



**आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),**

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी, अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136



DIN: 20231164SW000000AEF8

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/4474/2023 / १३१५- 19
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-182/2023-24**
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. MP/348/DC/Div-IV/2022-23 दिनांक: 24.03.2023 passed by The Deputy Commissioner, CGST, Division-IV, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Manubhai Kuvarjibhai Prajapati,
C-48, Chaitanya Tenement, Part-II,
Behind Mory Hotel,
Ishanpur, Ahmedabad-380443.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति खयालियत 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) कोन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम फर्नुक के अंतर्गत पुनरीक्षण आवेदन अर्शन 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 :

(iii) 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।

(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 रिवेट के मामले 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 हो समय पर या बाद में विल्ट 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 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 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.

(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, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की परिचय 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 आवेदन में कई मूल आवेदनों का समावेश होता है तो प्रत्येक मूल आवेदन 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 क्यास्थिति 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 शुल्काधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश क्यास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.8.50 पैसे क्यान्यायालय 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.8.50 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.

- 1* सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(शिरस्ट)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 88 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 सिवा गलत सेनबैट क्रेडिट की राशि;

बप सेनबैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'संबंधित अपील' में पहले पूर्व जमा की तुलना में, अपील' राशि 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 88 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 आवेदन के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दंड विवादित हो तो मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दंड विवादित हो तब दंड 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. Manubhai Kuvarjibhai Prajapati, C-48, Chaitanya Tenament Part-II, Behind Mony Hotel, Ishanpur, Ahmedabad-380 443 (hereinafter referred to as "*the Appellants*"), against Order-in-Original No. MP/46/DC/Div. IV/22-23 dated 24.03.2023 (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 is holding PAN No. ALSPP2000L. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for period FY 2015-16, it was noticed that the Appellants had earned an income of Rs. 28,54,613/- during FY 2015-16. Accordingly, it appeared that the Appellants had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The Appellants were called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the Appellants had not responded to the letters issued by the department.

2.1 Subsequently, the Appellants were issued Show Cause Notice No. IV/Div.-IV/SCN-577/20-21 dated 22.04.2021 demanding Service Tax amounting to Rs. 4,13,918/- for the period from FY 2015-16, 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; imposition of penalties under Section 77(1) of the Finance Act, 1994, imposition of penalties under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rule 1994; and imposition of penalties under Section 78 of the Finance Act, 1994.



2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,13,918/- was confirmed 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 for the period F.Y. 2015-16. Further (i) Penalty of Rs. 4,13,918/- was also imposed on the Appellants under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the Appellants under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 40,000/- was imposed on the Appellants under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rule 1994.

3. 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 job work for construction of Residential complex and as per the Notification No. 25/2012-ST dated 20.06.2012 14(b) the Job work or service for construction of Residential complex was exempted from Service tax in the F.Y. 2015-16.
- When the job work or service for construction of residential complex was exempted from Service tax in the F.Y. 2015-16 then the Appellant are not liable to pay the Service Tax in the said F.Y.
- The respected adjudicating authority wrongly passed the order.

4. Personal hearing in the case was held on 24.11.2023. Shri Suresh G. Prajapati, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated the contents of the written submission and requested to allow their appeal. Copy of invoices, Form 26AS, ITR is attached with the submission.



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 Appellants 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 F.Y. 2015-16.

6. I find that the main contention of the Appellants are that their income from job work or service for construction of residential complex was exempted from Service tax in the F.Y. 2015-16 was Rs. 27,80,416/-, which was exempted from service tax in the light of provision mentioned in sr. no. 14(b) of the Notification No. 25/2012-Service Tax dated 20/06/2012. For ease of reference, I reproduce the relevant provision of Notification No. 25/2012-ST dated 20.06.2012, 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... ..

14. Services by way of construction erection, commissioning or installation of original works pertaining to -

(a).....

(b) "a single residential unit otherwise than as a part of residential complex"



7. On scrutiny of the documents viz. Invoices issued by the Appellants during the F.Y. 2015-16; Form 26AS and ITR for the F.Y. 2015-16; which is not ample to justify that the Appellants were doing services of job work for construction of single residential complex. The Appellant have only provided invoices in proof of the claim that they are engaged in the service of construction of single residential complex. The Appellant should be given another opportunity to submit substantial documents in the justification of the claim of the benefit of exemption Notification No. 25/2012-ST dated 20.06.2012.

8. On careful examination of the submission made by the Appellants and the impugned order, I find that the Appellants have failed to produce the documentary evidence before the adjudicating authority in support of his claim. Here also they have only submitted invoices in support of their claim in respect of claim under exemption in the light of provision mentioned in sr. No. 14(b) of Notification No. 26/2012-ST dated 20.06.2012 which is not satisfactory. Accordingly, I remand back the matter to adjudicating authority to re-examine the issue. With this observation the matter is remanded back to the adjudicating authority to decide the matter as discussed hereinabove.

9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

G. C. J.
29.11.23

ज्ञानचंद जैन
आयुक्त (अपील)
Date : 29.11.2023

Attested

Shimshu Kumar
शिमशु कुमार
अधीक्षक (अपील)

सी. जी. एस. टी, अहमदाबाद



By RPAD / SPEED POST

To,

M/s. Manubhai Kuvajibhai Prajapati,
C-48 Chaitanya Tenament Part-II, ,
Behind Mony Hotel,
Ishanpur, Ahmedabad-380 443

Appellants

The Deputy Commissioner,
CGST, Division-IV(Narol),
Ahmedabad South

Respondent

Copy to :

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

