



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 - टेलीफ़ैक्स 07926305136



DIN: 20231164SW0000924249

स्प्रीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2519/2023 / 8665 - ६४
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-181/2023-24
दिनांक Date: 29-11-2023 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. 100/CGST/Ahmd-South/DC/SVS/2022-23 दिनांक: 10.01.2023 passed by
The Deputy Commissioner, CGST, Division-V, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Girdharbhai Govindbhai Vadoriya,
A-20, Shree Ramkrishna Society,
Nr. Uttamnagar, Nikol Gam Road,
Thakkarbapanagar, Ahmedabad-382350.

यदि यह वित्त इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए समान 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 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।

(j) 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 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 रिशेट 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 an 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 शिल्ल 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 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 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 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर ₹.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.

- 1st 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)-

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

• यह पूर्व जमा 'संबंधित 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. Girdharbhai Govindbhai Vadadoriya, A-20, Shree Ramkrishna Society, Nr. Uttamnagar, Nikol Gam Road, Thakkarbapanagar, Ahmedabad-382350 (hereinafter referred to as "the appellant") against Order-in-Original No. 100/CGST/Ahmd-South/DC/SVS/2022-23 dated 10.01.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST and C.Ex, Division V, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the Appellant was found not to be registered with the Service Tax Department. As Per the information received from the Income Tax Department, the said assessee had earned substantial service income but has neither obtained service tax registration, not paid service tax thereon. As per the data provided by the Income Tax Department for the Financial Year 2014-15 the Income earned by the Appellant is as under:

Sr. No.	Period	Income Earned in Rs,	Rate of Service Tax inclusive of E.C. & S.H.E.C.	Service Tax Payable in Rs.	Business description
1	2014-15	22,69,119/-	12.36%	2,80,463	Service Sector(Others)

2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST/WS05/TDP/15-16/Ramesh/2020-21 dated 28.12.2020 proposing the demand and recovery of Service Tax amounting to Rs. 2,80,463/- for the periods FY 2014-15 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/late fee under Section 77(1) and Section 78 of the Finance Act, 1994.

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

- Recovery of Service Tax of Rs. 2,80,463/- payable on the taxable services provided by the assessee during the F. Y. 2014-15, under proviso to section 73 (1) the Finance Act, 1994.



- Recovery of interest on confirmed amount at the appropriate rate under section 75 of the Finance Act, 1994;
- penalty of Rs. 10,000/- (Rupees Ten thousand only) under the provisions of the section 77 (1) of the Finance Act, 1994;
- Recovery of late fee of Rs.40,000/- (Rupees Forty Thousand only) under Section 70 of Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994.
- Penalty of Rs. 2,80,463/- under section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeal on the following grounds:

- The appellant has purchase the iron and M.S. Steel, like angle, pipe, channel and patta-patty and doing the machining work and mechanical work to frame a new produce such as window, Door, Gate from the material purchase or
- Also provide service as doing the job work/fabrication work in Iron and M.S. Steel and provide the Window, Door, and Gate. Fabrication of cutting edge, shuttering plates, vertical props and derricks, etc. from steel angle, MS plates, sheets transformed into various products having distinct name, identity, character and use.
- As per the section 66D of The Finance Act,1994 "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption ", is not a taxable service and hence there is no question of non-payment of Service Tax will be raised.
- As looking to the activity undertaken by appellant and such activity of caring out any process amounting to manufacturing are covered under clause (f) of negative list.
- The Impugned Order has been passed by the adjudicating authority without considering any facts and wrongly assuming that the values mention in the ITR should become taxable under the service tax.



- As per notification no. 214/86-CE dated 25/03/1986 - manufacturing job-work is exempted from service tax liabilities. Hence, appellant is not liable to pay service tax.
- Section 4 of Central Excise Tariff Act defines as manufacture including any process incidental or ancillary to the completion of a manufactured product. Therefore, it is clear that the appellant who have purchased MS Angles have manufactured cross-arms which is inter alia a new product coming under the description of other articles of iron or steel under 7326.90. Prima facie MS Angles are first cut into the required size and then shape and size are put as required. The process of cutting, drilling and welding are incidental or ancillary to the completion of making Door, Window, Gate as a manufactured product. The said is a new product and when it is manufactured, it becomes dutiable under excise.
- As per section 2(f) of Central Excise Act, 1944 which is relevant defines manufacture as including any process incidental or ancillary to the completion of the manufactured product.
 - a. When a process results in a commercially different article or commodity.
 - b. Manufacture can be said to have taken place when after process a new and different article emerges having a distinctive name, character, or use.
 - c. Manufacturing is bringing into existence a new substance.
- As per the Notification No. 25/2012 ST 20.06.2012, any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption, is exempted.
 - o As per section 2(f) of Central Excise Act, 1944 which is relevant defines manufacture as including any process incidental or ancillary to the completion of the manufactured product .
 - o Job work - machining process- Machining is a process in which a material is cut to a desired final shape and size.
 - o after completion of job work, job worker send materials back to the principal person.



o As per above notification, it is very much clear that, liability to pay service tax on job work has not been preparing periodical reports as well as Miscellaneous reports.

- April to June Rs. 2,19,941.00
- July to Sept Rs. 6,73,808.00
- Octo to Dec Rs. 6,96,275.00
- Jan to March Rs. 6,79,095.00

- o Further, from the above documents and record it is crystal clear that SCN is issued without any investigation and merely based on the false assumption that everything stated in. ITR Form under the Income Tax Law is taxable under the service tax law.
- o Entire demand is based on mere assumption without any investigation that the entire amount stated in the ITR is taxable under the Finance Act, 1994 in the hands of the appellant.
- o As per section 69, Only person liable to pay service tax is required to be registered, appellant which are not liable to pay service tax, as per the provision of section 69 of The Finance Act. 1994, required of registration is limited to person liable to pay service tax.
- o SCN has been issued by invoking the extended period under Section 73(1) of the Finance Act, 1994. However, from the above facts, it can be very well established that we were not liable to pay service tax on services provided by us. Hence, charging suppression and invoking extended period and levying service tax is not valid.

4. Personal hearing in the case was held on 24.11.2023. Mr. Prakash Nandola, Chartered Accountant, appeared on behalf of the appellant for personal hearing. She reiterated submissions made in appeal memorandum and requested to allow their 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

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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 FYs 2014-15.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the notices."

7. I find that the adjudicating authority had confirmed the demand of Service Tax on the whole income of Rs. 2,80,463/- observing as under:

"17. The SCN clearly spelt out that the said service provider was required to furnish written submission within 30 days on receipt of the show cause notice. However, it is observed that, the said service provider has failed to furnish written submission in this regard even after a passage of almost two years. Further, it is observed that, no request for extension of time limit for filing submission has been received by this office till date. It is amply clear that, in the event of failure to file the written submission of



appearance for personal hearing, the case would be decided on the basis of evidence available on record."

8. It is observed that the main contentions of the appellant are that (i) they have manufactured metal Window, Door, Gate and provide service as job work etc. and eligible for exemption as per of the mega exemption Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 214/86-CE dated 25.03.1986;
9. I find that the appellant has submitted various documents along with appeal memorandum in support of their claim for exemption from service tax at the appeal stage, which was not produced by them before the adjudicating authority and first time submitted at appeal stage. In this regard, I am of the considered view that the appellant cannot seek to establish their eligibility for exemption at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption.
10. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant is directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.
11. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.



12. 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.

G.C.
29/11/23

(मानचंद जैन)

आयुक्त (अपील्स)

Dated: 29 November, 2023

सत्यापित (Authenticated):

(अमरेंद्र कुमार)
अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST



To,
M/s. Girdharbhai Govindbhi Vadadoriya,
A-20, Shree Ramkrishna Society,
Nr. Uttamnagar, Nikol Gam Road,
Thakkarbapanagar, Ahmedabad-382350

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division V, Ahmedabad South
- 4) The supdt(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file