



सत्यमेव जयते

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

By SPEED POST

DIN:- 20240164SW0000333C9C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4281/2023 / 107 - 18
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-205/2023-24 and 26.12.2023
(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. 525/AC/Div-I/HKB/2022-23 dated 24.03.2023 passed by The Assistant Commissioner, CGST, Division -I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Babubhai Keshavlal Patel, 2, Narnarayan Society, Vastral Road, Mahadev Nagar, Ahmedabad- 380015

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.

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।



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.

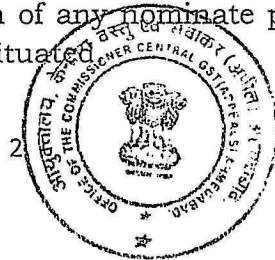
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Babubhai Keshavlal Patel, 2, Narnaryan Society, Vastral Road, Mahadev Nagar, Ahmedabad-380 015 (hereinafter referred to as the "the appellant") against Order in Original No. 525/AC/Div-I/HKB/2022-23 dated 24.03.2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division 11, Ahmedabad South (hereinafter referred to as "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were not registered with Service Tax department holding PAN No. AOOPP1464J. As per the information received from the Income Tax Department, it was noticed that the appellant had earned substantial income of Rs. 32,93,480/- from service provided during F.Y. 2015-16 and Rs. 19,04,785/- during F.Y. 2016-17; however they failed to obtain Service Tax Registration and also failed to pay service tax on such income. The appellant were called upon to submit copies of relevant documents for assessment for the said period, however, they neither submitted any required details/documents nor did offer any clarification/explanation regarding gross receipts from services rendered/income earned by them.

3. Subsequently, the Appellant were issued Show Cause Notice bearing No. V/15-44/Div-I/Babubhai Keshavlal Patel/2021-22 dated 14.04.2021, wherein it was proposed to:

a) Demand and recover an amount of Rs. 7,63,272/- for the F.Y. 2015-16 and F.Y. 2016-17 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 (hereinafter referred to as 'the Act').



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

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

a) The demand of service tax amounting to Rs. 7,63,272/- for the period from F.Y. 2015-16 to F.Y. 2016-17 was confirmed under provision to Section 73(1) of the Act by invoking extended period of five years along with interest under Section 75 of the Act.

b) Penalty amounting to Rs. 10,000/- was imposed under 77(1) of the Act for failure to obtain Service Tax registration.

c) Penalty amounting to Rs. 7,63,272/- was imposed under 78 of the Act.

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

➤ The appellant is engaged in activity of polishing the diamond of various parties on job-work basis which would be sending by them through anagdia and after polishing would be sending back to party through angadia as per the direction of parties.

➤ The polishing of diamond for various parties undertaken by the appellant is job work which is exempted service in terms of provision given in Sl. No. 30 Clause (b) of Notification No. 25/2012-ST dated 20th June, 2012. Hence the appellant is not liable to pay service tax. Thus order passed holding the appellant of taxable service is bad in law and is not legally sustainable.

➤ The present SCN presumes the entire receipt as consideration of services which is against the principle of law



settled by the Hon'ble Supreme Court in the case of Larsen and Turbo reported at 2014(303) ELT 3 (SC).

➤ Without conducting enquiry and only on the basis of document/information/data provide by Income Tax Department the demand of Service tax is not legally sustainable. This is based on the reliance placed on the decision of the Hon'ble Tribunal, Ahmedabad in the case of J.P. Iscon Pvt. Ltd. vs. CCE Ahmedabad-I in Service Tax appeal No. 10599 of 2021-DB reported at 2022(63) GSTL 64 (Tri-Ahmd.) and in the case of Sharma Fabricators & Erectors Pvt. Ltd. vs. CCE Allahabad reported at 2017 (5) GSTL 96 (Tri. -All.).

➤ The ratio of above mentioned decision is squarely applicable in the instant case.

➤ The adjudicating authority should have conducted a detail inquiry to examine the issue whether the services supplied by the appellant is taxable or exempted and any benefit such as abatement was available to the appellant before confirming the demand. The appellant craves leave to reply on the decision in the case of Khush construction vs. CGST NACIN ZIT Kanpur reported at 2019 (24) GSTL 606 (Tri-A/1) and in the case of Sharma Fabricators & Erectors Pvt. Ltd. vs. CCE Allahabad reported at 2017 (5) GSTL 96 (Tri-All.)

➤ Service tax can be charged only under a specific category of taxable service and not on any assumption or arbitrary basis. The reliance is placed on the following case laws (i) M/s Sainte Private Ltd. & ors. Vs UOP 1984-TMI-41503 -(High Court Bombay), (ii) CCE, Nagpur v. Vicco Laboratories 2004 -TMI - 47167 - (SUPREME COURT OF INDIA) (ii) (iii) CCE, Calcutta v. Sharma Chemical Works 2003 -TMI - 46554 (SUPREME COURT OF INDIA) (iv) M/s. Hindustan Ferodo Ltd. v. CCE, Bombay 1996 -TMI - 44402 - (SUPREME COURT OF INDIA) CCE, Bangalore v. Kashyap Engg. & Metallurgical (P) Ltd. 1994 -TMI -



83113 - (CEGAT, New Delhi) (v) UOI v. Garware Nylon Ltd. 1996
-TMI - 44318 - (SC)

- Service tax cannot be recovered based on ITR as it is held in the Hon'ble Tribunal order in the case of Alpa Management Consultants Pvt. Vs the Commissioner of Service tax reported at 2007 6 STR 181, (2007) 6 VST 691 CESTAT B'lore.
- The appellant was under bonafide belief that the activity under taken by them is an exempted service in terms of Notification No. 25/2012-ST dated 20.06.2012 and hence no liability of Service tax arises hence no registration was obtained.
- Penalty is not imposable in the appellant as there is no suppression of facts. The appellant rely on the decision of the Hon'ble Supreme Court order in the case of Continental Foundation Joint Venture vs. CCE Chandigarh-I reported in 2007 (2165) ELT 177 (SC).

5. Personal Hearing in the case was held on 18.12.2023. Shri Babubhai Keshavlal Patel, Accountant, appeared on behalf of Appellant for the hearing and reiterated the contents of the written submissions. He said the appellant are doing job-work of polishing of diamond for various clients. It is exempted service as pere Sl. No. 30(b) of Notification 25/2012-ST dated 20th June, 2012.

5.1. The appellant have submitted Income Tax Returns; Profit & Loss Account and Balance Sheet for the impugned period.

6. 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. 7,63,272/- 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 from F.Y. 2015-16 to F.Y. 2016-17.

7. It is observed that the demand of service tax was raised against the Appellant on the basis of the data received from Income Tax department.

8. It is observed that the main contentions of the appellant are that (i) they have not been heard before issuance of SCN or impugned order; and (ii) they are engaged in the business of engaged in activity of polishing the diamond of various parties on job-work basis, which was exempted from service tax in terms of provision given in Sl. No. 30 Clause (b) of Notification No. 25/2012-ST dated 20th June, 2012.

8.1. I find that the order has been passed **ex-parte**. I also find that the appellant submitted various documents in support of their claim for exemption from service tax, which were 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.

9. 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.

10. 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

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

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

G. J.
26.12.23

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 26th December, 2023

Attested

Amarendra Kumar

अमरेंद्र कुमार
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST



To,
M/s Babubhai Keshavlal Patel,
2, Narnaryan Society, Vastral Road,
Mahadev Nagar, Ahmedabad-380 015

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



