



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: 20231164SW0000555F0A

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/3505/2023 / 2983-87
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-161/2023-24**  
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. 178/WSO3/AC/CSM/2022-23 दिनांक: 28.02.2023 passed by The Assistant Commissioner, CGST, Division III, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**  
**M/s. Dirty Hands,**  
**Flat G, Ground Floor,**  
**North Block, 112 Gangadhar Chetty Road,**  
**Ulsoor, Bangalore-560042.**

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.

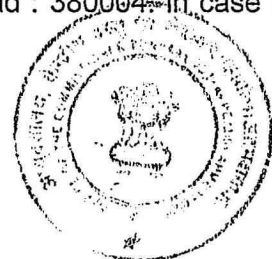
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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(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 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<sup>प</sup> 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. Dirty Hands, Second Floor, Mukhi corner, above India Bank, P.T. College cross road, Ahmedabad - 380007 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. 178/WS03/AC/CSM/2022-23 dated 28.02.2022 (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 were holding Service Tax Registration No. AAGFD1273N5D001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 15,78,395/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the Appellant for the FY 2015-16. Accordingly, it appeared that the Appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The Appellant were called upon to submit clarification for difference along with supporting documents, 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/WS07/V/O&A/SCN-1027/2015-16/REG/2020 dated 24.12.2020 demanding Service Tax amounting to Rs. 2,28,867/- for the period FY 2015-16, 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 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. 2,28,867/- 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 2015-16. Further **(i)** Penalty of Rs. 2,28,867/- 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 with Rule 7C of Service Tax Rules 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have preferred the present appeal, along with the application for condonation of delay, inter alia, on the following grounds:

- The Appellant were engaged into providing Design Service other than Interior Decoration and fashion designing and registered with service tax department vide Service Tax No. AAGFD1273NSD001.
- During F.Y. 2015-16, the sale of services as per ITR and sale of services as per STR are compared along with the data of sale of Services as per TDS and the higher of the details are taken as final and Service Tax @ 14.5% on Rs. 15,78,395/- which comes to Rs. 2,28,867/- is demanded for along with interest and penalty. The Appellant has a bona fide intension and thus





the Appellant decided to voluntarily opt for SABKA VISJWAS (legacy dispute resolution) Scheme.

- The Appellant have voluntarily discharge their pending service tax liability from 01/04/2014 to 30/06/2017 in the said scheme in the following mentioned manner:

F.Y.	Income as per Income Tax return	Amount of Service Tax applicable as per law	Service Tax paid	Service Tax pending to be discharged in SVLDRS
2014-15	10355716	1279967	364230	9,15,737
2015-16	1578395	228867	0	<b>2,28,867</b>
2016-17	1426532	171184	0	1,71,184
2017 till 30.06.2017	463610	69542	0	69,542
<b>Total</b>		<b>17,49,560</b>	<b>3,64,230</b>	<b>13,85,330</b>

- The Appellant have discharged the Service tax on Rs. 15,78,395/- as determined in the impugned order and have also received the discharge certificate in SVLDRS-4 as per the provision of Sabka Vishwas Scheme, 2019. As per Section 129(1) which is reproduced below of chapter of Finance Act 2019.

*129. (1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and—*

*(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;*

*(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;*

*(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.*

- The Appellant further stated that discharge certificate issues shall be conclusive as to the matter and time period sated therein and the declarant shall not be liable to pay any duty,



interest or penalty with respect to the matter and time period covered therein and shall not be reopened in any other proceeding under indirect tax enactment.

- Further, the notices serviced as mentioned in the impugned order has not been received by the Appellant. The notices serviced were issued almost two and half years before the order passed, no notices were served in between and thus a reasonable opportunity of being heard has not been given to the Appellant.
- The Appellant submitted that the demand for the said financial year, which was included in the SVS Scheme already paid / settled by the Appellant under SVS Scheme. Therefore, they are not liable to pay service tax on the same issue once again.
- The Appellant submitted SVLDRS- 3 and 4 along with their submission.

4. Personal hearing in the case was scheduled on 19.10.2023. Shri Nishit Parikh, Chartered Accountant on behalf of the Appellant appeared for personal hearing and reiterated the submissions made in the appeal memorandum. He requested to take SVLDRS-04 on record and 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, additional submission, at the time of personal hearing and documents available on record. The issue to be decided in this appeal is whether the impugned order passed by the adjudicating authority in the fact and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

6. I find that main contention of the Appellant is that the present show cause notice and impugned order cover period of F.Y. 2015-16,



whereas they have already applied for the scheme of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of Voluntary Disclosure for the period covering FY 2014-15 to FY 2016-17 for an amount of Rs. 13,85,330/-, for which they have received Form SVLDRS-4 dated 06.03.2020 issued by the Designated Committee with Discharge Certificate for full and final settlement of tax. But, SCN dated 24.12.2020 issued after the Appellant received SVLDRS-4 certificate and Service tax amount demand in above said SCN is same as declared in SVLDRS-1 and paid by the Appellant for the F.Y. 2015-16. Therefore, the impugned order required to be quashed and set aside and proceedings against same shall stand concluded.

7. On verification of the case records viz. the SCN dated 24.12.2020 issued on the basis of the Income Tax data for the FY 2015-16; impugned order; Form SVLDRS-3 dated 07.02.2020; and Form SVLDRS-4 dated 06.03.2020, I find that the Appellant have already paid the tax before issued a Show Cause Notice No. V/WS07/V/O&A/SCN-1027/2015-16/REG/2020 dated 24.12.2020 for demanding service tax on difference between the gross value of service provided in the books of account and the gross value of service shown in Service Tax return filed by the Appellant for the F.Y. 2015-16 along with F.Y. 2014-15 and F.Y. 2016-17. The Appellant filed SVLDRS-1 on 27.12.2019 and completion of the whole process under SVLDRS, the Designated Committee issued Form SVLDRS-4 dated 06.03.2020 discharging the Appellant from the payment of any further duty, interest or penalty with respect to the aforesaid matter.

7.2 Again on receipt of the data from the income tax department, the department issued SCN dated 28.12.2020 to the Appellant demanding the service tax on difference between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the Appellant for the F.Y. 2015-16. The said SCN dated 24.12.2020 decided by the adjudicating authority, ex-





parte and confirmed the demand of service tax of Rs. 2,28,867/- for the F.Y. 2015-16 along with interest and penalty.

7.3 In view of the above, I am of the considered view that when the of the financial records of the Appellant has already been verified for the period under dispute i.e. F.Y. 2015-16 and show cause notice for the F.Y. 2015-16 issued has been already settled by the Appellant in SVLDRS Scheme before issuance of the above said SCN, as enumerated above, the present show cause notice dated 24.12.2020 is not legally sustainable and is deemed to be concluded. The impugned order confirming the demand of service tax on the basis of present show cause notice dated 24.12.2020 is also required 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.

8. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant.

9. 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.



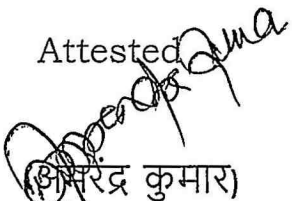
ज्ञानचंद जैन

आयुक्त (अपील्स)

Date : 30.10.2023



Attested



(अनंद कुमार)

अधीक्षक (अपील्स)

सी. जी. एस. टी, अहमदाबाद

**By RPAD / SPEED POST**

To,

M/s. Dirty Hands,

Flat G, Ground Floor,

North Block, 112 GangadharChetty Road,

Ulsoor, Bangalore – 560042

Appellant

The Assistant Commissioner,

CGST, Division-III (Vatva-II),

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-III (Vatva-II), Ahmedabad South
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
5. ~~Guard File~~
6. PA file

