



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 : 20221164SW0000515486

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/769/2022 / 5186-92
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-086/2022-23  
दिनांक Date : 30-11-2022 जारी करने की तारीख Date of Issue 30.11.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-53/AC-RAG/2021-22 दिनांक: 28.01.2022 passed by  
Assistant Commissioner, CGST, Division VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

- M/s Shailesh Badrilal Goyal (HUF)  
A-103, Sun Divine-2,  
Apts/ Nr. Sagun Castle, Satellite,  
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:**

(i) केंद्रीय 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 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.

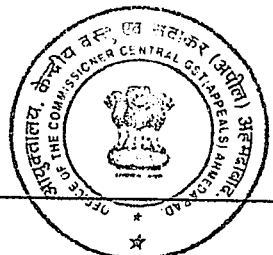
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (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 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 शुल्क अधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश 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 have 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.

- (59) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रति अपील 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)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

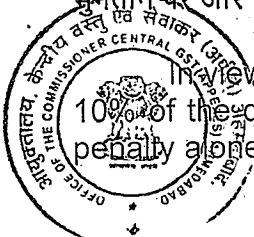
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxix) amount determined under Section 11 D;
- (clxx) amount of erroneous Cenvat Credit taken;
- (clxxi) 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. Shailesh Badrilal Goyal (HUF), A-103, Sun Divine-2 Apartments, Near Sagun Castle, Satellite, Ahmedabad - 380 015 (hereinafter referred to as the appellant) against Order in Original No. WS07/O&A/OIO-53/AC-RAG/2021-22 dated 28.01.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that as per the information received from the Income Tax Department, the appellant had earned substantial income from services amounting to Rs.15,10,856/- during F.Y. 2015-16. However, the appellant 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.2,19,074/- on the said income. The respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-454(F.Y.2015-16)/2020-21 dated 28.12.2020 wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.2,19,074/- 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 in terms of Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

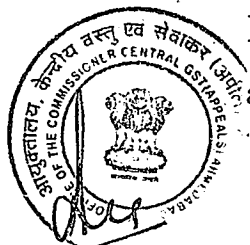
3. The SCN was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78 of the Finance Act, 1994.



Penalty amounting to Rs.10,000/- was imposed under Section 77 (c) of the Finance Act, 1994. Late Fee amounting to Rs.40,000/- was imposed under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

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

- i. They are engaged in providing exempt services and during the concerned year have provided Public Relation Management Services to educational institutes like H.L. College, Karnawati Medical College (as evident from 26AS) before and at the time of admission of students. These services are exempt in nature and covered under Serial No. 9 (b) (iv) of Notification No.25/2012-ST dated 20.06.2012.
- ii. Being exempted services, they do not form part of the aggregate value of turnover considered while calculating the threshold value for levy of service tax. Aggregate Value has been defined in Explanation B to Notification No.33/2012-ST dated 20.06.2012.
- iii. The amount shown in the Profit and Loss Account includes the amount of exempted services and if this amount is excluded from the total turnover, the taxable amount shall be below the threshold limit.
- iv. They submit proof that the education institute is registered under the University Grants Commission Act, 1956. The Unitedworld Institute of Design is affiliated to Karnavati University. This fact can be verified from the website of Karnavati University. The said University is established by an Act of the State Legislature of Gujarat as a Private University and empowered to award degrees.
- v. The entire demand is hit by the bar of limitation. Since they were not liable to pay service tax as the value of taxable services were below the threshold limit, there was no suppression or fraud or wilful mis-statement of facts of any kind. Therefore, the extended period has been invoked without any factual or legal base.
- vi. Reliance is placed upon the decision in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh – 2007 (216) ELT 177 (SC) and Jaiprakash Industries Ltd. – 2002 (146) ELT 481 (SC).



- vii. No *mens rea* can be attributed to them for not discharging the tax liability. In absence of *mens rea* penalty cannot be imposed. There is no fraud, wilful mis-statement or suppression of facts with intent to evade payment of tax as all the income were accounted for in the books of accounts.
- viii. Reliance is placed upon the decision in the case of Pahwa Chemicals Private Ltd. Vs. Commissioner – 2005 (189) ELT 257 (SC) Hindustan Steel Ltd. Vs. State of Orissa – 1978 (2) ELT J159 (SC) and Padmini Products Vs. Collector of C.Ex.- 1989 (043) ELT 1095 (SC).
- ix. Since the demand itself is baseless and without merits, levy of interest does not hold weight. There is no provision for recovery of interest in the Finance Act, 1994 whenever order is passed under Section 73 determining the amount of service tax. Thus, in the absence of the same, interest cannot be ordered to be recovered.
- x. Their conduct at all times was bona fide and there was no mis-statement or suppression of facts, much less with any intent to evade payment of ta. Therefore, penalty shall be dropped on the facts itself. Reliance is placed upon the decision in the case of DD Industries Ltd. Vs. CCE – 2002 (142) ELT 256 (Tri.).
- xi. This is a fit case for waiver of penalty in terms of Section 80 which provides a discretion not to impose penalty on reasonable cause being shown. Reliance is placed upon the decision in the case of Commissioner of Central Excise and Customs Vs. Ashish Vasantrao Patil – 2008 (10) STR 8 and Commissioner of C.Ex., & Customs, Nashik Vs. Vinay Bele and Associates – 2008.
- xii. Since they were not required to take registration, there arises no question to file returns. Therefore, penalty imposed under Section 77 and 78 for Rs.10,000/- and Rs. 40,000/- is baseless and without merits.

5. Personal Hearing in the case was held on 22.11.2022. Shri Gunjan Shah, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated submissions made in appeal memorandum. He stated that their turnover for F.Y. 2014-15 was below Rs.10 lakhs. They would submit copy of relevant document as part of additional submission.



6. In the additional written submission filed on 24.11.2022, the appellant have contended, inter alia, that :

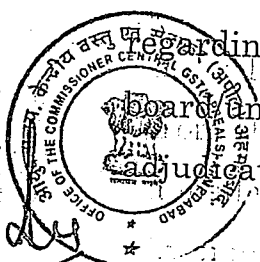
➤ They submit details and documents to prove that the turnover of the preceding F.Y. 2014-15 was below the threshold limit. They submit copies of 26-AS and Profit and Loss statement for F.Y. 2014-15. Therefore, they are entitled to the threshold limit of Rs.10 Lakhs in F.Y. 2015-16 also.

xiii. They submit proof that the education institute is registered under the UGC Act, 1956 and that Unitedworld Institute of Design is affiliated to Karnavati University. Karnavati University is established by an Act of the State Legislature of Gujarat as a Private University and empowered to award degrees.

➤ Hence, the services provided to Unitedworld Institute of Design is exempted under Sr. No. 9 (b) (iv) of Notification No.25/2012-ST dated 20.06.2012.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute before me for decision is whether the impugned order confirming demand for service tax amounting to Rs.2,19,074/- is legal and proper. The demand pertains to the period F.Y. 2015-16

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 documents/details in respect of the service income earned by them, however, the appellant failed to submit the same. It is observed that the appellant had in their submissions before the adjudicating authority contended that they are providing some of the services to educational institute which is exempted services. The appellant had also contended that they are eligible for exemption under Notification No. 33/2012-ST dated 20.06.2012, as they are below the threshold limit of Rs.10 lakhs. The adjudicating authority has rejected the contention regarding exemption to educational institute on the grounds that no evidences have been provided regarding affiliation of the institute to any recognized school, educational board/university. As regards the contention regarding SSI exemption, the adjudicating authority has recorded the finding that the appellant had failed



to produce evidence regarding their turnover being below Rs. 10 lakhs. Except for these findings, the adjudicating authority has not recorded any findings on the merits of whether the appellant are eligible for exemption in terms of Sr. No. 9 (b) (iv) of Notification No.25/2012-ST dated 20.06.2012.

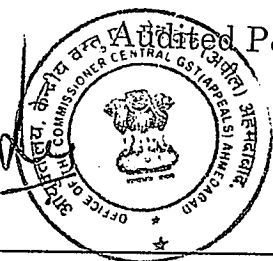
9. The appellant have, in their appeal memorandum and additional written submissions, contended that Unitedworld Institute of Design is affiliated to Karnavati University which has been set up under an act passed by the State of Gujarat. However, the appellant have not furnished any document regarding the affiliation of Unitedworld Institute of Design, except for stating that the same can be verified from the website of Karnavati University. Further, no details of the service provided by the appellant to the said institute has also been submitted. Sr. No. 9 of Notification No.25/2012-ST dated 20.06.2012 is reproduced below :

“9. Services provided,-

- (a) by an educational institution to its students, faculty and staff;
- (b) to an educational institution, by way of,-
  - (i) transportation of students, faculty and staff;
  - (ii) catering, including any mod-day meals scheme sponsored by the Government;
  - (iii) security or cleaning or house-keeping services performed in such educational institution;
  - (iv) services relating to admission to, or conduct examination, by such institution.”

9.1 The appellant have claimed exemption in terms of Sr. No. 9 (b) (iv) i.e. services relating to admission or conduct of examination by such institution. However, they have not submitted any details or evidence regarding the nature of the services provided by them which enables determination of whether the same is covered by the said entry. Therefore, it is not possible for this authority to determine whether the appellant are falling within the ambit of exemption in terms of the said Serial No. 9 (b) (iv) of Notification No.25/2012-ST dated 20.06.2012.

10. As regards their claim for SSI exemption, it is observed that the appellant have submitted a printout of their purported Profit and Loss Account for F.Y. 2014-15. However, the said P&L account is not sufficient to establish their claim for exemption. The appellant are required to submit copy of their Audited P&L account and other relevant documents to determine whether the





turnover of the appellant was below the threshold limit in the preceding financial year to make them eligible for exemption in F.Y. 2015-16.

11. Keeping in view the principles of natural justice, I am of the considered view that the appellant be given an opportunity to submit the proper and relevant details and documents to establish their claim for exemption. Accordingly, I am of the considered view that the case is required to be remanded back to the adjudicating authority for a decision afresh. The appellant are directed to submit before the adjudicating authority, within 15 days of the receipt of this order, copies of invoices specifying the nature of services rendered by them to the educational institute as well as copies of Audited P&L account and Balance Sheet. The adjudicating authority shall thereafter pass a speaking order after following the principles of natural justice.

12. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

13. 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)  
Superintendent(Appeals),  
CGST, Ahmedabad.

**BY RPAD / SPEED POST**

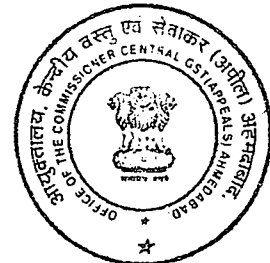
To

M/s., Shailesh Badrilal Goyal (HUF),  
A-103, Sun Divine-2 Apartments,  
Near Sagun Castle, Satellite,  
Ahmedabad - -380 015

The Assistant Commissioner,  
CGST, Division- VII,

(Akhilesh Kumar )  
Commissioner (Appeals)

Date: 30.11.2022.



Appellant

Respondent

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.

