



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000522086

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3995/2023 / 190 - 194
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-196/23-24 and 22.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. 01/AC/Div-I/HKB/2023-24 dated 03.04.2023 passed by The The Assistant Commissioner, CGST Division-I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Hasmukhbhai Prabhubhai Patel, D-201, Anmol Avenue, B/h Parmeshwar house, Nr. Bhojaldham Char Rasta, Nikol, Ahmedabad - 382350

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:

(1) 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 :-

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 :-

(क) 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।

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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपस्थित शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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.

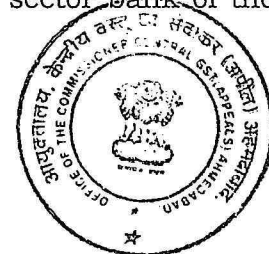
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय 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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

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.

(6) (i) 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 Hasmukhbhai Prabhubhai Patel, D-201, Anmol Avenue, B/h. Parmeshwar Homes, Nr. Bhojaldham Char Rasta, Nikol, Ahmedabad-382350 (hereinafter referred to as the “*appellant*”) against Order in Original No. 01/AC/Div-I/HKB/2023-24 dated 03.04.2023 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST & Excise, Ahmedabad South (hereinafter referred to as “*adjudicating authority*”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN Number AWNPP9024A but have not been registered with service tax department. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had earned substantial income from service provided during F.Y. 2015-16, however they failed to obtain Service Tax Registration and also failed to pay service tax on such income.

2.1. The appellant were called upon to submit copies of relevant documents, however, the appellant failed to submit the required details/documents or offer any explanation/clarification regarding income earned by them.

3. Subsequently, the appellant were issued Show Cause Notice No. bearing F.No. V/15-230-Div-I/Hasmukhbhai Patel/21-22 dated 17.04.2021 wherein it was proposed to:

- a) Demand and recover an amount of Rs. 2,21,476/- for the F.Y. 2015-16 under provision to Sub Section (1) of Section 73 of the Finance Act, 1994 (hereinafter referred to as the “*Act*”) along with interest under section 75 of the Act.



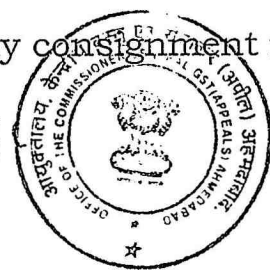
- b) Impose penalty under the provisions of Section 77(1) and 78 of the Act.

4. The SCN was adjudicated ex-parte vide the impugned order wherein:

- a) The demand of service tax amounting to Rs. 2,21,476/- was confirmed for the F.Y. 2015-16 under provision to Sub Section (1) of Section 73 of the Act along with interest under Section 75 of the Act.
- b) Penalty amounting to Rs. 2,21,476/- was confirmed under 78 of the Act for non-payment of service tax by willful-suppressing the facts from the department with an intent to evade the payment of service tax.
- c) Penalty amounting to Rs. 10,000/- under the provisions of the Section 77 (1) of the Act for failure to obtain the Service Tax Registration.

5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant are providing service transportation of sand material by Road to various individual/body corporate/Firms/Excise Dealers/Factories etc.
- The appellant is truck owner and plying his truck for Transportation of Goods by Road. The said service is covered in negative list under section 66D(p) of the Act hence they are not liable to pay service tax.
- Further, service recipients who pay the freight are liable to pay service tax under RCM as per notification no. 30/2012-ST dated 20.06.2012.
- The appellant has not issued any consignment note the



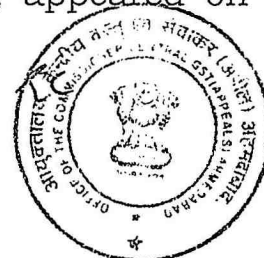
appellant has not been covered under the definition of GTA.

- Transportation of goods by road other than goods transport agency is covered in clause (P) of the Negative list.
- The appellant submitted breakup of service provided to different kind of service recipients:-

Particulars	Receiptient	Amount
Astvinayak Infrastructure Pvt. Ltd.	Body Corporate	4,24,000
		4,24,000
Sitaram estate	Co-op Society	1,30,500
Madhuram Estate	Co-op Society	1,05,000
Vraj vallabh pura Co. Op. Soc.	Co-op Society	40,000
		2,75,500
Shree Hari Suppliers	Partnership Firm	22,500
Yash Developers	Partnership Firm	28,000
		50,500
Nishitbhai Shah	Individual	1,26,300
Bhaveshbhai Dhandhuka	Individual	60,000
Olick Saingsihi	Individual	8,650
Other Misc. Transportation Income	Individual	3,35,000
Shital Varsha Mahavir	Individual	23,558
Shrenikbhai Choudhari	Individual	1,73,000
		7,26,508
		14,76,508

- The major income of the appellant is from Body corporate, co-op Society and Partnership Firm, where the appellant has rendered transportation of goods by Road Service.
- In view of the forgoing submission the appellant requests to set aside the impugned order in respect of confirming demand of Rs. 2,21,476.00 along with interest and penalty.

6. Personal Hearing in the case was held on 18.12.2023. Shri Prakash Nandola, Chartered Accountant, appeared on behalf of



appellant. He submitted that the appellant is an individual truck owner and transportation of sand and building material.

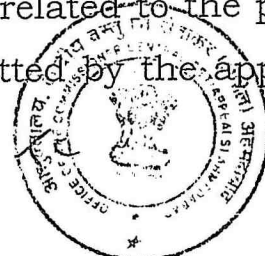
7. The appellant have submitted following documents (a) Form 26AS (Annual Tax Statement under Section 203AA of the Income Tax Act, 1961) certificate for F.Y. 2015-16, (b) Income Tax Return for F.Y. 2015-16 showing income of Rs. 14,76,508/- as sale of service (c) copy of invoices issued in F.Y. 2014-15.

8. 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 the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 2,21,476/- 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.

9. On going through the submitted copy of Form 26AS for the impugned period, filed under Income Tax Act, 1961, by the appellant it is found that the appellant were not deducted any TDS by their payer on income received from them. However, the appellant contended that they received income from various kind of payers which included partnership firm, body corporate, individuals and Co-operative Societies as illustrated by the table shown above.

9.1. The above discussion does not make it amply clear that the appellant were engaged in supplying of service to those service recipients which are mentioned in the table shown in the submission of the appellant.

10. The appellant have submitted sample invoice for F.Y. 2014-15, however the impugned demand was related to the period F.Y. 2015-16. Therefore, the invoices submitted by the appellant are



found to be irrelevant in the instant case.


11. It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order passed ex-parte.

12. Considering the facts of the case as discussed hereinabove and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority and decide the case afresh by following the principles of natural justice accordingly.

13. 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.

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

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



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 22nd December, 2023

Attested


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



By RPAD / SPEED POST

To,
M/s Hasmukhbhai Prabhubhai Patel,
D-201, Anmol Avenue,
B/h. Parmeshwar Homes,
Nr. Bhojaldham Char Rasta,
Nikol, Ahmedabad-382350.

Appellant

The Assistant Commissioner,
Central GST, Division-I,
Ahmedabad South.

Respondent

Copy to :

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

