



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 - टेलीफैक्स 07926305136



DIN: 20231164SW0000121171

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3378/2023 12993 - 97
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-157/2023-24
दिनांक Date : 30-10-2023 जारी करने की तारीख Date of Issue 07.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. 329/DC/Tejas/Div-8/A'bad-south/PMT/2022-23 दिनांक: 24.02.2023
passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Tejas Rameshchandra Shah,
B-5, Devsarshan Apt.,
Opp. Shanti Towers,
Ambawadi, Ahmedabad-380015.

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 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(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.

- 1^प 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.

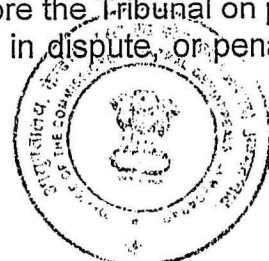
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Tejas Rameshchandra Shah, B-5, Devsarshan Apt./Opp. Shanti Towers, Ambawadi, Ahmedabad- 380 015 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. 329/DC/Tejas/Div.-8/Ahmedabad South/PMT/2022-23 dated 24.02.2023 (date of issue of OIO :- 27-02-2023) (hereinafter referred to as "*the impugned order*") passed by the Deputy/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 holding Service Tax Registration No. ADSPS7086HST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the Appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 and F.Y. 2016-17 as compared to the gross value declared by them in their Income Tax Return (ITR)/TDS Returns. Accordingly, it appeared that the Appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The Appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the Appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1. Subsequently, the Appellant were issued Show Cause Notice No. CGST/WS0804/O&A/TPD(15-16)/ADSPS7086H/2020-21/5539 dated 21.12.2020 and a corrigendum to the said SCN dated 28.02.2022 wherein it was proposed to:

a) Demand and recover an amount of Rs. 11,43,542/- for F.Y. 2015-16 and F.Y. 2016-17 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 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. 11,43,542/- 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. 11,43,542/- was imposed under section 78 of the Act.

c) Penalty was imposed under section 77 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:

- The Appellant is Proprietorship firms and engaged in business related to installation, commissioning, servicing of Air conditioners and related products as per requirement of the client. The Appellant supply both goods as well as provision of service as per the single tender or through a single work order.
- The Appellant submitted that the demand raised in the impugned order for the F.Y. 2015-16 and F.Y. 2016-17 is based on turnover declared in 26AS which include turnover decalred under Sales Tax Return (VAT Return) and under Service Tax return (ST-3 Return). The adjudicating authority confirmed demand wrongfully on the income of sale of goods without verifying the documents.



- The demand raised by the Id. Adjudicating authority is wrong and set aside as the same is considered without referring all the actual facts of the instant case.
- The Appellant prayed to quash the demand along with interest under section 75 of the Act raised by the Id. Adjudicating authority. The Appellant prayed to set aside the demand of penalty imposed under section 77 and Section 78 of the Act.

5. Personal hearing in the case was held on 17.10.2023. Sh. Bhargav Shah, C.A., appeared on behalf of the Appellant for personal hearing and reiterated the content of the written submission in the appeal and requested to allow the appeal.

6. The Appellant have submitted documents viz. Audited Balance Sheet and P & L Account, sample invoice copies (Trading Invoices raising VAT as well as Tax Invoices raising Service Tax), and 26AS Form, copies of ST-3 Returns for F.Y. 2015-16 and F.Y. 2016-17.

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. 2015-16 and F.Y. 2016-17.

8. It is observed that the Appellant are registered with the department and were filing ST-3 Returns. However, the present demand has been raised based on ITR data provided by Income Tax department. The SCN alleges that the Appellant had not discharged the service tax liability on the differential income noticed on



reconciliation of ITR and ST-3 Returns. No other detail for raising demand is available in the SCN.

9. 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 nowhere specified in the SCN 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. 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.

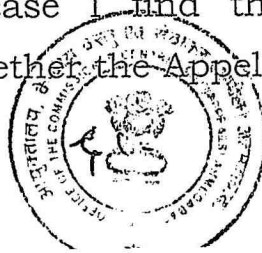
9.1 I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

"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."*

9.2 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.

10. 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 differential income arrived due to reconciliation of Income declared by the Appellant in Service Tax Returns (ST-3 Returns) and ITR data provided by Income Tax Department, in context of which the Appellant have held that the present demand on differential Income of Rs. 28,21,075/- in F.Y. 2015-16 and Rs. 48,96,577/- pertain to income received from selling of goods. On the basis of documentary evidence i.e. P & L Accounts and VAT Return filed for F.Y. 2015-16 and F.Y. 2016-17 and sample invoices copies in relation to trading of goods and service provided by the Appellant, I am of the considered view that the differential income raised by the adjudicating authority in F.Y. 2015-16 and F.Y. 2016-17 were not taxable service income as the said income had been earned by the Appellant from sales of goods; which was covered under negative list as per section 66D (e) of the Act. For clarification extract of 66D (e) of the Act is reproduced as under:

“SECTION 66D. Negative list of services.—

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

(a)

(e) trading of goods;”

11. Reading the aforesaid provision and documents submitted by the Appellant it is very much clear that the differential Income of Rs. 28,21,075/- in F.Y. 2015-16 and Rs. 48,96,577/- pertains to income received from selling of goods and hence the Appellant are eligible to take exemption. The details of amount shown in 26AS Form over which the demand has been raised by the adjudicating authority is in table as under:

Sr. No.	Financial Year	TDS deducted under head other than 194A	TDS deducted in (194A) i.e. Interest Income	Income as per ST-3	Differential income (Col.3-Col. 5.)
(1)	(2)	(3)	(4)	(5)	(6)
1.	2015-16	99,66,310	2,80,551	71,45,235	28,21,075
2.	2016-17	92,85,361	2,87,700	43,88,784	48,96,577



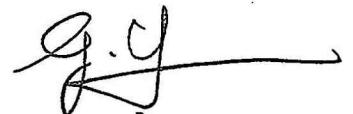
12. In the above shown table the income of Rs. 2,80,551 in F.Y. 2015-16 and Rs. 2,87,700/- are interest income over which the amount has been deducted under the heading 194A which is prescribed for interest other than 'interest on securities' income in 26AS Form. Similarly, the differential income amounting to Rs. 28,21,075/- in F.Y. 2015-16 and Rs. 48,96,577/- in F.Y. 2016-17 pertain to the income related to sales of goods which is evident from the VAT Return and sample invoices and 26AS Form for the period of F.Y. 2015-16 and F.Y. 2016-17 which is exempted income in terms of section 66D of the Act.

13. On the basis of above discussion, I find that the Appellant are exempted from tax and are not liable to pay service tax on the differential income arrived from the value shown in 26AS form and ST-3 Return. I find that the adjudicating authority has erred in confirming the demand of service tax amounting to Rs. 11,43,542/- for F.Y. 2015-16 and 2016-17. 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.

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.



ज्ञानचंद जैन

आयुक्त (अपील्स)

Date : 30.10.2023



Attested


(अनंद कुमार)
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. Tejas Rameshchandra Shah,
B-5, Devsarshan Apt.
Opp. Shanti Towers,
Ambawadi, Ahmedabad- 380 015

Appellant

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

