



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: 20231164SW000000B76C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3545/2023 1/21/84 - 92
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-162/2023-24
दिनांक Date : 31-10-2023 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. 313/DC/Infinity/Div-6/A'bad-south/PMT/2022-23 दिनांक: 21.02.2023
passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Infinity Financial & Space Management,
309/310, Goldsuk, B/h. Sapphire,
Nr. Shreji Complex, C.G.Road,
Ahmedabad-380009.

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 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 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 पढ़ी 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.

- 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;
इए लिया गलत सेनवैट क्रेडिट की राशि;
बए 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.

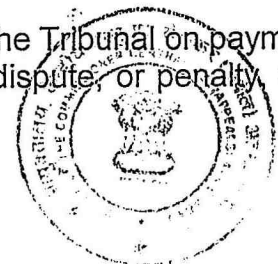
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Infinity Financial & Space Management, 309/310, Goldsuk, B/h. Sapphire, Nr. Shrreji Complex, C.G.Road, Ahmedabad – 380009 (hereinafter referred to as “*the Appellant*”) against Order-in-Original No. 313/DC/Infintiy/Div.-6/A’bad South/PMT/2022-23 dated 21.02.2023 (hereinafter referred to as “*the impugned order*”) passed by the Deputy Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “*the adjudicating authority*”).

2. Briefly stated, the facts of the case are that the Appellant were registered with Service Tax department under Photography Service having Service Tax Registration No. AADFI8028FSD001. As per the information received from the Income Tax Department, the Appellant had declared less taxable value in their Service Tax Return for the F.Y. 2015-16 as compared to Service related taxable value declared by them in their Income Tax Return. Therefore they had short paid service tax on differential value of income shown in ITR and STR. Therefore, the Appellant were issued Show Cause Notice bearing No. V/WS06/O&A/SCN-478/2020-21 dated 26.12.2020, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 1,76,969/- for the 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)(c), 77(2) and 78 of the Act.
- 3) The SCN was adjudicated vide the impugned order wherein:
 - a) The demand of service tax amounting to Rs. 1,76,969/- was confirmed along with interest under section 75 of the Act.



b) Penalty amounting to Rs. 1,76,969/- was imposed under 78 of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under 77(2) of the Act for failure to follow provisions of the Act.

d) Penalty was imposed under section 77(1)(c) 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 was engaged in the business of providing loan assistance Service and earning commission income as DSA of ICICI Bank & Kotak Mahindra Bank during F.Y. 2015-16.
- The Appellant has provided service amounting to Rs. 9,91,232/- during the year 2015-16. They did not raise invoice as the payment of commission was made by the banking companies directly to DSA as per their calculation.
- The Appellant submitted that the firm had shown income of amount of Rs. 11,79,793/- erroneously in Income Tax Return filed for the year.
- The Appellant submitted that after the receipt of SCN and personal hearing notices from the department, they managed to trace photocopy of P & L Account & Balance Sheet from their Accountant.
- Form 26AS for the F.Y. 2015-16 is showing commission income of Rs. 9,95,450/- (Rs. 8,56,540 /- form ICICI Bank Limited and Rs. 1,38,910/- by Kotak Mahindra Bank Limited).
- The department has erred in fact considering the turnover of Rs. 11,79,793/- as taxable service, as per Clause 44 of Section 65B of the Act. The value of service for the Appellant in F.Y. 2015-16 should be 9,98,171/-.
- The Appellant shall be given exemption as Small Scale Service Provider as the taxable service of aggregate income is not exceeding 10 lakhs as per the Notification No. 33/2012-ST



dated 20.06.2012. The income in the preceding year i.e. F.Y. 2014-15 is also below the threshold limit of Rs. 10 lakhs.

- The Appellant prayed for set aside the service tax demand of Rs. 1,76,969 along with demand of interest under section 75 of the Act. They also prayed for the set aside the demand of penalty under section 77(1)(c) and 77(2) and 78 of the Act.
- In support of the submission the Appellant have submitted the following documents:
 - a) Income Tax Return, ITR V & 26AS for F.Y. 2015-16,
 - b) Bank Statement of ICICI Bank and Kotak Mahindra Bank for F.Y. 2015-16,
 - c) Bank Book: ICICI Bank and Kotak Mahindra Bank for F.Y. 2015-16
 - d) ITR V, Computation, 26AS & Profit and Loss Account for F.Y. 2014-15
 - e) Ledger copies of Commission Income for F.Y. 2015-16

4. Personal hearing in the case was held on 25.10.2023. Shri Shridhar Shah, Chartered Accountant, appeared on behalf of the Appellant for personal hearing. He stated that the turnover is actually below 10 lakhs, however the accountant had declared more than 10 lakhs. This fact needs to be verified by the adjudicating authority. Hence the case may be remanded back to adjudicating authority.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 2015-16.



6. 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. 11,79,793/- during F.Y. 2015-16.

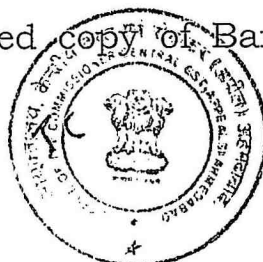
7. I have perused 26AS form for the F.Y. 2015-16 submitted by the Appellant and find the income which is detailed as under:

Sr. No.	Particulars	Amount
1.	Commission Income from ICICI Bank (Inclusive TDS)	8,56,540/-
2.	Commission Income from Kotak Mahindra Bank (Inclusive TDS)	1,38,910/-
	Total	9,95,450

8. Perusing to the 26AS Form for F.Y. 2015-16, I observe that the income earned by the Appellant is below the threshold limit i.e. 10 lakhs, I find that the Appellant seems to be allowed to take exemption of threshold value of service income in F.Y. 2015-16 in terms of the provision of Notification No. 33/2012-ST dated 20.06.2012. To claim the exemption Notification 33/2012-ST dated 20.06.2012 in 2015-16, the income in preceding year i.e. F.Y. 2014-15 has to be less than Rs.10 lakhs. As per the 26AS from the income details in F.Y. 2014-15 and F.Y. 2015-16 is shown as under:

Sr. No.	Description	2014-15	2015-16
1.	Total Income as per 26AS	4,70,480	9,95,450

9. I have gone through the submission of the Appellant that the turnover is below Rs. 10 lakhs, however the accountant had declared Rs. 11,79,793/- erroneously in Income Tax Return for the F.Y. 2015-16. This facts need to be verified by the adjudicating authority. The Appellant have submitted copy of Bank statement

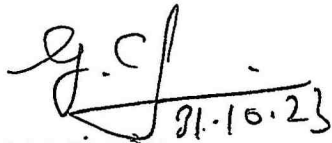


and Bank Book of Kotak Mahindra Bank and ICICI Bank of F.Y. 2015-16. These documents need to be verified thoroughly by the adjudicating authority. The Appellant had already submitted document Profit and Loss Account for F.Y. 2014-15, which shows that the total income in the said year is Rs. 5,56,061/-. If the income earned in F.Y. 2014-15 by the Appellant amounting to Rs. 5,56,061 and booked in P & L Account had been considered as total service income it would not have been considered as taxable service income as it is very below the threshold limit of Rs. 10 lakhs. So I am of the considered view that the P & L Account of F.Y. 2014-15 is sufficient document to ascertain that the Appellant are eligible to avail benefit of small scale service provider in terms of 33/2012-ST dated 20.06.2012. On careful examination of the submissions made by the Appellant and the impugned order, I find that the Appellant had failed to produce the documentary evidence before the adjudicating authorities. Accordingly, I remand back the matter to the adjudicating authority to re-examine the issue that whether income was earned by the Appellant is below the limit of 10 lakhs in F.Y. 2015-16 and the previous year F.Y. 2014-15 in relation to their business activity or not and to pass appropriate order. With these observations, the matter is remanded back to the original adjudicating authority to decide the matter as discussed herein above.

10. Accordingly, I set aside the impugned order and remand back to adjudicating authority.

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.


 31.10.23
 ज्ञानचंद जैन
 आयुक्त (अपील्स)

Date : 31.10.2023



Attested

(Signature)
(अधीक्षक कुमार)
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. Infinity Financial & Space Management,
309/310, Goldsuk, B/h. Sapphire,
Nr. Shreji Complex, C.G.Road,
Ahmedabad – 380009

Appellant

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



