



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: 20230964SW000094829B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/302/2023 / 5328 - 29
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-102/2023-24
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 04.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/Dem-115/SUDHIR/AC/DAP/2022-23 दिनांक: 14.12.2022 passed by Assistant Commissioner, CGST, Division-VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Sudhir Jagabhai Parikh,
Shop. No.4, Samanvay Apartment,
Behind Sarkarivasahat, Vastrapur,
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 :

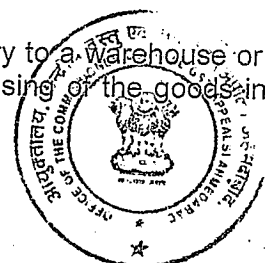
Revision application to Government of India:

(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।

(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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। इसके 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.

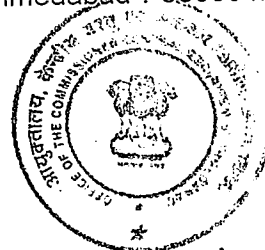
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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.

10 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)-

- (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' से पहले पूर्व जमा की तुलना में, अपील' बाखिल करने के लिए पूर्व शर्त बना दिया गया है.

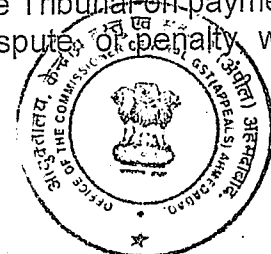
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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 M/s. Sudhir Jagabhai Parikh, Shop No. 4, Samnavya Apartment, Behind Sarkarivasahat, Vastrapur, Ahmedabad – 380054 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST-VI/Dem-115/SUDHIR/AC/DAP/2022-23 dated 14.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

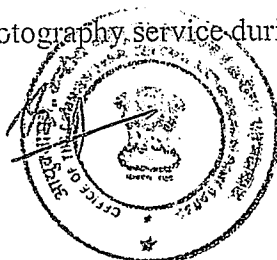
2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACOPP7741HST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that there is difference of value of service amounting to Rs. 16,23,570/- for the FY 2015-16, between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the relevant year. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS06/O&A/SCN-309/2020-21 dated 28.12.2020 demanding Service Tax amounting to Rs. 2,43,536/- for the period FY 2015-16, 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; and imposition of penalties under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,43,536/- 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 2015-16. Further (i) Penalty of Rs. 2,43,536/- 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. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

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

- The appellant are engaged in trading and photography service during the FY 2015-16.



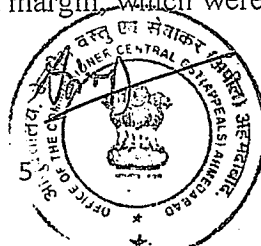
- Their income from trading and photography service is as under:

Sales income from Trading activities	10,00,000/-
Less: Purchase	9,05,900/-
Net Profit	94,100/-
Photography income	6,23,570/-
Less; Expenses	3,95,140/-
Net Profit from photography business	2,28,430/-
Total income from service	6,23,570/- ** below basic exemption limit

- Their income is from service is below exemption limit so that they were not fall under service tax regime and not liable to take service tax registration.
- They have also submitted copies of Income Tax Return, Profit & Loss Account, for the FY 2015-16 along with appeal memorandum.

3.1 The appellant have submitted additional submission, vide their letter dated 27.06.2023 submitted during the course of personal hearing on 03.07.2023. In their additional submission, they have, inter alia, submitted that their purchase was amounting to Rs. 9,05,900/- with no opening and closing stock as mentioned in Income Tax Return form on page No. 13 showing opening stock and purchases. The opening and closing stock of balance sheet is on page no. 11 resulting in sale of Rs. 10,00,000/ i.e. gross profit of Rs. 94,100/- i.e. around 10%. This proves that they have trading income as well as photography income. Trading income is liable for VAT under Gujarat VAT Act and the Photography income is liable for tax under service tax regime. The service tax income is not liable for service tax. The appellant also submitted an affidavit that at the time of filing return the service income shown as Rs. 16,23,570/- be read as Rs. 6,23,570/- as sale of service income and Rs. 10,00,000/- as sale of goods income.

4. Personal hearing in the case was held on 03.07.2023. Shri Nitin M. Pathak, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated submission made in the appeal and the additional written submission with supporting documents submitted at the time of personal hearing. He submitted that the appellant had earned part of the income of Rs. 10 lakhs from sale of goods and an income of Rs. 6,23,570/- from sale of services. However, the entire income was erroneously shown in the ITR as from sale of services. He drew attention to para three regarding application of funds in the ITR, where inventory is shown as nil and serial number six of debits to profit and loss account, where purchase of goods is shown as Rs. 9,59,900/-. He contended that these same goods were traded by the appellant with 10% profit margin, which were inadvertently, not shown as



sale of goods. He also drew attention to their profit and loss account for the FY 2015-16, where bifurcation of income from sales of goods and from photography service is shown separately. They have also submitted an affidavit in this regard. He undertook to submit a copy of balance sheet, ledger, sample invoices for sale and purchase of goods, etc. within a week.

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 of service tax 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 2015-16.

6. I find that the main contention of the appellant are that (i) they were engaged in trading and photography service during the FY 2015-16 and their income from Trading activities was Rs. 10,00,000/-, which was liable for VAT under Gujarat VAT Act and not service tax; (ii) their income from Service activities was Rs. 6,23,570/-, which was below exemption limit and thus, no service tax payable by them. It is also observed that the adjudicating authority has passed the impugned order ex-parte observing that the appellant not submitted any written submission as assured during the personal hearing or not submitted any request for extension of time limit for filing their written submission.

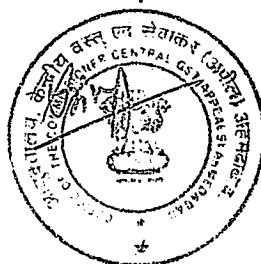
7. On verification of the documents submitted by the appellant, i.e. Profit & Loss Account and Income Tax Return for the FY 2015-16 and affidavit dated 07.06.2023, I find that during the relevant period, the appellant were engaged in trading activities as well as providing photography service and their income from Trading activities was Rs. 10,00,000/- and Service activities was Rs. 6,23,570/-. The sale of goods / trading of goods falls in Negative List as per Section 66D(e) of the Finance Act, 1994. Hence, the appellant are not liable to pay service tax on the said amount of Rs. 10,00,000/-. Section 66D(e) of the Finance Act, 1994 reads as under:

"SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :-

(a)

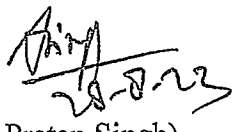
(e) trading of goods;"




8. As regard the remaining income of Rs. 6,23,570/- for the FY 2015-16 for which the appellant contended that they were eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012, I find that the appellant not submitted any income details for the FY 2014-15, which is relevant for the exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2015-16. Therefore, the benefit of threshold exemption cannot extended to them. In view of the above, I hold that the appellant is not eligible for any exemption on income of Rs. Rs. 6,23,570/- for the FY 2015-16 and they are liable to Service Tax of Rs. 93,536/- for the said income received by them during the FY 2015-16.

9. In view of the above discussion, I uphold the order passed by the adjudicating authority for demanding Service Tax of Rs. 93,536/- along with interest for the FY 2015-16 and set aside the order for demanding remaining Service Tax amount. Needless to say that the penalty under Section 78 of the Finance Act, 1994 is required to be reduced to the Service Tax demanded and upheld in this order, i.e. Rs. 93,536/-. However, in view of the clause (ii) of the second proviso to Section 78(1), if the amount of Service Tax confirmed and Interest thereon is paid within the period of thirty days from the date of receipt of this order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days. I also uphold the rest of the impugned order imposing penalty, however, looking to the circumstances and quantum of the demand, I order for reducing the penalty to Rs. 2,000/- under Section 77(1) of the Finance Act, 1994; and Rs. 2000/- under Section 77(2) of the Finance Act, 1994.

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.


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested


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

Date :



By RPAD / SPEED POST

To,
M/s. Sudhir Jagabhai Parikh,

Appellant

Shop No. 4, Samnavya Apartment,
Behind Sarkarivasahat, Vastrapur,
Ahmedabad – 380054

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)
- 5) Guard File
- 6) PA file

