



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: 20231164SW0000666D80

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/4116/2023 / १३०० - ६३०५
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-176/2023-24
दिनांक Date: 28-11-2023 जारी करने की तारीख Date of issue 30.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Gyan Chand Jain, Commissioner (Appeals)
- ग Arising out of OIO No. MP/297/DC/Div-IV/2022-23 दिनांक: 10.03.2023 passed by The Deputy Commissioner, CGST, Division-IV, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Agnya Sudhirbhai Shah,
Suhag Arts, 86, Girivar Bunglows,
Ramwadi, Isanpur,
Ahmedabad-382443.

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 अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अर्थात् 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।

(iii) 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.
- (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 खाला 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 संलग्न रकम 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्ट्रेट) की परिषद क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, अस्तरवा, 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 पडी 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 not withstanding 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, 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.

- 17 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीली 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)-

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

⇒ यह पूर्व जमा 'संवित अपील' में पहले पूर्व जमा की तुलना में, अपील' शामिल 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 वो 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. Agnya Sudhirbhai Shah, Suhag Arts, 86, Girivar Bunglows, Ramwadi, Isanpur, Ahmedabad-382 443 (hereinafter referred to as "the Appellants") against Order in Original No. MP/297/DC/Div.-IV/22-23 dated 10.03.2023 [hereinafter referred to as "the impugned order"] passed by the Deputy Commissioner, Central GST, Division-IV (Narol), Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the Appellants were holding Service Tax Registration No. CBEPS9817CST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the Appellants 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 Appellants 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 Appellants were called upon to submit copies of relevant documents for assessment for the said period. However, the Appellants 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. Therefore, the Appellants were issued Show Cause Notice wherein it was proposed to:

- a) Demand and recover an amount of Rs. 3,32,519/- 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) & 77(2) 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. 3,32,519/- was confirmed along with interest.
 - b) Penalty amounting to Rs. 3,32,519/- was imposed under section 78(l) of the Act.
 - c) Penalty amounting to Rs. 10,000/- was imposed under section 77(2) of the Act.
 - d) Penalty as applicable on the Appellants under section 77(1) of the Act.
4. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellants have preferred the present appeal on the following grounds:
- The Appellants are engaged in the business of providing taxable service of "advertising agency service". The 'advertising agency' entered into contract with their clients for providing "advertisement agency service". The 'Advertising agent' render 'advertising agency service' to various clients in the form of creative agency wherein, they create advertisement by themselves or their third party media agency wherein, they do media printing and/ or buying for advertisement to be published in print/electronic media. They are receiving 15% Agency Commission from authorized Broadcasting and Print media.
 - In the present case the Print media or authorized broadcasting media gives a discount of 15% to the Advertising agency. If the tariff rate is Rs. 100/-, it is



sufficient the Advertising Agency pay the media Rs. 85/- along with applicable Service Tax. The Advertising Agency has not received any amount from the media nor has the media paid any consideration to the Advertising Agency. The Appellants has only availed the discount of 15 % as Commission.

- The advertisement can be done in various ways either through Print media or through Radio or Television, etc. In order to fulfill the requirement of his client the advertising agency i.e. the Appellants gets in touch with the appropriate media. In other words as far as the advertising agency is concerned its client is not the media. In this case the client of the advertising agency is service receiver and the advertising agency is service provider. This aspect can be further supported with the fact that it is only the client who is deducting the TDS under the Income Tax Act. The media such as broadcasting agency charges the advertising agency for insertion of the advertisement either in Print Media or in Television.
- In the instant case the "Advertising Agent" has purchased the Space or Time Slot for Advertisement from the Media. Hence no service is rendered by the Advertising Agency to the media.
- Now for the calculation of Service Tax, the gross amount received by the 'Advertising agency' (Service provider) from its client will be the value of the taxable service. Moreover, as the consideration (gross amount) received by the "Advertising agency" has been shown as an Income in the Profit & Loss A/c is sufficient to be charged with Service tax on the entire consideration received. The argument of the 'Advertising agency' that the amount of 85 percent which it pays to the Media for



the purchase of SPACE or TIME SLOT (as the case may be) is claimed as the reimbursement of the expenditure made by them is nullified as the said consideration has been shown as an income in the Profit & Loss A/c. The exemption from the payment of service tax is plausible under the "reimbursement" concept where the 'Advertising agency' fulfills all of the stipulations prescribed for the "pure agent" under Service Tax (Determination of Valuation) Rules, 2006. Other than the above, if the 'advertising agency' receives any consideration from the Media as a Commission for arranging/finding Customers for the Media in relation to their Sale of SPACE or TIME-SLOT (as the case may be), the said consideration amount received by the 'Advertising Agency' is also liable to Service Tax under the Taxable services of "business auxiliary service".

- The activity of the media is selling of Space or Time Slots for advertisement, which is classified under 105(zzzzm) of Section 65 of the Act; on the other hand the activity of the "Advertising Agency" is to make necessary arrangements to have the matter of its client advertised in the media. The Appellants relied on the following case laws: (1) The Hon'ble CESTAT, Ahmedabad in the matter of M/s Drishty Communication Pvt. Ltd. v. CCE & ST-Rajkot [Service Tax Appeal No. 135 of 2012 dtd. 05th January, 2023], (2) Euro Rscg. Advertising Ltd. and.....v. CCE on 27th December, 2006 Equivalent citations: 2007 9 STJ 56 CESTAT Bangalore, 2007 7 STR 277, (3) Grey Worldwide (I) Pvt. Ltd. v. Commissioner of Service Tax on 30th July, 2014 in the Hon'ble CESTAT, West Zonal Bench at Mumbai, Appeal No. ST/300 & 325/09.
- The Appellants have already paid service tax on amount



received from clients/customers, in over business 15% on amount received from customers, commission on selling of printing slot.

- The demand of interest and penalty is not sustainable in view of unsustainability of the demand of input tax credit. Service tax has not been payable as the department could not prove the allegation with the support of any corroborative evidences.

5. Personal Hearing in the case was held on 09.11.2023. Shri Dhaval Movaliya, C.A., appeared on behalf of the Appellants for the hearing. He stated that the Appellants are advertising agency and get 15% commission from the newspaper. It is also stated that the clients of the Appellants cut TDS on 100% amount. That is why the demand on 100% amount was confirmed. They have paid the applicable tax and filed the ST-3. Therefore the OIO should be set aside and appeal should be allowed.

6. The Appellants have submitted following documents (A) copy of Income Tax Return, (B) copy of P & L Account and Balance Sheet and copy of ledger summary in respect of F.Y. 2015-16, (C) copy of ST-3 Returns and sample invoices issued to various clients and copy of invoice received from the Times Group (D) copy of Form 26AS for F.Y. 2015-16.

7. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and oral submissions made at the time of personal hearing. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 3,32,519/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y 2015-16.



8. It is noticed that in the instant case the Appellants holding Service tax registration No. CBEPS9817CST001 are engaged in providing taxable services of Advertising Agency Service. The taxable service in respect of advertising agency is defined in Section 65 (105) (e) in the following manner:

to a client, by an advertising agency in relation to advertisement in any manner.

9. In the present case a person or an organization who wants to advertise their product approaches an advertising agency. Therefore such a person / organization who want to avail the services of advertising agency become the client of the advertising agency. This aspect can be further supported with the fact that it is only the client who is deducting the TDS under the Income Tax Act. The advertisement can be done in various ways either through Print Media or through Radio or Television, etc. In order to fulfill the requirements of his client the advertising agency which is the service provider gets in touch with the appropriate media. In other words as far as the advertising agency is concerned, its client is not the media. In order to provide advertising agency service the Appellants charge certain amounts from their clients, which is inclusive of amount that has to be paid to media for insertion of the advertisement either in Print Media or in Television. The Appellants have demonstrated by the given example as shown under that they have received income only to the extent of around 15% from the media in the form of discount-

If the tariff rate is Rs. 100/- the media charges Rs. 85/- and the Appellants get Rs. 15/- towards discounts, which is an actual income in the hand of the Appellants and on that amount they discharge service tax received from their clients.

10. However, on going through the impugned order, which



was issued ex-parte, the adjudicating authority has neither considered the factual position nor the legality of the entire issue and demanded service tax on the whole amount received by the Appellants from the service provided by them on the basis of mere data collected from income Tax Return without excluding the amount which was paid to media for the purchase of space or Time Slot. The demand of service tax confirmed by the adjudicating authority is shown as under:

Period	"Value difference in ITR and STR"	Total rate of duty	Amount of Service Tax not paid
2015-16	22,95,310	14.5%	3,32,519
Total			3,32,519

11. I find that the Appellants had paid service tax for the impugned period and also filed service tax Return. On the basis of data received from Service tax Returns (ST- 3) submitted by the Appellants the details of taxable amount and service tax paid by the Appellants in the impugned period is shown as under:-

F.Y. 2015-16		
Period	Taxable amount	Service Tax paid
April-September	1,16,752	14,821
October-March	2,96,750	42,669
Total	4,13,502	57,490

12. In view of the above findings, the impugned order has no merits. Since the demand of service tax is not sustainable on merits there does not arise any question of interest or penalty in the matter.

13. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the Appellants.



14. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

Attested

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

(Signature)

ज्ञानचंद जैन

आयुक्त (अपील)

Dated: 27.11.2023



BY RPAD/ SPEED POST

To

M/s. Agnya Sudhirbhai Shah,
Suhag Arts,
86, Girivar Bunglows,
Ramwadi, Isanpur, Ahmedabad-382 443

Appellants

The Deputy Commissioner

Division-IV (Narol), CGST & Central Excise
Ahmedabad South

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2. The Commissioner, CGST, Ahmedabad South
3. The Deputy Commissioner, Division -IV, Central GST, Ahmedabad South.
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)
- ~~5. Guard File~~
6. PA file

