



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 : 20221264SW0000333FD3

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1523/2022 / 5662 - 5666
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-092/2022-23
दिनांक Date : 08-12-2022. 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. 26/WS08/AC/KSZ/2021-22 दिनांक: 29.03.2022 passed by Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- Dr. Ashish Kaushal
A-201, Heritage Skyz,
Near Prahaladnagar Garden,
Anand Nagar Road, 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:

- (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।
- (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 मामले 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 हो तो 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 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.

- (60) 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)-

- (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:

- (clxxii) amount determined under Section 11 D;
- (clxxiii) amount of erroneous Cenvat Credit taken;
- (clxxiv) 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 मांग 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."



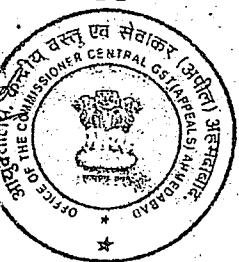
ORDER-IN-APPEAL

The present appeal has been filed by Dr. Ashish Kaushal, A-201, Heritage Skyz, Near Prahaladnagar Garden, Anand Nagar Road, Satellite, Ahmedabad – 380 015 (hereinafter referred to as the “appellant”) against Order in Original No. 26/WS08/AC/KSZ/2021-22, dated 29.03.2022 [hereinafter referred to as the “*impugned order*”] passed by the Assistant Commissioner, Division – VIII, CGST, 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.1,46,56,951/- during F.Y. 2014-15, however, the appellant had neither obtained service tax registration nor paid service tax on the service income received by him. The appellant was requested vide letters on different dates to submit the documentary evidence in respect of their income. However, the appellant failed to submit the required details/documents. Therefore, the service income earned by the appellant was considered as taxable value and it appeared that the appellant had failed to pay the service tax amounting to Rs.18,11,599/-. Therefore, the appellant was issued Show Cause Notice bearing No. CGST/Div-VIII/O&A/TPD/19/AJLPK4304P/2020-21 dated 21.09.2020 wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.18,11,599/- 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) & (2) and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs.3,027/- was confirmed along with interest. The demand of service tax amounting to Rs.18,08,572/- was dropped. Penalty amounting to Rs.1,000/- was imposed under Section 77 (1)



of the Finance Act, 1994. Also penalty equivalent to the service tax confirmed was imposed under Section 78(1) of the Finance Act, 1994.

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

- i. The adjudicating authority has wrongly considered Medical Practice receipt of Rs.24,493/- as taxable service. The income was received as consultancy fees from reputed hospitals in Ahmedabad for purely exempted services for patient medical treatment.
- ii. Opportunity has not been given for submitting ITR of F.Y. 2013-14 for the benefit of Notification No.33/2012-ST dated 20.06.2012. He is also eligible for benefit of exemption to small service providers. The ITR with computation of income for F.Y. 2013-14 is submitted during which he had received income from HCG Medi-surge Hospitals Pvt. Ltd. which is exempted from service tax.
- iii. Interest and penalty are not leviable as the service tax payable after allowing their claims would be Nil.

5. Personal Hearing in the case was held on 07.12.2022. Shri Ajay C. Mehta, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issue before me for decision is as whether the impugned order confirming the demand of service tax amounting to Rs.3,027/-, 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 demand of service tax was raised against the appellant based on the data received from the Income Tax Department. It is stated at Para 3 of the impugned order that the appellant was called upon to submit documents/details, however, the appellant failed to submit the same. In the impugned order, it is stated that "*the nature of activities carried out by the assessee appeared to be covered under the definition of service and not covered*



under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appeared to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.6.2012, as amended from time to time. Thus, the services provided by the assessee appeared to be subjected to Service Tax". No other cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the appellant 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 diligently. 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. Coming to the merits of the case, it is observed that in the impugned order it is mentioned at Para 22 that the appellant had only submitted document from HCG Medi-Surge Hospital (P) Ltd. to prove that the service provided by the appellant are health care services. It has further been recorded that the appellant had failed to any document from M/s. SAL Care (P) Ltd. and M/s. Healthcare Global Enterprise Ltd. to support the contention that the amount received was towards health care services. Further, the benefit of exemption under Notification No.33/2012-ST dated 20.06.2012 has been



denied by the adjudicating authority on the grounds that the appellant had not submitted any proof that the value of taxable services in the preceding F.Y. 2013-14 did not exceed Rs.10 Lakhs.

8.1 The appellant has along with the appeal memorandum submitted copies of his ITR for F.Y. 2013-14 along with the statement of Computation of Income and Form 3CB issued by the Statutory Auditor. In the Form 3CB, the nature of business of the appellant has been stated to be Medical Professional. The Consultancy Income received by the appellant during F.Y. 2013-14 is stated to be Rs.1,11,71,933/-. It is not disputed that the consultancy services provided by the appellant in the health care sector are exempted from payment of service tax. It is also observed that the Department has not brought on record any material to indicate that the appellant was engaged in providing taxable services. When the demand of service tax has been raised by the Department without any evidence or material, the onus cannot be shifted on to the appellant to establish that he was not providing taxable services or that the services provided by him were exempt from service tax. The appellant, being a Doctor, makes it obvious that the services provided by him are in the health care sector which are not chargeable to service tax. Therefore, the impugned order, without any material evidence considering the amount of Rs.24,493/- as income from taxable services, is bad in law as the same is devoid of any merit.

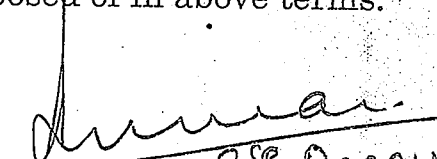
8.2 As regards the claim of the appellant for exemption in terms of Notification No. 33/2012-ST dated 20.06.2012, it is observed that the department has not alleged that the appellant was providing taxable services in the preceding F.Y. 2013-14 and neither has any demand of service tax been raised against the appellant for the said period. Therefore, denial of the benefit of exemption under the said Notification on the ground that the appellant had not submitted any document to establish that value of taxable services was less than Rs.10.Lakhs is not legally tenable. The onus is on the department to prove that the appellant was engaged in providing taxable services and that the income from such taxable services in the preceding financial year was more than Rs. 10 lakhs. Having failed to do so, the benefit of exemption cannot be denied to the appellant. Consequently, I am of the considered view that the adjudicating authority erred in denying the benefit of exemption under the said Notification.




9. In view of the facts discussed herein above, I am of the considered view that the demand of service tax confirmed vide the impugned order is not legally tenable or sustainable. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

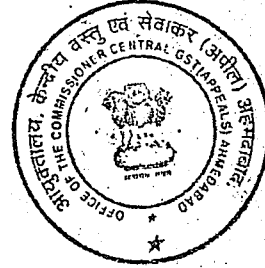
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.


 8th December,
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 08.12.2022.

Attested:


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



BY RPAD / SPEED POST

To

Dr. Ashish Kaushal,
 A-201, Heritage Skyz,
 Near Prahaladnagar Garden,
 Anand Nagar Road, Satellite,
 Ahmedabad – 380 015

Appellant

The Deputy Commissioner,
 CGST, Division- VIII,
 Commissionerate : Ahmedabad South.

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.