by the department which calls for any interference with the impugned order. Consequently, I am of the considered view that the appeal filed by the appellant department is devoid of merit.

9. In view of the facts discussed hereinabove, I uphold the impugned order and reject the appeal filed by the appellant department.

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.

*Akhil Kumar*  
 22nd November, 2022  
 ( Akhilesh Kumar )  
 Commissioner (Appeals)  
 Date: 22.11.2022.

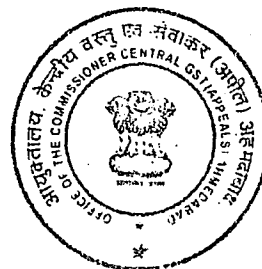
Attested:

*[Signature]*  
 (N.Suryanarayanan. Iyer)  
 Superintendent(Appeals),  
 CGST, Ahmedabad.

BY RPAD / SPEED POST

To

The Assistant Commissioner,  
 CGST, Division- VII,  
 Commissionerate : Ahmedabad South.



Appellant



M/s. Murari Sanwarmal Todi,  
Todi Bhavan, Opposite Doctor House,  
Ambawadi, Ahmedabad – 380 015

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.

