सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN: 20231164SW000000B2FA

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3501/2023 /३६०३ –१८

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-155/2023-24**
दिनाँक Date : 26-10-2023 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. 253/WSO8/AC/KSZ/2022-23 दिनाँक: **10**.02.2023 passed by Assistant Commissioner, CGST, Division VIII, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Ravin Himatlal Mehta,
402, 4th Floor, Anjali Residency,
Near Neelkanth Elegance,
Radio Mirchi Tower Road,
Satellite, Ahmedabad.

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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत`हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 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.

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 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. Ravin Himatlal Mehta, 402, 4th Floor, Anjali Residency, Near Neelkanth Elegance, Radio Mirchi Tower Road, Satellite, Ahmedabad (hereinafter referred to as *"the Appellant"*) against Order-in-Original No. 253/WS08/AC/KSZ/2022-23 dated 10.02.2023 (hereinafter referred to as *"the impugned order"*) passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South (hereinafter referred to as *"the adjudicating authority"*).

2. Briefly stated, the facts of the case are that the Appellant were not registered with Service Tax department holding PAN No. AQKPM2723Q. As per the information received from the Income Tax Department, it was noticed that the Appellant had earned substantial income of Rs. 18,23,789/- from service provided during F.Y. 2014-15; however they failed to obtain Service Tax Registration and also failed to pay service tax on such income. The Appellant were called upon to submit copies of relevant documents for assessment for the said period, however, they neither submitted any required details/documents nor did offer any clarification/explanation regarding gross receipts from services rendered/income earned by them.

2.1. Subsequently, the appellant were issued Show Cause Notice wherein it was proposed to:

a) Demand and recover an amount of Rs. 2,25,420/- for F.Y. 2015-16 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 77 (1), 77(2) and 78 of the Act.

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

a) The demand of service tax amounting to Rs. 2,25,420/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2015-16.

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

c) Penalty amounting to Rs. 10,000/- was imposed under section 77(2) of the Act for not submitting the documents in the department when called for.

d) Penalty amounting to Rs. 2,25,420/- was imposed under section 78 of the Act.

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

- SCN is indiscreet in nature. The SCN has been issued merely on the basis of the data received from the income tax department without any verification of the facts about he taxability on the income of the Appellant. Reliance is placed on the judgment of the Hon'ble Allahabad High Court in the case of Sharma Fabricator & Erectors Pvt. Ltd. – 2017 (5) G.S.T.L. 96 (Tri.-All.)
- The SCN is liable to be quashed as the same is non-est however it is confirmed vide the impugned order.
- The adjudication of SCN on ex-parte is in clear violation of principal of natural justice.
- The nature of business being Export of Service by the Appellant is not considered while issuances of SCN and during adjudication. The Appellant were engaged in providing

Consultancy service to one M/s WuXI App Tec, INC, USA under an agreement entered on 14th December, 2012 as amended on 10th March, 2015 with the Appellant.

- No violation of any provision of the Act and rules made there under no penalty is imposable upon the Appellant. As the Appellant is liable to discharge any service tax on the Income earned by them for carrying out consultancy services to their overseas client as it being Export of Service in terms of Rule 6A of Service Tax Rules, 1994. The Appellant is liable to take service tax registration under section 69 of the Act; not liable to pay service tax in terms of Section 68 of the Act read with rule 6 of Service Tax Rules, 1994; not violated the provisions of section 69 of the Act read with Rule 4 of the Service Tax Rules; not violated the provision of Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994. Accordingly the Appellant contend that penalty imposed upon the Appellant under Section 77(1), Section 77(2) and Section 78 of the Act are not sustainable under the law.

5. Personal hearing in the case was held on 06.10.2023. Sh. Pravin Dhandharia, C.A., appeared on behalf of the appellant for personal hearing and reiterated the contents of the written submission and further requested for one week time to submit additional documents. He stated that the Appellant are providing 100% Export of Services. Hence the Appellant requested to allow the appeal.

6. The Appellant have submitted documents viz. copy of consultancy agreement entered on 29th August, 2012 as amended on 10th March, 2015 between the Appellant and WUXI Apptec Inc., U.S.A.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made 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 F.Y. 2014-15.

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; appears to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 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 of demand of service tax.

8.1 I find it 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. Coming to the merit of the case I find that the main contention of the Appellant are that whether the Appellant are liable to pay service tax on income declared by the Appellant in ITR data provided by Income Tax Department, in context of which the Appellant have held that the present demand on Income of Rs. 18,23,789/- pertains to Export of Service which is exempted under Rule 6A of the Service Tax Rule, 1994. For clarification extract of Rule 6A is reproduced as under:

RULE 6A. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -
(a) the provider of service is located in the taxable territory ,
(b) the recipient of service is located outside India,
(c) the service is not a service specified in the section 66D of the Act, (d) the place of provision of the service is outside India,
(e) the payment for such service has been received by the provider of Service in convertible foreign exchange, and
(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 2 | Explanation 3] of clause (44) of section 65B of the Act

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in

providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]

12. It is observed that during 2014-15, the Appellant were engaged in the business of providing Consultancy services to one M/s WuXI App Tec., INC, USA outside India and have received payment in convertible foreign exchange against the same. The Appellant have submitted the following documents:

a) Copy of P & L Account for the FY 2014-15;
b) Copies of sample invoices issued by the Appellant during the FY 2014-15;
c) Copies of agreement between the Appellant and WUXI Apptec Inc., U.S.A. entered on 29th August, 2012 as amended on 10th March, 2015;
d) Copy of ledger account in respect of M/s WuxI App Tec Ic. – Minnesota (USA);
e) Copy of 26AS Form for F.Y. 2014-15;

13. Reading the aforesaid provision and above mentioned documents submitted by the Appellant it is very much clear that the service value for the amount of Rs. 18,23,789/- as per their Books of Account provided by the Appellant is exempted in terms of service being export of service in view of Rule 6A of the Service Tax Rule, 1994. On verification of documents submitted by the Appellant and demand raised vide the Order-in-Original by the adjudication authority, I find the amount shown in Income Tax Return for F.Y. 2014-15 over which demand of service tax of Rs. 2,25,420/- was raised is nothing but income collected by rendering export of service. The details of amount collected from the export of service rendered by the Appellant is shown in table as under:

Sr. No.	Particulars	Amount (in Rs.)	Remarks
1	Income from Export of Service	18,23,789/-	The said export of service provided is not taxable as per Rule 6A of Service Tax Rules.

13. I have perused agreement copies held between the Appellant and WUXI Apptec Inc., U.S.A. entered on 29th August, 2012 as amended on 10th March, 2015, copies of sample invoices, copy of P & L Account and Balance Sheet and 26AS Form for F.Y. 2014-15. Looking to the evidences in support of their submission provided by the Appellant I find that the Appellant, which are located in taxable territory are providing service to the recipient of service located outside India and for the service rendered by the Appellant they were collecting payment in convertible foreign exchange. Thus I am of the considered view that the said amount of Rs. 18,23,789/- in F.Y. 2014-15 is only the consideration received on account of export of service rendered by the Appellant and demand accordingly is legally wrong and not sustainable. 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 and finding, 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.

26.10.23

ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : .10.2023

Attested

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

By RPAD / SPEED POST

To,

M/s. Ravin Himatlal Mehta,, Appellant
402, 4th Floor, Anjali Residency,
Near Neelkanth Elegance,
Radio Mirchi Tower Road,
Satellite, Ahmedabad.

The Assistant Commissioner, Respondent
CGST, Division-VIII,
Ahmedabad South

Copy to:-

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