



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 : 20221264SW000000E160

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/89/2022 / 5642-116
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-090/2022-23
दिनांक Date : 07-12-2022 जारी करने की तारीख Date of Issue 09.12.2022.
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-102/AC-RAG/2021-22 दिनांक: 23.02.2022 passed by
Assistant Commissioner, CGST, Division VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पंता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VII, Ahmedabad South
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad

Respondent

- M/s Snehdeep Consultants
1006, Tenth Floor, Akshat Tower,
Nr. Pakwan Dining Hall, Bodakdev,
Ahmedabad - 380054

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 हों।

(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.

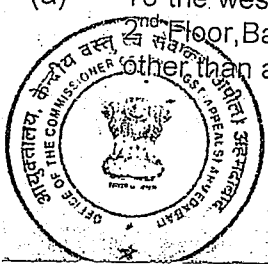
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपरर 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 contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- 2^o 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.

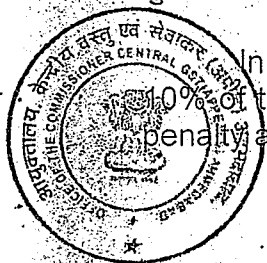
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxviii) amount determined under Section 11 D;
(clxxix) amount of erroneous Cenvat Credit taken;
(clxxx) 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."



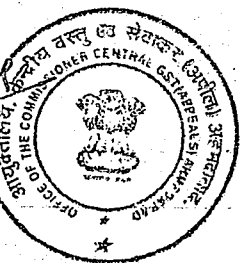
ORDER-IN-APPEAL

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. 10/2022-23 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-102/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. Snehdeep Consultants, 1006, 10th Floor, Akshat Tower, Near Pakwan Dining Hall, Bodakdev, 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.1,04,55,118/- 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.12,92,253/-. Therefore, the respondent was issued Show Cause Notice bearing No. V/WS07/O&A/SCN-58/AAYFS2117C/2020-21 dated 23.09.2020 wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.12,92,253/- 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.

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

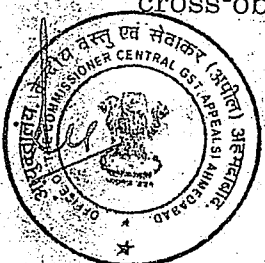
3. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

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 just reproduced the submission of the respondent that bungalows were sold after getting BU permission and concluded that the amount received is not subject to service tax. The adjudicating authority has not recorded his findings in respect of the date of BU permission and booking of bungalow, whether the initial booking amount has been received before getting BU permission or the entire amount has been received after getting BU permission. No findings have been given as to how it was concluded that the bungalows were sold after getting BU and, thus not liable to service tax.

iii. The adjudicating authority has merely mentioned that the remaining amount of Rs.11,94,118/- was from sale of right in property as per the Balance Sheet and held that the same was not liable to service tax. However, there is no discussion on this issue and no finding has been given as to how sale of right in property is not liable to service tax.

4. Personal Hearing in the case was held on 07.12.2022. Shri Vijay Mewani, Accountant, appeared on behalf of the respondent for the hearing. He reiterated the submissions made in letter dated 28.11.2022 filed as cross-objections to appeal.



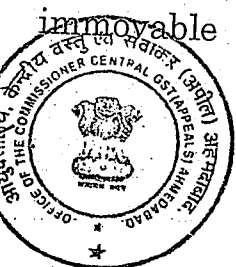
5. The respondent filed their cross-objections on 28.11.2022, wherein it was, inter alia, contended that :

➤ They were engaged in the business of Building Construction activities as a Builder. They had obtained BU permission on 07.06.2011 for their Scheme under Reference No. BLNTB/NZ/200210/P/A 7553/RO/M1. They had sold the bungalows in F.Y. 2014-15, post receipt of the BU permission.

➤ The first booking payment toward the bungalow sale was also received after 27th June and they submit copy of ledger accounts and copy of sale deed containing the cheque received dates. They had already submitted bank statements, 26AS and ITR copies from which also it is evident that sales proceeds were received after BU permission. From this, it can be seen that they are not liable to pay service tax as the sale proceeds were received post BU permission.

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.12,92,253/-, in the facts and circumstances of the case, is legal and proper or otherwise. 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 impugned order it is mentioned at Para 2 that the respondent had submitted vide letter dated 29.10.2020 that they were engaged in building construction and selling the bungalows to buyers after getting BU permission and that they had obtained BU permission on 07.06.2011. It is further mentioned that the respondent had sold some bungalow post receipt of BU permission. Based on the submission of the respondent, the adjudicating authority has concluded that sale of immovable property after completion certificate is excluded from the



definition of service as per Section 65(B)(44) of the Finance Act, 1994 and, therefore, held that service tax was not leviable. Accordingly, the proceedings initiated against the respondent was dropped.

7.1 From the copies of Agreement for Construction Cost of Bungalow, Ledger Accounts and the BU permission submitted by the respondent, it is observed that the respondent had charged and collected construction cost of the bungalow from their client. The agreement is dated 04.07.2014 i.e. after receipt of BU permission. However, it is seen that the agreement is not related to sale of the bungalow but is in respect of construction of bungalow. It is also seen that the land on which the construction was carried out by the respondent was not belonging to the respondent and neither was the bungalow constructed belonging to the respondent. Therefore, by no stretch of imagination, it can be said that the respondent had constructed and sold the bungalow. The respondent were merely engaged for construction of a bungalow, the cost of which, in terms of Clause 8 of the said Agreement dated 04.07.2014, was to be collected by the respondent from the purchaser of the plot.

7.2 Section 66E of the Finance Act, 1994 is in respect of Declared Services. It would be pertinent to refer to sub-section (b) of Section 66E, which is reproduced below :

“ construction of a complex, building, civil structure or a part thereof, including a complex or a building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.”

7.3 In the present appeal, it is seen that the respondent have, in terms of the agreement dated 04.07.2014 collected the construction cost from the purchaser of the plot. Apparently, the construction cost collected by the respondent is inclusive of the material used in the construction of the bungalow. In terms of Section 66E (h) of the Finance Act, 1994, the service portion in the execution of a works contract is a Declared Service. In the event the respondent had provided construction services along with materials, the service would be covered under Works Contract service and the service tax payable would be accordingly determined.



8. In view of the above, I am of the considered view that the respondent had provided only construction service, with or without materials, and their contention that they had sold bungalow after receipt of BU permission is factually incorrect; Considering these facts, I am of the considered view that the matter is required to be remanded back to the adjudicating authority to determine whether the appellant had provided merely Construction Services or whether they had provided Works Contract Service. The service tax payable by the respondent would be required to be determined accordingly. The adjudicating authority should also give his detailed findings on the issue of chargeability of service tax on the amount of Rs.11,94,118/- received from sale of right in property. The respondent are directed to file their submissions before the adjudicating authority within 15 days of the receipt of this order. Needless to say, the principles of natural justice is to be followed in the remand proceedings.

9. In view of the facts discussed hereinabove, the impugned order is set aside and the appeal filed by the appellant department is allowed by way of remand.

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.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

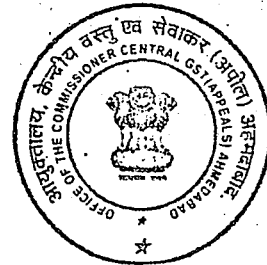
BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST, Division- VII,

(Akhilish Kumar)
Commissioner (Appeals)

Date: 07.12.2022.



Appellant

Commissionerate : Ahmedabad South.

M/s. Snehdeep Consultants,
1006, 10th Floor, Akshat Tower,
Near Pakwan Dining Hall,
Bodakdev, 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.

