



सत्यमेव जयते

आयुक्त का कार्यालय  
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केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
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आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240164SW000000DE07

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3147/2023 / 226-36
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-217/2023-24 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. 306/AC/Div-I/HKB/2022-23 dated 02.01.2023 passed by The Assistant Commissioner, CGST, division-I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Chandrakant Rameshwar Yadav, 39, Ishwarlal Shopping Centre, Opp. Nalanda School, Amraiwadi, Ahmedabad - 380026

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 शुल्क के कर्षण 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 अपीलिय 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 अपीलिय 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 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."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Chandrakant Rameshwar Yadav, 39, Ishwarlal Shopping Centre, Opp. Nalanda School, Amraiwadi, Ahmedabad, Gujarat- 380026 (hereinafter referred to as "*the appellant*") against Order in Original No. 306/AC/Div-I/HKB/2022-23 dated 02.01.2023 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST and Central Excise, Division-I, Ahmedabad South Commissionerate [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AASPY5888L. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, 2015-16 and 2016-17, it was noticed that the appellant had earned an income of Rs. 10,97,784/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. 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 and demanding Service Tax amounting to Rs. 1,35,686/- for the period 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 under Section 77 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,35,686/- was confirmed 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 for the period from FY 2014-15. Further (i) Penalty of Rs. 1,35,686/- was also



imposed on the appellant under Section 78 of the Finance Act, 1994 and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant have filed the present appeal alongwith application for condonation of delay on following grounds :

**The appellant has not provided any taxable services and therefore is not liable to pay service tax:**

- The appellant is running a business of LABOUR- SERVICE WORKS OF JEWELLERY OF GOLD AND SILVER SERVICES Provided by them are covered into negative list as provided under section 66D of the Finance Act,1944 has not provided any taxable services and therefore is not liable to pay service tax, under the trade name of "KAM LESH JEWELLERS" . The Services Provided by them covered under mega exemption notification No.25/2012-S.T. dated 20.06.2012,SERIAL NO.30(B) JEWELLERY OF GOLD AND hence they are not liable to pay service tax under the Provision Of Section 66B Of Finance Act,1994
- The appellant submits that trading and JEWELLERY OF GOLD AND SILVER SERVICES is not subject to service tax, it is under negative list. The said is explained below:
  - According to the section 66(D) of the Finance Act 1994, service tax shall be levied on all services except services provided in negative list. The said Section 66 (D) of the Finance Act, 1994 is reproduced as under:
 

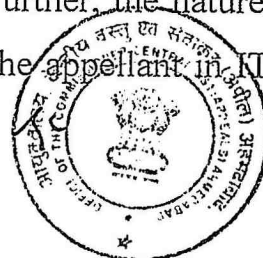
*"There shall be levied a tax at the prescribed rate on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed".*
  - Further 'Negative list of services' which are not eligible to service tax are given in Section 66D of Finance Act, 1994. According to section 66D of the Finance Act 1994 trading of and JEWELLERY OF GOLD AND SILVER SERVICES falls under 30(B).The said section is reproduced for the sake of brevity:



- Section 66D-Negative list of services NOTIFICATION NO.25/2012-SERVICE TAX DATED 20/06/2012, SERIAL NO.30(8) of Finance Act, 1994 Negative list of services. 66D. the negative list shall comprise of the following services, namely: - 30(B) Trading AND SERVICE OF JEWELLERY OF GOLD AND OTHER OTHER PRECIOUS METALS of goods;
- Therefore, it can be seen that according to above submission, The appellant is into trading business and LABOUR- SERVICE WORKS OF JEWELLERY OF GOLD AND SILVER SERVICES Provided by us are covered into negative list as provided under section 66D of the Finance Act,1944 has not provided any taxable services and therefore is not liable to pay service tax and therefore the impugned order confirming the demand is void.
- **B. The Services Provided by us covered under mega exemption notification N0.25/2012-S.T. dated 20.06.2012, SERIAL NO. 30(B) JEWELLERY OF GOLD AND HENCE WE ARE NOT LIABLE TO PAY SERVICE TAX UNDER THE PROVISION OF SECTION 66B OF FINANACE ACT,1994.**

**OIO vis a vis SCN is Invalid- When it does not propose demand under specific category**

- It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific but must also give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals. In the given case neither the demand is specific and nor full details under which category of service/classification such demand has been confirmed and is by without giving proper justification and facts
- The present impugned OIO confirming demand proposed in the SCN did neither propose the classification of taxable service(s) for which the service tax was demanded from the appellant nor specify the classification of services allegedly rendered by the appellant. Further, the nature, scope and coverage of transaction/turnover specified by the appellant in ITR have not



been considered by the learned adjudicating authority in the OIO for demand of service tax. In the absence of specific proposal for classification and allegation that the turnover shown in ITR would be classifiable and taxable under a specific provision of Finance Act, 1994, the demands made on the generic basis, merely on the basis of ITR, should not have been confirmed in the orders-in-original;

- In the instant case the impugned SCN and OIO do not contain the details like the category of services under which the service tax liability would fall; that the nature of activities carried out by the appellant and whether such activities could be classified under specific categories of services and applicability of relevant provisions to the said category. Time and again, as rightly held by the Apex Court in various cases that, SCN is foundation on which the Department has to build up its case, be in a position to defend their case effectively.
- The said analogy has been confirmed and held by various courts in various decisions as below:
  - A. In the case of M/s R. RAMADAS reported at 2020 (11) TMI 84-Madras High Court.
  - B. In the case of Brindavan Beverages (P) Ltd. reported in 2007 (2013) ELT 487(SC).
  - C. In the case of Arpit Advertising reported in 2011 (23) STR 460 (Tri. Del.) .
  - D. In the case of Shyam Enterprises reported in 2011 (23) STR 29 (Tri. Del.).

**The demand is confirmed based on account of mere assumptions and presumptions, is liable to be set aside**

- It is to submit that the amount derived by the department is merely on the basis of assumption and presumption. It can be seen from the SCN that department has not produce any evidence to prove that such transaction is other than JEWELLERY OF GOLD AND OTHER SPECIUS METAL of goods. Therefore, the figures are arrived at assumptions and presumptions. The revenue has not come forward with the evidence that the Appellant have generated the disputed income on account of providing taxable service.

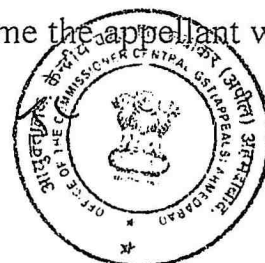


Therefore, in absence of concrete evidence on record the service tax cannot be demanded on the basis of assumption and presumption. The department has not been able to support their allegation with evidence that the said income is generated for providing other than JEWELLERY OF GOLD AND OTHER SPECIUS METAL of goods services. There is merit in the contention of the appellant that it is settled principal of law that the burden of proving fact is on the person who alleges the same but the department did not produce any evidence on record to prove that the disputed Income pertained to taxable services and that the charges that income was generated out of taxable activity without any evidence was not sustainable in the absence of cogent, convincing and tangible evidences. Therefore, by relying only on the figures shown in ITR, without undertaking any independent investigation under the Service Tax Act, without going into details of actual nature of such receipt, demand of service tax cannot be made.

- It is also noted that there are numerous decisions of the Tribunal laying down that such admission of receipt of income without there being any admission of correctness of the amount derived by considering nature of bank receipts, cannot be considered to be conclusive evidence to establish the guilt of the appellant. Burden of proof is on the Revenue and is required to be discharged effectively. The same was held by the Hon'ble Ahmedabad Tribunal in the matter of M/s Goyal And Co Construction Pvt Ltd And Shri Mukesh Agarwal Versus C.S.T. -Service Tax - Ahmedabad reported at 2022 (4) TMI 735 - CESTAT AHMEDABAD.

**Figures ITR cannot be used for determining service tax liability unless there is conclusive evidence as to the said is on account of providing taxable service:**

- As mentioned in the facts in detail that demand raised through the Show cause Notice, is only on the basis of data available from CBDT i.e. ITR of the Appellant, without proper investigation or appreciation.
- As such, the contention of the Ld. Adjudicating authority that every payment which is recorded in income tax return is service income and liable to tax, is baseless, erroneous and lacks merit. For the same the appellant would like to rely on below mentioned cases:





- a) Indus Motor Company vs. CCE, Cochin 2007-TIOL-1855-CESTAT-Bang: 2008(9) STR (Tri. Ban.)
- b) Synergy Audio Visual Workshop Pvt. Ltd. Vs CST Bangalore, 2008-TIOL 809-CESTAT-BANG;
- In this regard, relying on the order of the CESTAT Allahabad in Kush Constructions vs CGST NACIN reported at 2019 (34) GTL 606, the appellant would like to submit that it is trite law that figures of Form ITR can not to be used for determining Service Tax liability unless there is conclusive proof to show that it was on account of any taxable service and the same view is appreciated and upheld in case of M/S Luit Developers Private Limited reported at 2022 (3) TMI 50 by CESTAT Kolkata.
- Further, the figures submitted to the Income Tax authorities cannot be used for determining Service Tax without evidence of taxable service as has been pronounced in case of Tribunal in CCE Ludhiana vs Deluxe Enterprises 2011 (22) STR 203.

**Extended period cannot be invoked**

- Without prejudice to the above written submissions, without admitting but assuming, the appellant submits that the show cause notice is erroneous in as much as it demands Service Tax by invoking extended period. It is to submit that major portion of demand in the Show Cause Notice is being hit by the bar of limitation. The meaning of the word "suppression" was considered by the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh, reported in 2007 (216) ELT 177 (SC), and was held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty.
- The impugned order confirming demands and penalties by invoking extended period should be dropped on this ground.
- Since the demand of duty is not sustainable either on merit or on limitation, therefore there is no question of any interest and penalty as held by the Hon'ble Supreme Court of India in the case of M/s HMM Limited.
- appellant would like to submit that, It is settled law that penalty under Section 78 of the Finance Act, in other words ~~if there has been fraud or~~



willful mis statement or suppression of facts with intend to evade payment of service tax by the appellant, then and only then penalty under Section 78 could be imposed 1994, could be imposed only if demand of service tax could be sustained under proviso to Section 73(1) of the Finance Act 1994. For the same the appellant would like to rely on below mentioned cases

- The Hon'ble Supreme Court of India in case of M/s Uniworth Textile Limited 2013 (288) E.L.T. 161(S.C.)
  - The Hon'ble Supreme Court of India in case of M/s Rajasthan Spinning & Weaving Mills 2009 (238) E.L.T. 3 (S.C.)
  - The Hon'ble Supreme Court of India in case of M/s Cosmic Dye Chemical 1995(75) E.L.T.72(S.C.)
- Relying on the Hon'ble Supreme Court's judgment as submitted above, it can be said that the present case is not the case of fraud, suppression, willful misstatement of facts, etc. Hence penalty under section 78 of the Finance Act 1994 cannot be imposed. The demand is liable to be dropped on this ground also.

4. The appellant were given opportunities for Personal Hearing on 11.09.2023, 15.09.2023, 22.09.2023 & 20.10.2023. The appellant were granted ample opportunity of Personal Hearing in terms of the provisions of Section 35(1A) of the Central Excise Act, 1994. But they neither appeared in personal hearing nor sought any adjournment.

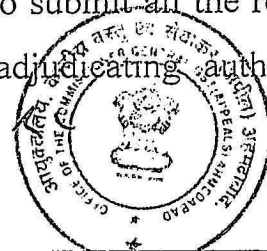
4.1 In terms of the provisions of Section 35(1A) of the Central Excise Act, 1994, hearing of the appeal can be adjourned on sufficient cause being shown. However, as per the proviso to the said Section 35 (1A), no adjournment shall be granted more than three times to a party during hearing of the appeal. In the present appeals, the appellant were called for a personal hearing on four different dates, however, they neither attended the hearing nor sought any adjournment. I am, therefore, satisfied that the appellant have been granted ample opportunities to be heard, which they have not availed. I, therefore, proceed to decide the case, ex-parte, on the basis of the material on available on record.

Ke

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, 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 FY 2014-15.

6. It is observed that the main contentions of the appellant in the appeal memorandum are that (i) running a business of LABOUR- SERVICE WORKS OF JEWELLERY OF GOLD AND SILVER SERVICES Provided by them are covered into negative list as provided under section 66D of the Finance Act,1944; (ii) The Services Provided by them covered under mega exemption notification No.25/2012-S.T. dated 20.06.2012,SERIAL NO.30(B) JEWELLERY OF GOLD AND hence we are not liable to pay service tax under the Provision Of Section 66B Of Finance Act,1994.

7. I also find that the appellant submitted various documents in support of their claim for exemption from service tax, which was not produced by them before the adjudicating authority and first time submitted at appeal stage. I am of the considered view that the appellant cannot seek to establish their eligibility of exemption, which is covered into negative list as provided under section 66D of the Finance Act,1944 and covered under mega exemption notification No.25/2012-S.T. dated 20.06.2012,SERIAL NO.30(B) JEWELLERY OF GOLD 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. 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 consider the aforesaid claim of the appellant for exemption for service tax payment under section 66D of the Finance Act,1944 and covered under mega exemption notification No.25/2012-S.T. dated 20.06.2012,SERIAL NO.30(B) JEWELLERY OF GOLD. The appellant is directed to submit all the records and documents in support of their claim 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.

8. 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.

9. 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.

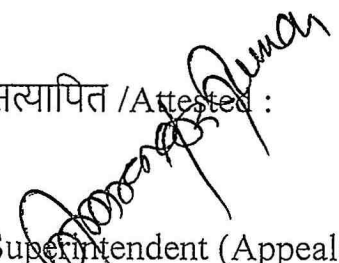


ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 28<sup>th</sup> December, 2023

सत्यापित / Attested :

  
Superintendent (Appeals)  
CGST Appeals, Ahmedabad



By REGD/SPEED POST A/D

To,  
M/s Chandrakant Rameshwar Yadav,  
39, Ishwarlal Shopping Centre, Opp. Nalanda School,  
Amraiwadi, Ahmedabad, Gujarat- 380026.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad;
2. The Principal Commissioner, CGST and Central Excise, ~~AND, SOUTH~~
3. The Deputy / Assistant Commissioner, Central GST, Palanpur Division, ~~AND, SOUTH~~ Commissionerate;
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website;
5. Guard file;
6. PA File.