



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: 20231164SW000000E5FA**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/3490/2023 1782-18
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-149/2023-24**  
दिनांक Date : 25-10-2023 जारी करने की तारीख Date of Issue 02.11.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. 128/CGST/Ahmd-South/DC/SVS/2022-23 दिनांक: 17.01.2023 passed by deputy Commissioner, CGST, Division V, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

**M/s. Hahalkumar Harishbhai Shah,  
C 105, Belapark Society,  
B/h Hemapark, Ambica Nagar,  
Odhav, Ahmedabad-382430.**

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, 4<sup>th</sup> 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 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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(Appel) 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 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.

- 1ण 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 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. Hemalkumar Harishbhai Shah, C-105, Bela Park Society, B/h Hema Park Ambica Nagar, Odhav, Ahmedabad (hereinafter referred to as "the Appellant") against Order-in-Original No.128/CGST/Ahmd-South/DC/SVS/2022-23 dated 17.01.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST and C.Ex., Division-V, 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. BSBPS4386R. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the Appellant had earned an income of Rs. 12,30,000/-during the FY 2014-15, which was reflected under the heads "Sales of Services under 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 has neither obtained Service Tax registration nor paid the applicable service tax thereon. The Appellant were called upon to submit copies of relevant 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. CGST/WS05/TPD-2014-15/2020-21 dated 28.12.2020 wherein it was proposed to:

a) Demand and recover an amount of Rs. 1,54,980/- for F.Y. 2014-15 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.

2.2 The SCN was adjudicated ex-parte vide the impugned order wherein:

a) The demand of service tax amounting to Rs. 1,54,980/- for F.Y. 2014-15 was confirmed along with interest under section 75 of the Act.

b) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act.

c) Penalty amounting to Rs. 40,000/- was imposed under section 70 of the Act for failure to furnish two half yearly returns in the format of ST-3 within the specified time.

d) Penalty amounting to Rs. 1,54,980/- was imposed under section 78(1) of the Act.

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 providing work of mobile recharge and mobile lamination service during the FY 2014-15.
- For the income against the sale of service, the Appellant submitted that the income had been calculated from ITR of F.Y. 2014-15 as income earned 12,30,000/- was wrongly filed by their consultant which is not processed by Income Tax department. The Appellant had filed revised ITR of F.Y. 2014-15 as income earned 5,98,050/- which was processed vide acknowledgment No. 170797860120516.



- The Appellant submitted that the income from sale of service was remaining within threshold limit of exemption as per Notification No. 33/2012-ST dated 20.06.2012, and therefore, the Appellant are not liable for payment of service tax on the same.
- In FY 2014-15, while filing Revised ITR all the income for Rs. 5,98,050/- had been recorded under head of "Gross Turnover or Gross Receipts" and total presumptive income under Section 44 AD of Income Tax Act. 1961 of Rs. 2,15,105/-. They submitted copies of Revised ITR for F.Y. 2014-15 along with their appeal memorandum.

4. Personal hearing in the case was held on 29.09.2023 and 25.10.2023. Shri Hemalkumar Harishbhai Shai, himself appeared for personal hearing and reiterated the submissions made in appeal memorandum. He submitted that after loss of job he had started small work of recharging mobile phones. Since, 2014-15 was first year of business and in the previous year, the income from service or business was nil, he stated that income from services is less than Rs. 10 lakhs as per Notification No. 33/2012-ST dated 20.06.2012. Therefore, the Applicant are eligible for threshold exemption, keeping in view the taxable income in the previous year being less than Rs. 10 lakhs. The Appellant requested to set aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing 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.

6. I find that in the SCN in question, the demand has been raised for the period F.Y. 2014-15 based on the Income Tax Returns filed by the Appellant, which is wrongly filed and not processed by Income Tax Department. The same was rectified by the Appellant and filed Revised Income Tax Return and same was processed by the Income Tax Department on 28.05.2016.

6.1 In the present case, I find that letters were issued to the Appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.

7. It is observed that the demand of service tax vide Show Cause Notice (supra) was raised against the Appellant on the basis of the data received from Income Tax department. As per the data received from Income Tax department, the Appellant had received Rs. 12,30,000/- during FY. 2014-15. On the basis of documentary evidence i.e. Revised Income Tax Return for the F.Y. 2014-15, it is observed that income earned by the Appellant from gross receipt of Rs. 5,98,050/- during F.Y. 2014-15 was below the threshold limit i.e. Rs. 10 lakhs in terms of the provision of Notification No. 33/2012-ST dated 20.06.2012. The Income in the preceding year F.Y. 2013-14 of the Appellant is Rs. 1,95,348/- which is also below the limit of Rs. 10 lakhs.

Notification No. 33/2012 - Service Tax



*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 Finance Act), and insupersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1<sup>st</sup> March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:*

(i).....

(ii).....

(viii) *the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.*

7.1 From reading the above provision it is clarified that the Appellant are exempted from tax under Notification No. 33/2012-ST dated 20.06.2012 subject to the condition that the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

8. In view of the above It is held that the Appellant had received income of Rs. 5,98,050/- in 2014-15 from service provided, which are below the threshold limit of Rs. 10 Lakh. Therefore, in terms of Notification No. 33/2012-ST dated 20.06.2012 the Appellant are not liable to pay any service tax in respect of the service provided by them during F.Y. 2014-15. I am of the considered view that the adjudicating authority has erred in confirming the demand of service tax amounting to Rs. 1,54,980/- for FY. 2014-15.

9. 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.





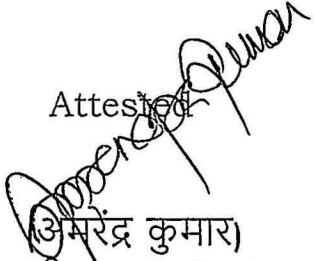
10. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

11. 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.



ज्ञानचंद जैन  
आयुक्त (अपील्स)  
Date : 25.10.2023

Attested



अमरेंद्र कुमार  
अधीक्षक (अपील्स)  
सी.जी.एस.टी, अहमदाबाद



**By RPAD / SPEED POST**

To,  
M/s. HemalkumarHarishbhai Shah,  
C 105, Belapark Society, B/h HemaparkAmbica Nagar  
Odhav, Ahmedabad - 382430

Appellant

The Deputy/ Assistant Commissioner,  
CGST and C.Ex. , Division-V,  
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 V, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
- 5) Guard File
- 6) PA file

