



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: 20230964SW000000C9AE

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1555/2023 /6133- 38
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-114/2023-24
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 14.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 49/WSO3/AC/CSM/2022-23 दिनांक: 22.12.2022 passed by Assistant Commissioner, CGST, Division-III, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Parulben Jayvardhan Vyas,
59/3, Vallabhvadi, Rambaug,
Maninagar, Ahmedabad-383008.

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 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 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 Appellant 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 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.

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)-

- 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.

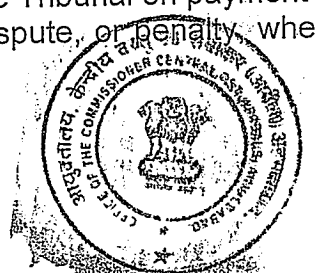
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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."



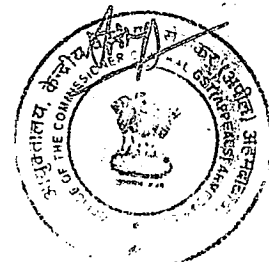
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Parulben Jayvardhan Vyas, 59/3, Vallabhvadi, Rambaug, Maninagar, Ahmedabad – 383008 (hereinafter referred to as “the appellant”) against Order-in-Original No. 49/WS03/AC/CSM/2022-23 dated 22.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division III, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ABZPV7363F. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 and FY 2016-17, it was noticed that the appellant had earned an income of Rs. 10,16,583/- during the FY 2014-15, and Rs. 11,25,650/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment 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/15-374/PARULBEN JAYVARDHAN VYAS/2020-21 dated 22.12.2020 demanding Service Tax amounting to Rs. 2,94,497/- for the period FY 2014-15 and FY 2016-17, 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) 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. 2,94,497/- 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 FY 2014-15 and FY 2016-17. Further (i) Penalty of Rs. 2,94,497/- 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; (iii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; and (iv) Penalty of Rs. 20,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.



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

- The appellants are engaged in the business of providing Mandap Decoration Service in the name and style of Shri Ambica Decorators. During the FY 2013-14 to FY 2016-17, the gross receipts of the appellants are as under:

Sr. No.	Particular	FY 2013-14 (in Rs.)	FY 2014-15 (in Rs.)	FY 2015-16 (in Rs.)	FY 2016-17 (in Rs.)
1	Income from Mandap Decoration Service	9,32,672/-	8,87,685/-	8,70,000/-	9,24,000/-
2	Income from sale of goods being non-use and discarded decoration materials	NIL	1,28,898/-	1,19,066/-	2,01,650/-
	Total	9,32,672/-	10,16,583/-	9,89,066/-	11,25,650/-

Thus, gross receipt from the sale of services in both the years under dispute, i.e. FY 2014-15 and FY 2016-17, are below the exemption limit.

- The appellants submitted that the present demand was confirmed by the adjudicating authority without making any further independent inquiry as to the nature of receipts etc. The show cause notice issued merely on the figures received from the income tax department.
 - The adjudicating authority has provided three dates of personal hearing in the span of 13 days, i.e. 06.12.2022, 09.12.2022 and 19.12.2022. The appellants before could appoint legal representative and could reiterate their submission the impugned order was passed on 22.12.2022. Thus, the impugned order passed by the adjudicating authority without giving proper chance of being heard and in violation of principle of natural justice.
 - Alternatively, the appellants submitted that the adjudicating authority not given the benefit of basic threshold exemption to the appellants for the FY 2014-15 and FY 2016-17, which was available to them as their taxable value of service during the FY 2013-14 and FY 2015-16 were below Rs. 10 lakh.
4. Personal hearing in the case was held on 11.08.2023. Shri Shakir V. Chauhan, Chartered Accountant; and Shri Darshan Panchal, Chartered Accountant, appeared on behalf



of the appellant for personal hearing and handed over additional written submission with supporting documents. They submitted that the appellant provided mandap decoration service and also rendered sale of scrap goods. Since, the sale value was below the threshold limit so VAT was not payable. They submitted that the income from services in each of the financial year was less than Rs. 10 Lakhs and they are eligible for threshold exemption. In view of the same, they requested to set aside the impugned order.

4.1 The appellant in their additional written submission given at the time of personal hearing, inter alia, reiterated the submission made in the appeal memorandum and further submitted the following grounds:

- There are two kinds of the receipts in both the years viz. income from sale of the service of the mandap decorators and income from the sale of non-use and discarded mandap and other decoration materials. The mandap decorating items are being goods and hence the same is not subjected to any service tax as trading of goods is in the negative list of services in terms of Clause (e) of the Section 66D of the Finance Act, 1994.
- They submitted copies of Sales Invoices of the non-use mandap and other decorating items in scraps along with their reply.

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 2014-15 and FY 2016-17.

6. It is observed that the main contention of the appellant is that they are engaged in the business of providing Mandap Decoration Service and also there was income from the sale of non-use and discarded mandap and other decoration materials during the material period. The taxable value of the service provided by them during the FY 2014-15 and FY 2015-16 remains under threshold exemption limit as their taxable value for the FY 2013-14 and FY 2015-16 was below Rs. 10 lakhs. Therefore, service tax is not leviable from them.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order passed ex-parte.



during the FY 2014-15 to FY 2016-17. During the FY 2014-15 and FY 2016-17, their service income and income from sale of goods are as under:

Sr. No.	Particular	FY 2014-15 (in Rs.)	FY 2016-17 (in Rs.)
1	Income from Mandap Decoration Service	8,87,685/-	9,24,000/-
2	Income from sale of goods being non-use and discarded decoration materials	1,28,898/-	2,01,650/-
	Total	10,16,583/-	11,25,650/-

8.1 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. 1,28,898/- for the FY 2014-15 and Rs. 2,01,650/- for the FY 2016-17. 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;*”

9. Thus, after the deducting the income from the sale of non-use and discarded mandap and other decoration materials, the taxable service value for the FY 2014-15 was Rs. 8,87,685/- and for the FY 2016-17 was Rs. 9,24,000/-. As regard the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 admissible to the appellant or not, I find that the total value of service provided during the Financial Year 2013-14 was Rs. 9,32,672/- as per the Profit & Loss Account and Income Tax Return submitted by the appellant, which is relevant for the exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15. I also find that the total income received by the appellant was Rs. 9,89,066/- during the Financial Year 2015-16, as per the Profit & Loss Account and Income Tax Return submitted by the appellant, thus the appellant are also eligible for benefit of exemption of Rs. 10,00,000/- during the FY 2016-17.

10. In view of the above discussion, I am of the considered view that the appellant are not liable to pay Service Tax of Rs. 2,94,497/- as demanded and confirmed in the impugned order for the FY 2014-15 and FY 2016-17 and the impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.



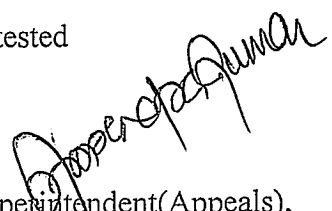
11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

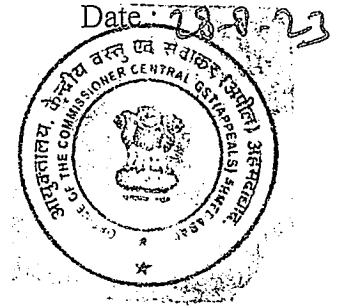
12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested


Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Parulben Jayvardhan Vyas,
59/3, Vallabhvadi, Rambaug,
Maninagar, Ahmedabad – 383008

Appellant

The Assistant Commissioner,
CGST, Division-III,
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 I, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division III, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- ~~6) Guard File~~
- 7) PA file

