



**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: 20231164SW0000717946

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3532/2023 / ४६३२ - ३४
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-172/2023-24
दिनांक Date: 24-11-2023 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. 258/WSOB/AC/KSZ/2022-23 दिनांक: 15.02.2023 passed by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Dhaval M Thakkar (HUF),
C-504, Dhanjay Tower,
Shyamal Cross Road, Satellite,
Ahmedabad- 380009.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति क्यास्थिति 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:

(i) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंततः 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 :

(i) 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 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 हो 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.
- (i) 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 छाता 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 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 अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (i) 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 (i) क में बताए अनुसार के अलावा की अपील, अपीलों के मामलों 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, Giridhar 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 पड़ी 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 विहित हैं।

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 कर्तव्यमंग(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, सामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इस लिया गलत सेनवैट क्रेडिट की राशि;
बप सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील राखिल करने के लिए पूर्व जमा 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. Dhaval M Thakkar HUF, 310, Pratibha-1, Opp. Gandhigram Rly. Station, Ashram Road, Ahmedabad - 380 009 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. 258/WS08/AC/KSZ/2022-23 dated 15.02.2023 (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 holding Service Tax Registration No. AAIHD2221ESD001. 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 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/WS0802/O&A/TPD(15-16)/AAIHD2221E/2020-21/5455 dated 21.12.2020 wherein:

- a) Demand and recover an amount of Rs. 5,60,654/- 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 ex-parte vide the impugned order by the adjudicating authority wherein:

- a) The demand of service tax amounting to Rs. 5,60,654/- 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. 5,60,654/- was imposed under 78 of the Act.
- d) Penalty of Rs. 10,000/- 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:-

- That the Appellant have not availed any opportunity of hearing though the Appellant had received hearing notice but the Appellant has suffered from cancer and not in position to go outside. In absence of any reply to SCN and explaining the case without hearing, the said OIO confirming the duty is not proper and legal.
- That while demand is confirmed on the ground of CBDT data, the cum duty price benefit is not extended. Therefore, the said OIO deserves to be set aside.



- That it is admitted fact that in ITR for the period 2015-16 , the amount of income shown is Rs. 5,60,654/- which is considered as taxable service by Adjudicating Authority but on what ground it is considered as taxable value is not mentioned anywhere in notice. Therefore, in absence of any ground, the said SCN & O.I.O for demanding service tax is not sustainable.
- That even the department has not taken care to investigate the matter whether, in fact, the amount of income as per ITR return is liable to service tax. Therefore in absence of any evidence. The Appellant is not liable to pay service tax as mentioned in O.I.O & notice though there is difference in duty amount. Therefore, on this count, the said demand of service tax is not sustainable. Reliance is placed on the judgment reported in 2019 (24) GSTL 606 in the case of Kush Construction.
- That in the notice, there is no classification of service has been mentioned that under which Appellant is covered and liable to pay service tax of Rs. 5,60,654/- for the period 2015-16 . If there is no such classification of service is mentioned in notice, it cannot be concluded that the Appellant is liable to pay service Tax. Reliance is placed on judgment reported in 2018(10) G.S.T.L 392 in the case of Deltax Enterprise, 2015 (040) STR 1034 & 2020 (43) G.S.T.L 533 in the case of Vaatika Constructions.
- That from the notice it does not transpire that which type of service had been provided by the Appellant which is liable to demand of service tax. Therefore, in absence of any specific allegation made in the notice for service, the said OIO deserves to be set aside. the Appellant relies upon recent judgment reported in 2022 (58) G.S.T.L 324 in the case of Ganpati Mega Builders (I) Pvt. Ltd. & 2002 (58) 245 in the case of Quest



Engineers & Consultant (P) wherein the Hon'ble Tribunal held that - Form 26AS is not prescribed documents for ascertaining gross turnover of Assessee.

- That the Appellant is registered with Service Tax department having ECC No. AAIHD2221ESD001 and all prescribed returns are filed under Service tax Act, 1994. Therefore, there is no suppression of facts. Therefore, there is no need to make payment of service tax as mentioned in OIO.
- That the allegation made in the notice is that the Appellant has suppressed the facts misstatement and contravention, omission and suppressed the facts, nature and value of service provided by noticee not assessing and paying due service tax liability and the said thing brought to the notice to the department on the basis of ITR return submitted to the Income Tax department. The submission of the noticee is that the department could have called for details from income tax department within statutory time limit instead of taking more than 4 years. Therefore, there is no suppression of facts as alleged in the notice as the Noticee has filed so called IT return on the basis of department has issued notice within time prescribed under Income Tax Act and noticee is still in dilemma that why the notice issuing authority has taken more than 5 years for demanding service tax on the taxable value declared in ITR. Therefore, the invocation of extended period to cover liability for the period 2015-16 is totally baseless and vague by issuing notice on 21/12/2020. Therefore, the demand is totally time barred. Therefore, the said OIO is not sustainable. Reliance is placed on the judgment reported in 2016 (337) E.L.T 482 in the case of Commissioner of Central Excise, Jalandhar v. Royal Enterprises wherein the Hon'ble S.C. held that suppression of facts - According to decision of Supreme Court in 1989 (40) E.L.T. 276 (SC) and 1995 (78)



E.L.T. 401 (S.C.) mere omission of not disclosing facts would not amount to suppression of facts unless there was deliberate attempt to evade payment of duty. The Appellant also relied upon (1) the Hon'ble High Court judgment in 2017(349) E.L.T 13 (Kar.). In the case of Jaishri Engineering Co. (P.) Ltd. v. CCE -1989 (40) E.L.T. 214 (S.C.) the Hon'ble Court has held that penalty would be imposable only if there was deliberate suppression or wrong statement. Where the breach is flowing from a bonafide belief and the offender has not acted against the manner prescribed by the statute, no penalty is called for as held in the case of Hi-Life Tapes (P) Ltd. v. CCE - 1990 (46)E.L.T. 430 (Tribunal). The Hon'ble Supreme Court in the case of Hindustan Steel v. State of Orissa [1978(2) E.L.T. (J 159) (S.C.) has held that penalty will no ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contentions or dishonest or acted in conscious disregard of its obligation.

- The Appellant placed the following judgment (1) 2008(226) E.L.T. 38 (P & H) C.C.E. Jalandhar v. S.K. Sacks (P) Ltd. (2) 1998 (33) E.L.T. 548 (Tri.)- Indopharma Pharmaceuticals Works (3) 2000 (125) E.L.T. 781 (Tribunal)- Bhilai conductors (P) Ltd. (4) 1994 (74) E.L.T. 9 (SC) - Tamil Nadu Housing Board

4. Personal hearing in the case was held on 08.11.2023. Shri Naimesh K. Ojha, Advocate appeared on behalf of the Appellant for personal hearing and reiterated the contents of the written submission and requested to allow the Appeal.

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. The Appellant were registered with the Service Tax department and having Registration No. AAIHD2221ESD001. The Appellant have submitted ST-3 Returns for April-September, 2015 and October-March, 2016, however the adjudicating authority vide the impugned order mentioned in para 7 that the Appellant failed to file correct ST-3 Returns for the impugned period. On an examination of those two ST-3 Returns submitted by the Appellant I could not find whether the status of the said returns is filed or otherwise as I find "Error" on the body of the copy of both returns, which needs to be verified by the adjudicating authority. Further, I find the Appellant did not show value in these ST-3 Returns and did not file Service Tax accordingly. As such, I come to the conclusion that the Appellant admitted that they were not liable to pay service tax on taxable value, however they did not submit why the Appellant should not have been liable to pay service tax on taxable value. The Appellant also did not submit any supporting documents to substantiate that the income of Rs. 38,66,582/- in the F.Y. 2015-16 is non-taxable income. This should be verified at the end of adjudicating authority. I observe in para 13 of the impugned order that the Appellant had failed to produce their written submission before issuance of impugned order.

7. Considering the above, I am of the considered view that the Appellant should be given an opportunity for submitting the above said documents which they failed to submit before the adjudicating authority before issuance of the impugned order. Hence it is in the fitness of the thing that the matter is remanded back so that the adjudicating authority may pass the speaking order.



8. In view of the above, the impugned order is set aside and the matter is remanded back for fresh adjudication following the course of natural justices.

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.

Attested

(अशोक कुमार)
अधीक्षक (अपील)

सी.जी.एस.टी, अहमदाबाद

ज्ञानचंद जैन
आयुक्त (अपील)
Date : 11.11.2023



BY RPAD/ SPEED POST

To
M/s. Dhaval M Thakkar HUF,
C-504, Dhanjay Tower,
Shyamal Cross Road, Satellite,
Ahmedabad - 380 009

Appellant

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

Respondent

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.