



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN: 20230964SW000000F50F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/116/2023 / 6128-32
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-121/2023-24
दिनांक Date : 11-09-2023 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. MP/139/DC/Div-IV/2022-23 दिनांक: 20.12.2022 passed by Deputy
Commissioner, CGST, Division-IV, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Jagdish Haribhai Parmar,
1296 121 Khodiyar Nagar,
Hemtaji Maharaj Nicha,
Behrampura,
Ahmedabad-380022.

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। इसके 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 रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

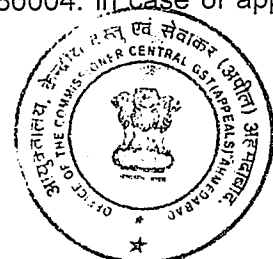
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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.

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.

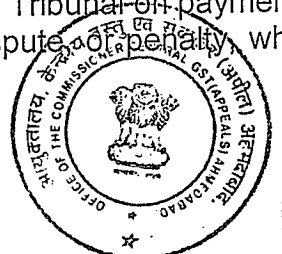
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Jagdish Haribhai Parmar, 1296 121 Khodiyar Nagar, Hemtaji Maharaj Nicha, Behrampura, Ahmedabad, Gujarat— 380 022 (hereinafter referred to as the “*appellant*”) against Order in Original No. MP/139/DC/Div-IV/22-23 dated 20.12.2022 [hereinafter referred to as “*impugned order*”] passed by the Deputy Commissioner, Division IV, CGST, Commissionerate Ahmedabad South (hereinafter referred to as “*adjudicating authority*”).

2. Briefly stated, the facts of the case are that the appellant were not registered with Service Tax department. They are holding PAN No. ARHPP9379F. As per the information received from the Income Tax Department, the appellant had earned substantial service income from services during F.Y. 2015-16, however they did not obtain service tax registration and did not pay service tax on such income from service. The appellant were called upon to submit the documents, however, the appellant failed to submit the required details / documents. Therefore, the appellant were issued Show Cause Notice bearing No. IV/Div.-IV/SCN-444/2020-21 dated 22.04.2021, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 2,69,265/- 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 (hereinafter referred to as ‘*the Act*’).
- b) Impose penalty under the provisions of Section 70, 77 (1) and 78 of the Act.

3. The SCN was adjudicated vide the impugned order wherein:

- a) The demand of service tax amounting to Rs. 2,69,265/- was confirmed along with interest.
- b) Penalty amounting to Rs. 2,69,265/- was imposed under



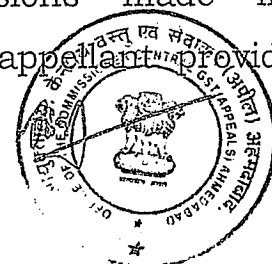
section 78(1) of the Act.

- c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act.
- d) Penalty amounting to Rs. 5,000/- was imposed for not submitting the documents.
- e) Penalty amounting to Rs. 40,000/- was imposed under section 70 of the Act.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds. They have submitted copy of supporting documents viz. 26AS, Income Tax Return and statement of Income, Profit & Loss Account and Balance Sheet for the F.Y. 2015-16.

- During the impugned period the appellant being a government registered contractor was providing service to local authorities only. The said service is exempted under mega exemption Notification 12/2012-Service Tax dated 17.03.2012 and hence the appellant are not liable to pay service tax.
- In respect of taking service tax registration the appellant submits that as they are not liable to pay the service tax, they are not required to obtain Service tax registration under the provision of section 69 of Act.
- As the appellant are not liable to pay service tax and are exempted under the provision of Notification of 12/2012-ST dated 17.03.2023 there is no willful suppression of facts nor contravention of any provisions of the Act and therefore invoking provision of section 73(1) of Act along with interest under section 75 of the Act and penalty under section 78 of the Act are not proper.

5. Personal Hearing in the case was held on 11.08.2023 Shri I.S. Saiyad, Tax Consultant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted that the appellant provided works



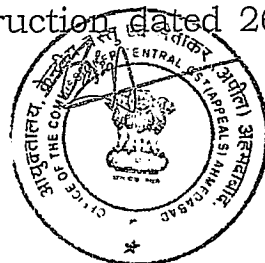
contract service regarding repairing of roads to Ahmedabad Municipal Corporation, which is exempt from service tax. Further he submitted that the adjudicating authority had passed the impugned order on ex-parte basis, without verifying the nature of service provided. He submitted Form 26AS and other supporting documents and requested to set aside the order.

6. The appellant vide letter dated 24.08.2023 submitted copy of copy of Registration Certificate in AMC.

7. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 2,69,265/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

8. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the nature of the activities carried out by the appellant as a service provider appears to be covered under the definition of service; appears to be not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Act, as amended. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Act. No 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. However, the data received from the Income Tax department cannot form the sole ground for raising the demand of service tax.

8.1 I find in pertinent to refer to Instruction dated 26.10.2021



issued by the CBIC, wherein it was directed that:

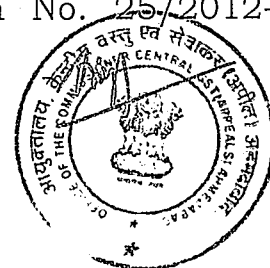
"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

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."

8.2 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.

9. The adjudicating authority had confirmed the demand of Service Tax in the impugned order by not considering exemption benefit under Sr. No. 13 (a) and 25 (a) of the Notification No. 25/2012-ST dated 20.06.2012 to the appellant, inter alia, holding that the appellant have not produced any evidence to prove that the said amount credited in their account is against services provided to Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply.

10. For ease of reference, I reproduce the relevant provision of Sr. No. 13 (a) and 25 (a) of Notification No. 25/2012-ST dated



20.06.2012 as amended vide Notification No. 06/2015 dated 01.03.2015 (effective from 01.04.2015), which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

3.....

13. Services provided by way of construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

14.....

15.....

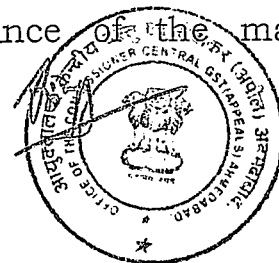
25. Services provided to Government, a local authority or a governmental authority by way of-

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

11. In view of the above proviso of Sr. No. 13 (a) and 25 (a) of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 06/2015 dated 01.03.2015, it is amply clear that if the appellant provided services by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, a road, bridge, tunnel, or terminal for road transportation for use by general public the services provided by the appellant is exempted one.



12. On verification of the various documents submitted by the appellant, viz. copy of contracts with Ahmedabad Municipal Corporation, copy of work completion certificate issued by City Engineer, AMC and Form 26AS for the F.Y. 2015-16, I find that the appellant had provided services to Ahmedabad Municipal Corporation related to supplying water tanker at different place in Ahmedabad and supplying labourers and machinery at various places in Ahmedabad for construction of Road. Therefore, the said services were exempted as per Sr. No.13 (a) and 25 (a) of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 06/2015 dated 01.03.2015. Under the circumstances, I find that the version of the appellant that they were engaged in the services by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, a road, bridge, tunnel, or terminal for road transportation for use by general public and that consideration so received against providing such services were exempted vide Sr. No. No.13 (a) and 25 (a) of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 06/2015 dated 01.03.2015 has to be considered in their favour in absence of any contrary evidences brought on record by the adjudicating authority. I find that it is a well settled legal position that the phrases and wordings used in the statutes have to be interpreted strictly and cannot be interpreted to suit one's convenience as it may defeat the objective/purpose of Legislature. As a principle of equity, no tax can be imposed by inference or analogy or assumptions or presumptions. In the case of **State of Rajasthan Vs Basant Agrotech (India) Ltd. [2014 (302) ELT 3 (SC)]**, the Hon'ble Supreme Court has held that if the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intention of the legislature and by considering what was the substance of the matter and in




interpreting a taxing statute, equitable considerations are entirely out of place.

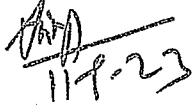
13. Since the demand of service tax is not sustainable on merits there does not arise any question of interest or penalty in the matter.

14. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

15. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

Attested

Anand Kumar
 Superintendent(Appeals)
 CGST Ahmedabad.


(Shiv Pratap Singh)
 Commissioner (Appeals)
 Dated: 11.09.2023



BY RPAD/ SPEED POST

To
 M/s. Jagdish Haribhai Parmar,
 1296 121 Khodiyar Nagar,
 Hemtaji Maharaj Nicha,
 Behrampura, Ahmedabad,
 Gujarat— 380 022.

Appellant

The Deputy Commissioner
 CGST & Central Excise
 Division IV, Ahmedabad South.

Respondent

Copy to :

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





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