



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240164SW000000A3C6

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3988/2023 / 119 - 123
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-207/2023-24 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. CGST-VI/Dem-330/Pratiksha/AC/DAP/2022-23 dated 28.03.2023 passed by The Assistant Commissioner, CGST, Division - VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Pratiksha Vikram Sanghani, B/2, Apurva Apartment, Nr. Snehkunj Bus Stand, Ambawadi, 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, 4<sup>th</sup> 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 प्रकिया 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 अपील 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 Pratiksha Vikram Sanghani, B/2, Apurva Apartment, Nr. Snehkunj Bus Stand, Ambawadi, Ahmedabad-380 015 (hereinafter referred to as the "the appellant") against Order in Original No. CGST-VI/Dem-330/PRatiksha/AC/DAP/2022-23 dated 28.02.2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division VI, 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. BNBPS2000P. As per the information received from the Income Tax Department, it was noticed that the appellant had earned substantial income of Rs. 10,38,462/- from service provided during F.Y. 2014-15; 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.

2.1. Subsequently, the Appellant were issued Show Cause Notice F.No. V/WS06/O & A/SCN-300/2020-21 dated 24.09.2020, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 1,28,354/- for the F.Y. 2014-15 under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 read with relaxation provisions of Section 6 of Chapter V of the Taxation and other laws (Relaxation of Certain provisions) Ordinance, 2020 (No. 2 of 2020) promulgated on 30.03.2020 by invoking extended



period of time limit 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), 70 and 78 of the Act.

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

- a) The demand of service tax amounting to Rs. 1,28,354/- 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 of Rs. 40,000/- under section 70 of Act read with Service Tax rules, 1994.
- d) Penalty amounting to Rs. 1,28,354/- 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 business of House Hold Goods Trading. She also provide tuitions to primary school student.
- The appellant's turnover 10,38,462 include trading of house hold goods as well as tuition income.
- Turnover is below threshold limit in terms of Notification No. 08/2008-ST dated 01.03.2008 with effect from 01.05.2008.





- The Appellant did not receive OIO dated 28.02.2023 as she shifted to Canada for job purpose. However later the OIO was service to her brought in law on 15.03.2023.
- The 1d. Adjudicating authority gave personal hearing opportunities but the appellant could not aware of these proceedings as she shifted to Canada long back and the address which notices were sent was not under operation by any responsible person.
- The income earned by the appellant is not taxable under service tax as the major porition of out of total income in the impugned period is related to sale of house hold goods and therefore demand is service tax with interest and penalty is bad in law and illegal.

5. Personal Hearing in the case was held on 20.12.2023. Shri Amit H. Oza, Advocate appeared on behalf of appellant for the hearing and reiterated the contents of the written submissions made at the time of Personal Hearing and earlier. He stated that the previous year turnover as per ITR is only Rs. 6,16,430/- and too of sale of goods. Service sale is zero. Hence the appellant may granted threshold benefit.

5.1. The appellant have submitted Income Tax Returns; Profit & Loss Account and Balance Sheet, Form 26AS for the F.Y. 2013-14 and 2014-15.

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. 1,28,354/- 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. 2014-15.



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. Going through the above submission made by the appellant 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 were engaged in the business of engaged in activity of business of House Hold Goods Trading, which was exempted from service tax, (iii) their income from service activities was Rs. 10,38,462/-, which is evident from the figure shown in Trading and Profit and Loss Account and also from the figure mentioned in Revenue from operation column in Income Tax Return filed by the appellant for the F.Y. 2014-15. It is also observed that the adjudicating authority has passed the impugned order ex-parte.

8.1. On verification of the documents submitted by the appellant for the F.Y. 2013-14 and F.Y. 2014-15, i.e. Income Tax Return, P & L Account, Balance Sheet, and Form 26AS, I find that during the impugned period i.e. F.Y. 2014-15, the appellant were engaged in trading activities as well as in providing service and their income from trading activities was Rs. 2,16,432/- and from service activities was Rs. 10,38,462/-. On perusal of trading and P & L Account and Income Tax Return filed by the appellant for the F.Y. 2013-14, I find that the income of the appellant in the said year is only Rs. 6,16,430/- and the said income is received only from the trading business activity which is evident from the figure that are booked in P & L Account as "Sale of Goods" and also from the fact that this figure is also shown in the column "Revenue from Operation" in Income Tax Return filed for the year F.Y. 2013-14 by the appellant. The breakup in respect of taxable service income and exempted service income in F.Y. 2013-14 & 2014-15 is shown as under



Sr. No.	Details of Income as per P & L Account and CA Certificate	Amount (in Rs.)	
		F.Y.2013-14	F.Y.2014-15
1.	Income from Sales of Goods	6,16,430	10,38,462
2.	Income from Sales of service	0	2,16,432
3.	Total Income	6,16,430/-	12,54,894/-

9. In view of the breakup shown in above table, I find that the income from sale of goods / trading of goods falls in the Negative List as per Section 66D(e) of the Act. Hence, the appellant are not liable to pay service tax on the said amount of Rs. 2,16,432/- received by them during the F.Y. 2014-15. As regard to the income in the impugned order of Rs. 10,38,462/- for the F.Y. 2014-15 for which the appellant contended that they were eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012, I find that their taxable service income for the F.Y. 2013-14 was Rs. 6,16,430/-, which is also below the threshold limit and therefore the appellant is eligible for taking the benefit of threshold exemption of Rs. 10 lakhs for the F.Y. 2014-15 and therefore not liable to pay Service tax in terms of Notification No. 33/2012-ST dated 20.06.2012 to the extent of amount Rs. 10 lakhs. Hence the appellant will be liable to pay service tax only on Rs. 38,462/-. For ease of reference Section 66D (e) of the Act and Notification No. 33/2012-ST dated 20<sup>th</sup> June 2012 are produced, which read as under:

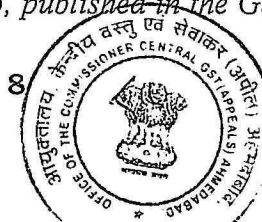
**“SECTION 66D. Negative list of services.—**

*The negative list shall comprise of the following services, namely :-*

- (a) .....  
 (e) trading of goods;”

**Notification No. 33/2012 - Service Tax**

*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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India,*





*Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakhs rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:*

(i).....  
(ii)-----

*(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakhs rupees in the preceding financial year.*

10. In view of the above discussions and finding I pass the following order in appeal:

10.1. The impugned order is upheld only to the extent of service tax payable on the taxable value of Rs. 38,462/- for F.Y. 2014-15 along with interest under section 75 of the Act.

10.2 I uphold the late fee of Rs. 40,000/- under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Act.

10.3. I uphold the penalty of Rs. 10,000/- under section 77 of the Act.

10.4. I uphold the penalty equal to the service tax payable as per para 10.1 above under section 78 of Act.

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

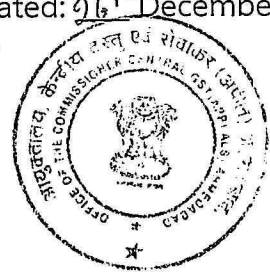
The appeal filed by the appellant stands disposed of in above terms.

*J.C.J.*  
26-12-23


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 26<sup>th</sup> December, 2023



Attested

  
 (अनंद कुमार)  
 अधीक्षक (अपील्स)  
 सी.जी.एस.टी, अहमदाबाद  
**By RPAD / SPEED POST**



To,  
 M/s Pratiksha Vikram Sanghani,  
 B/2, Apurva Apartment,  
 Nr. Snehkunj Bus Stand,  
 Ambawadi, Ahmedabad-380 015.

Appellant

The Assistant Commissioner,  
 Central GST, Division-VI,  
 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-VI,  
Ahmedabad South
4. The Assistant Commissioner (HQ System), CGST,  
Ahmedabad South (For uploading the OIA)
5. Guard File
6. PA file

