



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1594/2023 / 95 - 99
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-203/2023-24 and 21.12.2023
(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. 79/WS03/AC/CSM/2022-23 dt. 30.12.2022 passed by The Assistant Commissioner, CGST, Division-III, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Ranjit Kumar Nathulal Jain, 675/2/2, 2 nd Floor, Chunilal Building, Sakar Bazar, Kalupur, Ahmedabad - 380002

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:

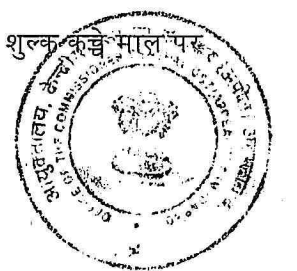
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 उपयोग शुल्क के माल पर या 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 रूपये या उससे कम होतो रूपये 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 2nd floor, 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 हैं।

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. Ranjit Kumar Nathulal Jain, 675/2/2, 2nd Floor, Chunilal Building, Sakar Bazar, Kalupur, Ahmedabad – 380002 (hereinafter referred to as “the appellant”) against Order-in-Original No. 79/WS03/AC/CSM/2022-23 dated 30.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST and C.Ex, Division III, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. ANCPJ9972F. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15 to 2016-17, it was noticed that the appellant had earned an income of Rs. 14,25,327/- during the FY 2014-15, which was reflected under the service sector “Commission Agents – General Commission Agent’ provided by the Income Tax department. Accordingly, it appeared that the appellant 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 appellant was called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS; for the said period. However, the appellant had not responded to the letters issued by the department. As per the data provided by the Income Tax Department for the Financial Year 2014-15 to 2016-17 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	14,25,327/-	12.36%	1,76,170/-	Service Sector(Commission Agents – General Commission Agent)



2.1 Subsequently, the appellant was issued a Show Cause Notice No. V/15-462/Div-I/RanjitkumarNathulal Jain/2020-21 dated 22.12.2020 proposing the demand and recovery of Service Tax amounting to Rs. 1,76,170/- 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. 1,76,170/- 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;
- penalty of Rs. 5,000/- (Rupees Five thousand only) under the provisions of the section 77 (1) of the Finance Act, 1994
- Recovery of late fee of Rs.20,000/- (Rupees Twenty Thousand only) under Section 70 of Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994.
- Penalty of Rs. 1,76,170/- 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 not received Show Cause Notice nor has received any Notices of Personal Hearings for Show Cause Notice. Without giving proper opportunity of being heard to pass an order is against principle of natural justice. The Appellant request you to quash such order which has been passed without hearing the appellant.



- In respect of para 26 of OIO, the appellant has submitted that the levy of service tax was through Chapter-V of the Finance Act 1994. Section 173 of the CGST Act provides that Chapter-V of the Finance Act, 1994 shall be omitted. In other words, it is a case of omission of a Chapter as against repeal of an Act. Finance Act, 1994 does not stand repealed.
- As per the said notification it hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act.
- During the year F.Y. 2013-14 and 2014-15 the appellant has done trading business as Cloth merchant along with has received Commission income. During FY. 2013-14 the appellant has not provided taxable services more than exemption limit, so for F.Y. 2014-15 the appellant is eligible for exemption under Notification No 33/2012-ST.
- The appellant has relied on Ashok Kumar Mishra Vs. CCE & ST [(2018 Tax Pub (ST) 0298 (CESTAT -AII): (2018) 082 ITPJ (S) 0193).
- The appellant has no intention to hide any information from the department and from the very beginning. Further, under Income Tax Act during filing of Income Tax Returns the appellant has also mentioned Turnover Amount based on which department has issued notice.
- Here, there is no (a) fraud; or (b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax. The appellant is relied on following judicial pronouncement.
- ▶ Hon'ble Supreme Court in case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)



- ▶ Hon'ble High Court of Madras in case of CCE, TIRUCHIRAPALLI Vs SHRI SUTHAN PROMOTERS 2010-TIOL-623-HC-MAD-ST
- ▶ Hon'ble CESTAT, Chennai in case of RAC Steels Vs. CCE, Salem 2010-TIOL-484- CESTAT-MAD and in case of Rajarani Exports Vs. CCE, Salem (2010} 18 STR 777
- ▶ It is evident from the facts mentioned above and judgments that there is no fraud or suppression involved and therefore, a penalty under Section 78 should not be imposed.
- ▶ The appellant has not charged service tax from the service receivers as the appellant is under a bona-fide belief that no service tax is payable.

Explanation 2 to section 67 during the relevant time read as follows :

"Where the gross amount not charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged."

- ▶ The Hon'ble Supreme Court has in the case of Maruti Udyog 2002(14)ELD 003 (SC) has held that amount realized by the company towards the sale of goods should be considered as inclusive of duty and the assessable value should be recomputed.
- ▶ The Hon, Tribunal in the case of Rampur Engineering 2006 (5) STT 386 has held that in the case of service tax, if service tax has not been separately recovered value should be considered as inclusive of duty.
- ▶ In the present case, the appellant has not collected service tax from the service receivers and therefore provision of section 67 will be applicable and benefit of cum duty valuation is admissible and therefore taxable value is required to be recomputed.



4. Personal hearing in the case was held on 11.12.2023. Mr. Sahil H. Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum and requested to allow their appeal. Further, he made submission of additional documents i.e. Sample Purchase & Sales invoices and Balance Sheet & Profit Loss account of F.Y. 2013-14 at the time of personal hearing.

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 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. I further find that the impugned order has been passed **ex-parte**.

7. I find that the adjudicating authority had confirmed the demand of Service Tax on the whole income of Rs. 1,76,170/- 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. Further, personal hearings were fixed on 19.12.2022, 23.12.2022 and 28/30.12.2022. However no request for adjournment was filed



by the assessee with regard to personal hearing. Vide SCN 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 a Textile Trader and Commission agent and eligible for exemption as per of the Notification No. 33/2012-ST dated 20.06.2012 or eligible for the benefit of CUM DUTY valuation under Section 67(2) of the Finance Act, 1994.

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.



(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Dated: 21st December, 2023

सत्यापित Attested:


(अनुराग कुमार)
अधीक्षक (अपील्स)
केंद्रीय जीएसटी, अहमदाबाद
By RPAD / SPEED POST



To,
M/s. Ranjit Kumar Nathulal Jain,
675/2/2, 2nd Floor, Chunilal Building,
Sakar Bazar, Kalupur,
Ahmedabad – 380002.

Appellant

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division III, Ahmedabad South
- 4) The Assisnat Commissioner(HQ Systems) Ahmedabad, with a request to upload on Website (For uploading the OIA)
- 5) Guard File
- 6) PA file

