



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: 20231164SW0000000E9E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3486/2023 / 8633-41
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-170/2023-24**
दिनांक Date: 23-11-2023 जारी करने की तारीख Date of issue 29.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain, Commissioner (Appeals)**
- ग Arising out of OIO No. 156/WSO3/AC/CSM/2022-23 दिनांक: 16.02.2023 passed by The Assistant Commissioner, CGST, Division-III, Ahmedabad South.
- घ अपीलकर्ता का नाम व पता Name & Address

Appellant
M/s. Devendra Balvantrai Katrodiya,
3-Nandlal Chambers, Near Sheth Ni Pole,
Ratanpole, Ahmedabad-380001.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सूक्ष्म 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:

- (i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत 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।
- (ii) 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 भण्डारगार या अन्य कारखाने में या किसी भण्डारगार से दूसरे भण्डारगार में माल ले जाते हुए मार्ग में, या किसी भण्डारगार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डारगार में हो माल की प्रक्रिया 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 हों।

- (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। इसके 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 होती 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 माता, 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, Giridhar Nagar, Ahmedabad : 380004, in case of appeals other than as mentioned in para-2(f) (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 अनुसूची-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 और 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, 1992 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;
- इस लिया गलत सेनवैट क्रेडिट की राशि;
- एक सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'तबित अपीला' में पहले पूर्व जमा की तुलना में, अपीला' तबिल करने के लिए पूर्व राशि 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. Devendra Balvantrai Katrodiya, 3, Nandlal Chambers, Near Sheth Ni Pole, Ratanpole, Ahmedabad - 380 001 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. 156/WS03/AC/CSM/2022-23 dated 16.02.2023 (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 are holding PAN No. AMAPK6198D. 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. 21,74,236/- during the FY 2016-17, which was reflected under the heads "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 had neither obtained Service Tax registration nor paid the applicable service tax thereon. The Appellant were called upon to submit copies of required 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. V/15/389/DIV-I/DEVENDRA BALVANTRAI KATRODIA/2020-21 wherein:

- a) Demand and recover an amount of Rs. 2,68,735/- under proviso to Sub Section (1) of Section 73 of the Act 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), and 78 of the Act.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein:

- a) The demand of service tax amounting to Rs. 2,68,735/- was confirmed under section 73(1) of the Act by invoking extended period of 5 years along with interest under section 75 of the Act.
- b) Penalty amounting to Rs. 20,000/- was imposed under section 70 of the Act with Rule 7C of Service Tax Rules 1994 for non filing/late filing of ST-3 Returns.
- c) Penalty amounting to Rs. 2,68,735/- was imposed under 78 of the Act.
- d) Penalty of Rs. 10,000/- was imposed on the Appellant under Section 77(1) of the Act,
- e) Penalty of Rs. 5,000/- was imposed on the Appellant under section 77(2) 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 Service Tax of Rs. 2,68,735 under provision to Section 73(1) of Finance Act 1994 is not tenable at law and should be deleted along with the interest liability.
- Show Cause Notice issued by Learned Officer was without mentioning date the notice as well as without mentioning correct DIN. Learned Officer has mentioned wrong DIN on Show Cause Notice because of period of limitation thereon.



- Show Cause Notice issued by mentioning Financial Year 2015-16 and 2016-17 have no relevance with Service Tax Liability although for making the notice under extended period, learned officer has inserted the said years for diversion of the main matter.
- Show Cause Notice issued by mentioned wrong DIN. It implies that DIN was not generated against this notice or else generated after 31.12.2020 to cover the SCN under extended period for FY 2014-15. Date was also not mentioned on SCN. On this ground, the said SCN was void ab-initio and the said proceeding initiated against Appellant is void ab- initio.
- Without prejudice to the above-mentioned grounds, the services offered by Appellant was fully exempted under mega exemption notification no. 25/2012 ST, Clause 30 dated 17.03.2012. The Learned Officer has not considered the notification under consideration while issuing the order. The Learned Officer has also not mentioned under which service head, the Appellant's services were covered. it is crystal clear that the Ld. Officer has merely on presumption passed the order in casual and arbitrary manner without any due verification.
- Without prejudice to the above-mentioned grounds, Further the Assistant Commissioner has not considered the exemption of Rs. 10 lakhs as provided by Notification No. 33/2012 dt. 20-6-2012 and levied service tax on the entire turnover of the Financial Year: 2014-15 which is not tenable at law.
- The Penalty of Rs. 2,68,735/- levied under Section 78 of the Finance Act, 1994 should be deleted as bad in law,
- Penalty imposed of Rs. 10,000/- under Section 77(1) of the Act should be deleted as not tenable at law. Considering the



services were covered under mega exemption notification 25/2012 dated 17.03.2012, the Appellant were not required to obtain service tax number so penalty of Rs. 10,000/- under Section 77(1) of the Act should be deleted as not tenable at law.

- Penalty imposed of Rs. 5,000/- under Section 77(2) of the finance Act, 1994 should be deleted as not tenable at law. Para 17 of Order, Learned Officer has mentioned that Appellant has submitted written replies as on 15.02.2021 & 16.12.2022 confirms that Appellant has submitted the replies to the notices issued time to time. So, penalty of Rs. 5,000/- under Section 77(2) of the Finance Act, 1994 should be deleted as not tenable at law.
- Penalty imposed of Rs. 20,000/- under Section 70 of the finance Act, 1994 should be deleted as not tenable at law. Considering our submission as mentioned at Grounds of Appeal No. 3 Appellant is not required to obtain service tax registration number then question of filing service tax rn does not arise. So, penalty of Rs. 20,000/- under Section 70 of the finance Act, 1994 should be deleted as not tenable at law.
- The Ld. Assessing Officer erred on facts and in law in issuing demand notice u/s 73(1) amounting to Rs. 2,68,735/- without appreciating that in absence of any legally enforceable assessment order, no demand could be imposed on the Appellant forcibly.
- The Appellant craves permission to add, alter, amend, modify and or withdraw any of the grounds of appeal on or before completion of appellate proceedings.



4. Personal hearing in the case was held on 08.11.2023. Shri Niharkumar Dineshkumar Bhansari, C.A. appeared on behalf of the Appellant for personal hearing and reiterated the contents of the written submission. He state that the Appellant does job wok for the jewelers. Jobwork is exempted under Sr. No. 30(b) of the Mega Exemption Notification No. 25/2012-ST dated 17.03.2012. Therefore he requested to allow the Appeal.

4.1 The Appellant vide their letter dated 17.10.2023 submitted additional written submission, wherein they, inter alia, reiterated the submission made in the appeal memorandum and also submitted copy of (1) confirmation and issuance and receiver Vouchers of Precious Metal (2) Bank statement (3) Copy of 26AS (4) ITR Acknowledgement and ITR for F.Y. 2014-15.

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 2014-15.

6. It is observed that the main contention of the Appellant is that they are engaged in doing the job work of manufacturing of gold jewellery work where the Appellant would receive raw material as gold bars and manufacture ornament from the same and this activity is exempted vide Sr. No. 30(b) of Notification No. 25/2012-ST dated 20.06.2012 and therefore, service tax is not leviable.



7. For ease of reference, I reproduce the relevant provision of Sr. No. 13 of Notification No. 25/2012-ST dated 20.06.2012 as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- 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 Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1 ...

2

30. Carrying out an intermediate production process as job work in relation to -
(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;"

8. On scrutiny of the documents submitted by the Appellant viz. Invoices and Profit & Loss Account, it appears that the Appellant engaged in intermediate production process as job work in relation to Jewellery making of gold and other precious metals, therefore, the job work carried out by the Appellant was exempted from service tax as per Sr. No. 30(b) of Notification No. 25/2012-ST dated 20.06.2012 and the Appellant not required to pay any service tax on the income of Rs. 2,68,735/- received by them during the FY 2014-15.

9. In view of the above discussion, I am of the considered view that the activity carried out by the Appellant not liable to pay



Service Tax during the FY 2014-15. 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.

10. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of job work income received by the Appellant during the FY 2014-15, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant.

11. अपील कर्ता द्वारा दर्ज की गई अपील का निषटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the Appellant stands disposed of in above terms.

ज्ञानचंद जैन
आयुक्त (अपील)
Date : 27.11.2023



Attested

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

BY RPAD/ SPEED POST

To
M/s. Devendra Balvantrai Katrodiya, Appellant
3-Nandlal Chambers,,
Near Sheth Ni Pole,
Ratanpole,
Ahmedabad - 380 001

The Assistant Commissioner Respondent
CGST & Central Excise
Division VIII, Ahmedabad.

Copy to :

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



