



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:- 20240164SW0000222F80

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3991/2023 / 21u - 18
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-215/2023-24 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	04.01.2024
(ङ)	Arising out of Order-In-Original No. 186/WS03/AC/CSM/2022-23 dated 02.03.2023 passed by The Assistant Commissioner, CGST, Division-III, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Nehal Rameshchandra Patel, Shop NO. 10, Ankur Flats, Nayaran Nagar Road, Chandra Nagar, Ahmedabad- 380007

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 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 शिल्क के 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 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.

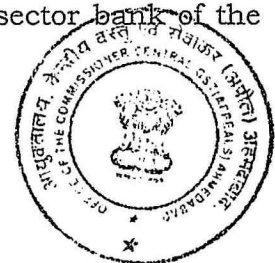
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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. Nehal Remeshchandra Patel, Shop No 10, Ankur Flats, Nayaran Nagar Road, Chandra Nagar, Ahmedabad- 380 007(hereinafter referred to as "*the appellant*") against Order-in-Original No. 186/WS03/AC/CSM/2022-23 dated 02.03.2023 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division-III, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

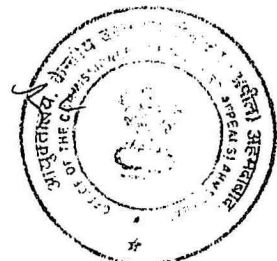
2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. BHKPP0171PSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the gross value declared by them in their Income Tax Return ITR/TDS Returns. Accordingly, it appeared that the appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1. Subsequently, the appellant were issued Show Cause Notice No. V/WS07/V/O&A/SCN-1033/2015-16/REG/2020 dated 02.03.2023 wherein it was proposed to:

a) Demand and recover an amount of Rs. 1,09,749/- for F.Y. 2015-16 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 70, 77 (1), 77(2) 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. 1,09,749/- 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 2015-16.
- b) Penalty amounting to Rs. 1,09,749/- was imposed under section 78 of the Act.
- c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act.
- d) Penalty amounting to Rs. 5,000/- was imposed under section 77(2) of the Act for not submitting the documents in the department when called for.
- e) Penalty amounting to Rs. 20,000/- was imposed under section 70 of the Act read with Rule 7C of Service Tax Rules, 1994 for non-filing/late filling of ST-3 returns.
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:
- The appellant is engaged in the business of Legal consultancy services i.e. Shine investigation.
  - The appellant had been issued letters dated 16-10-2023 and 23.10.2023 from the department for explaining the difference of income between Income tax data and ST-3 returns, however they did not receive the same.



- That the appellant did not receive SCN issued by the department.
- That the appellant obtained registration in the light of section 69 of the Finance Act, 1994 read with Rule 4 of the Service tax Rules, 1994 when the income exceed Rs. 9 lakhs.
- That the appellant's income in the F.Y. 2015-16 is only Rs. 9,21,960/- which is below Rs. 10 lakhs and therefore not liable to pay tax.
- Further, the appellant firm was audited for the period of October 2015 to June 2017 by the CGST Audit Commissionerate, Ahmedabad vide Final Audit Report ST-1013/2020-21 dated 22<sup>nd</sup> March, 2021. The demand of Service tax along with interest and penalty raised vide the aforesaid Audit report were already paid by the appellant. Hence the impugned order should be set aside.
- No opportunity was given before issuance the order.

5. Personal hearing in the case was held on 22.12.2023. Sh. Govind Tatosaniya, Chartered Accountant appeared on behalf of the appellant for personal hearing and reiterated the submission in the appeal. He stated that turnover in the previous year was below threshold limit. Further the client was audited for the period from October-2015 to June-2017. He has paid the applicable service tax for the relevant period. No service tax liability is remaining to be paid.

6. The appellant have submitted documents viz. Balance Sheet and P & L Account for F.Y. 2014-15 & 2015-16, Form 26AS for F.Y. 2015-16.

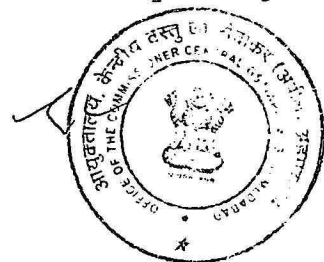


7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether 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. 2015-16.

8. It is observed that the main contentions of the appellant are that (i) they have not received any SCN nor did received any letter for appearing before adjudicating authority for personal hearing; and (ii) their income in the impugned period and in the previous year is below Rs. 10 lakhs and hence they are not liable to be paid service tax (iii) their firm has already been audited by the CGST Audit Commissionerate for the period October 2015 to June-2017.

9. I find that in the SCN in question, the demand has been raised for the period F.Y. 2015-16 based on the Income Tax Returns filed by the appellant. I further find that the order has been passed **ex-parte**.

10. The appellant submitted that Service Tax Commissionerate, Ahmedabad has already conducted audit under EA-2000 for the period October' 2015 to June' 2017 and service tax demand along with interest and penalty raised by the audit officers vide the issued Final Audit Report ST-1013/2020-21 dated 22<sup>nd</sup> March, 2021 has already been paid by the appellant. Looking to the above contention of the appellant, I have the considered view that the invocation of extended period is not legal and hence the impugned demand and recovery of service tax along with interest and penalty is not sustainable.



11. Coming to the merit of the case, I find on perusal of the P & L Account submitted by the appellant that their income in F.Y. 2015-16 is only Rs. 9,71,951/-, and in F.Y. 2014-15 the income is Rs. 2,95,845/- only. Therefore, the income of the appellant in the impugned period and in the previous year is below the limit of threshold limit i.e. Rs. 10 lacs as per Notification No. 33/2012-ST dated 20.06.2012, thereby the appellant are not liable to be paid service tax in the impugned period.

12. Accordingly, in view of my foregoing discussions and finding, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

13. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

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.

*G. J.*  
28.12.23

ज्ञानचंद जैन  
आयुक्त (अपील)  
Date : 28.12.2023

Attested  
*(अमरेन्द्र कुमार)*  
(अमरेन्द्र कुमार)  
अधीक्षक (अपील)  
सी.जी.एस.टी, अहमदाबाद





**By RPAD / SPEED POST**

To,  
M/s. Nehal Remeshchandra Patel,  
Shop No 10, Ankur Flats,  
Nayaran Nagar Road, Chandra Nagar,  
Ahmedabad-380 007.

Appellant

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



