



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 - टेलिफैक्स 07926305136



DIN: 20231264SW000000D647

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/4274/2023 **12551 - 5855**
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-184/2023-24**
दिनांक Date: 30-11-2023 जारी करने की तारीख Date of Issue 04.12.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain, Commissioner (Appeals)**
- ग Arising out of OIO No. 171/CGST/Ahmd-South/DC/SVS/2022-23 दिनांक: 28.02.2023 passed by
The Deputy Commissioner, CGST, Division-V, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Dharmendra Kumar Ramesh bhai Patel,
48, Rajdeep Park,
Opp. Indian Oxygen, Odhav,
Ahmedabad-382415.

वेई व्य वित्त इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल 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।

(i) 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 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 हो।

- (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 ईए-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 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed 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 को 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.

- 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;
इप लिया गलत सेनवैट क्रेडिट की राशि;
बप सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

- o यह पूर्व जमा 'लंबित 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. Dharmendra kumar Rameshbhai Patel, 48 Rajdeep Park, Opp. Indian Oxygen, Odhav, Ahmedabad-382 415 (hereinafter referred to as "*the Appellants*") against Order-in-Original No. 171/CGST/Ahmd-South/DC/SVS/2022-23 dated 28.02.2023 (hereinafter referred to as "*the impugned order*") passed by the Deputy Commissioner, Central GST, Division V, 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. APOPP1467M. 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. 27,80,416/- 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. CGST/WS05/TPD-15-16/D.Rameshbhai/20-21 dated 28.12.2020 demanding Service Tax amounting to Rs. 4,03,160/- 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. 4,03,160/- 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. 4,03,160/- 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 folding, cutting and packing of textile fabric and the said job work or service is a part textile processing
- The respected adjudicating authority passed the order without considering Appellants' reply and submission of dated 16/01/2023 and dated 08/02/2023.
- The Appellants have done textile processing job work for folding, cutting and packing of cloth in the F. Y. 2015-16 in the name of Dharmendra R. Patel which was proprietorship concern. Folding, Cutting and Packing of Textile fabrics is a part of textile processing and without folding, cutting and packing of textile fabrics the process of finished printed textile fabrics is incomplete. After the process of folding, cutting and packing of printed cloth the process of manufacturing of textile fabrics is completed. As per the Govt. Notification No. 25/2012-Service Tax dated



20/06/2012 30(i) (a) the Job work or Service for textile Processing was exempted from Service Tax in the said F.Y.

- When the job work or service for textile processing was exempted from Service Tax in the F. Y. 2015-16 then the Appellants are not liable to pay the Service Tax in said F. Y.
- The adjudicating authority wrongly passed the order with confirming the demand and it should be removed.

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 textile processing job work for folding, cutting and packing of cloth was Rs. 27,80,416/-, which was exempted from service tax in the light of provision mentioned in sr. no. 30(ii)(a) 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... ..

30. Services by way of carrying out -

(i); or

(ii) any intermediate production process as job work not amounting to manufacture or production in relation to:

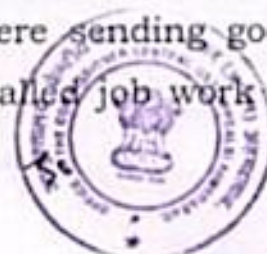
(a) agriculture, printing or textiles processing

(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;"

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 certify that the Appellants were doing services like folding, cutting and packing of cloths for the F.Y. 2015-16, which is not ample to justify that the Appellants doing folding, cutting and packing of textile fabrics were providing services of textile processing. It is also not clear whether the Appellant was supplying labour to the textile manufacturers to do folding, cutting and packing of cloths at the factory of manufacturer or the manufactures were sending goods to the premise of the Appellant. It can be called job work only when

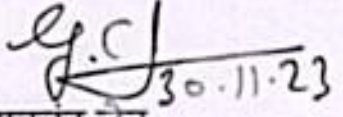


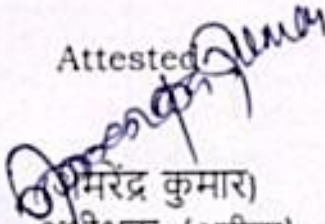
the goods are sent at the premise of the Appellant. This aspect needs verification to ascertain the entitlement of the Appellant for the exemption because of job work. Hence the matter needs to be remanded.

8. Accordingly, I remand back the matter to adjudicating authority to re-examine the issue and decide the matter following the course of natural justice.

11. 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.


 ज्ञानचंद जेन
 आयुक्त (अपील्स)
 Date : 30.11.2023

Attested

 धर्मरंद्र कुमार)
 अधीक्षक (अपील्स)
 सी. जी. एस. टी, अहमदाबाद



By RPAD / SPEED POST

To,

M/s. Dharmendra kumar Rameshbhai Patel,
 48 Rajdeep Park,
 Opp. Indian Oxygen, Odhav,
 Ahmedabad-382 415

Appellants

The Deputy Commissioner,
 CGST, Division-V,
 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 V, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
- ✓5) Guard File
- 6) PA file



