



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:- 20240164SW000000EECE

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1549/2023 ] 112 - 143
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-211/2023-24 and 28.12.2023
(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. 102/WS08/AC/KSZ/2022-23 dated 12.12.2022 passed by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Tusharbhair Vinodbhai Sachania, 403, Shyam VI Apartment, Sundarvan Society, Vasna, Ahmedabad

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 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 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.

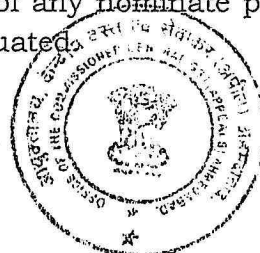
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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.

(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. Tusharbhai Vinodbhai Sachania, 403, Shyam VI Apartment, Sundarvan Society, Vasna, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 102/WS08/AC/KSZ/2022-23 dated 12.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AGSPS5271M. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant had earned an income of Rs. 13,11,650/- during the FY 2014-15. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax Registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1. Subsequently, the appellant were issued Show Cause Notice bearing F.No. CGST/Div-VIII/O & A/TDP/196/AGSPS5271M/2020-21 dated 21/09/2020 wherein it was proposed to:

a) Demand and recover an amount of Rs. 1,62,119/- for F.Y. 2014-15 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*).



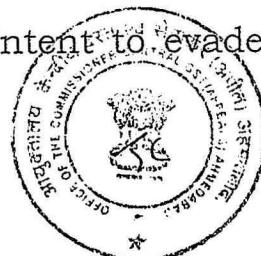
- b) Impose penalty under the provisions of Section 77 (1), 77(2) and 78 of the Act.

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

- a) The demand of service tax amounting to Rs. 1,62,119/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2014-15.
- b) Penalty amounting to Rs. 1,62,119/- was imposed under section 78 of the Act.
- c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act for failure to obtain the Service tax registration.
- d) Penalty amounting to Rs. 10,000/- was imposed under section 77(2) of the Act for failure to assess himself the tax due on the services provided by them and furnish a return in the format of ST-3 return within prescribed time.

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

- That the appellant were engaged in providing service of consulting engineer.
- That the invocation of extended period of limitation for issue of SCN seeking the demand of tax upto 5 years only if the said tax has not been paid on account of "fraud or collusion or willful misstatement or suppression of facts; or contravention of any of the provisions with the intent to evade payment of service tax".



- That the appellant has not indulged in any fraud or collusion or willful misstatement as the given figures reported in Form 26AS based on which the SCN has been issued, have been available with the department right from the year in question.
- The invocation of extended period may not be in accordance with the law hence the SCN in question is required to be vacated. The appellant relies on the decision of the Hon'ble Supreme Court in the case of Anand Nishikawa Compnay Ltd. vs. CCE-2005(9) TMI 331.
- The appellant has provided services to the tune of Rs. 13,11,650/- which also includes expenditure incurred by the appellant as a pure agent amounting to approx Rs. 3,50,000/-. Thus Rs. 3,50,000/- should be excluded from the value of taxable service as per Rule 5(1) of Service Tax (determination of Value) Rules, 2006).
- Considering above provision the value of service comes Rs. 9,61,650/- (Rs. 13,11,650/- - Rs. 3,50,000/-), which is less than Rs. 10 lacs and therefore the appellant is not liable to pay service tax in terms of Notification No. 33/2012-ST dated 20<sup>th</sup> June, 2012.
- That the demand along with interest and penalty is not sustainable and liable for set aside.
- The appellant submitted in their additional submission that they are working as employee of M/s IPS Mehtalia Pvt. Ltd. since 1996 and they were not providing service to them.
- That the employer company inadvertently deducted the TDS under Professional service head instead of salary head.



➤ The appellant is not liable to tax as and when the income earned as salary amounting to Rs. 5,67,650/- will be deducted from the total gross value in F.Y. 2014-15 i.e. (Rs. 13,11,650/- (-) Rs. 7,44,000/-). During F.Y. 2013-14 the total income of the appellant is only Rs. 7,29,104/-. In view of the above the appellant do not cross the threshold limit of Rs. 10 lacs. Hence they are exempted from service tax liability under Notification No. 33/2012-ST dated 20<sup>th</sup> June, 2012

4. Personal hearing in the case was held on 11.12.2023. Sh. Hemil M. Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the written contents during filling of the appeal. He stated that major part is salary which is not liable to service. He requested to allow the appeal.

5. In their additional submission dated 28<sup>th</sup> August, 2023 the appellant have submitted following copy of documents **(1)** Income Tax Return for F.Y. 2013-14 and 2014-15, **(2)** Form 26AS for F.Y. 2013-14 & 2014-15, **(3)** Profit and Loss Account & Balance Sheet for F.Y. 2013-14 & 2014-15, **(4)** Bank statement, **(5)** promotion letter dated 01-04-2016, certificate of Appreciating dated 05.05.2016, experience certificate dated 18.09.2017 issued by M/s IPS-Mehtalia Pvt. Ltd..

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing 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 F.Y. 2014-15.



7. 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.

8. It is observed that the main contentions of the appellant are that (i) their major income in the impugned period is salary income from a company M/s IPS-Methalia Pvt. Ltd. which is exempted income as per Section 65(44) of the Finance Act, 1994.

9. As regard, the contention of the appellant that the impugned order was issued without conducting personal hearing i.e. **ex-parte**.

10. During the F.Y. 2014-15, I find that the appellant earned income Rs. 13,11,650/- as per the document submitted by the appellant i.e. Profit & Loss Account, Form 26AS. The appellant contended that out of the total income in F.Y. 2014-15 they had earned Rs. 7,44,000/- from M/s IPS-Mehtalia Pvt. Ltd. as a salary. However, on verification of the Form 26AS for F.Y. 2014-15 submitted by the appellant, the TDS was deducted in the head of 194J which shows that the income amounting to Rs. 7,44,000/- from M/s IPS Mehtalia Pvt. Ltd. was received as professional fees or fees for technical service and not from salary. This aspect needs verification. The appellant in earlier submission during filing of the appeal contended that out of Rs. 13,11,650/- earned in F.Y. 2014-15, Rs. 3,50,000/- was received against expenditure incurred by the appellant and therefore they contended that the said income should be excluded from the total income earned in F.Y. 2014-15. These aspects also required to be verified at the end of adjudicating authority. All the above mentioned facts need to be verified by the adjudicating authority which was not done by them while passing the impugned order.

11. 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 .

12. 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.

13. 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.C.*  
*28.12.23*

ज्ञानचंद जैन  
आयुक्त (अपील्स)  
Date : 28.12.2023

Attested

*Ramesh Kumar*

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

To,  
M/s. Tusharbai Vinodbhai Sachania,  
403, Shyam VI Apartment,  
Sundarvan Society,  
Vasna, Ahmedabad.



Appellant

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



