



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
Website : www.cgstappealahmedabad.gov.in



आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW000000C573

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/347/2023 / 1012 To 1021
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-232/23-24 and 24.01.2024
(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	29.01.2024
(ङ)	Arising out of Order-In-Original No. 18/AC/SB Engineering/Div-2/A'bad-South/JDM/2022-23 dated 27.12.2022 passed by The Assistant Commissioner, CGST, Division-II, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner, CGST & C. Ex., Division - II, Ahmedabad South. 3rd Floor, GST Bhavan, Ahmedabad
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Responded	M/s. SB Engineering Works, 13, Shiv Park, Vandarvad Talav, Vatva Ind. Estate, Ahmedabad - 382445.

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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क 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 रूपये 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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."

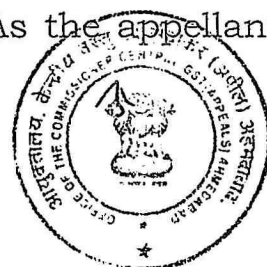


ORDER-IN-APPEAL

The following appeal has been filed under section 84(1) of the Finance Act (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division – II, Ahmedabad South Commissionerate (hereinafter referred as 'appellants') in compliance to Order-in-Review No. 74/2022-23 dated 23.03.2023 passed by Commissioner, Central GST, Ahmedabad South (hereinafter referred to as the "the reviewing authority" also) against Order-in-Original No. 18/SC/S.B. engineering/Div2/A'bad-South/JDM/2022-23 dated 27.12.2022 (hereinafter referred as "the impugned order") passed by the Assistant Commissioner, CGST, Division – II, Ahmedabad South (hereinafter referred as "the adjudicating authority") in the case of M/s. S.B. Engineering Works, 13, Shiv Park, Vandarvad Talav, Vatva Ind. Estate, Ahmedabad-382 445 (hereinafter referred as "the Respondents").

Appeal No. & Date	Review Order No. & Date	Order	Order-In-Original No. & Date
GAPPL/COM/STD/347/2023- Appeal Dated 19.07.2023	74/2022-23 23.03.2023	dated	18/SC/S.B.Engineering/Div2/A'bad- South/JDM/2022-23 dated 27.12.2022

2. Briefly stated, the facts of the case are that the respondent were holding Service Tax Registration No. AAWFS9271PST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the respondent 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). It was observed that there was a difference of Rs. 1,39,14,680/- in value of services reflected in ITR and gross value shown in ST-3 returns for the year 2015-16. Hence, it appeared that the appellant had not discharged their service tax liability to the tune of Rs. 20,17,629/- on the aforesaid amount of Rs. 1,39,14,680/-. As the appellant failed



to produce any documentary evidence/proper clarification for non-payment/less discharge of service tax liability a Show Cause Notice No. AR-III/Div-II/Third-party/S.B.Engg./19-20 dated 24.12.2020 was issued to the appellant wherein:

- a) Demand and recover an amount of Rs. 20,17,629/- under proviso to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Act.
- b) Impose penalty under the provisions of Section 77 and 78 of the Act.

2.1. The Adjudicating authority, based on the appellant's submissions and documents, observed that services provided to M/s. Meghmani Industries Ltd. in a Special Economic Zone (SEZ) to the tune of Rs. 1,02,49,290/- were exempt from service tax. The adjudicating authority confirmed the exclusion of service tax on these services in terms of Notification No. 12/2013-ST dated 01.07.2023 as amended. Additionally, the adjudicating authority allowed the amount of service tax Rs. 30,39,506/- which is included in the total sale value. The adjudicating authority confirmed the exemption of service tax on manpower services provided to M/s. Nagarjuna Agrichem Ltd., Hyderabad to the tune of Rs. 6,77,681/- in the light of Notification No. 07/2015-ST dated 01.03.2015 considering that the service tax on manpower supply service was payable by the recipient of services on 100% basis. Consequently, the adjudicating authority dropped the proceedings initiated by the Show Cause Notice. However, the legal correctness of the impugned order in respect of allowing the benefit of exemption to the service provided to Meghmani Industries Ltd. valued at Rs. 1,02,49,290/- under Notification No. 12/2013-ST dated 01.07.2013 was questioned vide Order-in-Review dated 23.03.2023.



2.2 The Principal Commissioner, Central GST, Ahmedabad South, in exercise of the power conferred on him under subsection 1 of Section 84 of the Act in order to satisfy himself as to the legality and propriety of the impugned order, directed the adjudicating authority vide review order No. 74/2022-23 dated 23.03.2023 to file an appeal before undersigned within stipulated period for determination of the legality and correctness of the impugned order on the following grounds:

- The adjudicating authority while allowing the benefit of exemption under Notification No. 12/2013-ST dated 01.07.2013 in respect of services provided by the assessee to M/s mehgmani Industries ltd. has not discussed as to which documents were verified by him to satisfy that the condition mentioned in the above said Notification have been fulfilled by the assessee.
- The appellant submitted that as per Notification no. specified service received by the recipient i.e. SEZ Unit or the Developer are used exclusively for the authorized operations.
- The person liable to pay service tax has the option not to pay the service tax subject to the condition and procedure as stated in para 3 of Notification No. 12/2013-ST dated 01.07.2013.
- The appellant also submitted that as per voucher No. 190 dated 30.10.2015 and Voucher No. 205 dated 07.11.2015 shown in ledger to M/s Meghmani Industries Ltd. account, the respondent had charged service tax, however they did not discharge service tax in the Government Account.



3. The respondent were called upon to file a memorandum of cross objection against the appeal. Personal hearing in the case was held on 22-09-2023. Shri Rohan Thakkar, Chartered Accountant, appeared for personal hearing on behalf of the respondent and reiterated the written submissions in the cross objection to the departmental appeal. He requested to uphold the order passed by the adjudicating authority and to reject the departmental appeal.

4. I have carefully gone through the submission of both appellant and respondent, studied the facts of the case, grounds of appeal, and documents available on record and considered the submissions by both sides. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, dropping the proceedings initiated against the respondent vide the show cause notice (supra), in the facts and circumstance of the case, is legal and proper or otherwise.

5. I find that the appellant have contended that the adjudicating authority granted exemption to the services provided to M/s. Meghmani Industries Ltd. without specifying which documents were verified to ensure compliance with the conditions of the Notification No. 12/2003-ST dated 01.07.2013. The relevant provision of Notification No. 12/2003-ST dated 01.07.2013 is reproduced as under:

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax



has the option not to pay the service tax *ab initio*, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner:

- (I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.
- (II) The *ab -initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

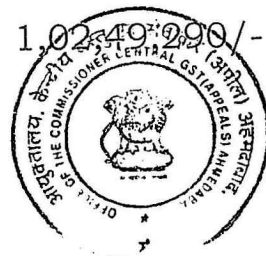
(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

5.1 On the analysis the above provision, it is clear that not all the services to a Special Economic Zone (SEZ) are automatically



exempted under the above Notification; only those exclusively used for authorized operations by the SEZ Unit or the Developer qualify for exemption from the payment of service tax. The service provider intending to provide services to SEZ Unit or Developer without payment of service tax must possess a copy of authorization in Form-A-2. However, on going through the written submission of the appellant and respondent, I find that no such authorization in Form-A-2 pertaining to M/s. Meghmani Industries Ltd. was furnished before the adjudicating authority. In the submission of the respondent they accept that they are not having the copy of Form-A-2. Thus, it appears that the adjudicating authority vide the impugned order wrongly allowed the benefit of exemption without confirming that the services to the tune of Rs. 1,02,49,290/- provided by the respondent to M/s Meghmani Industries Ltd. were indeed for authorized operations only.

6. In view of the above discussion I am of the considered view that the benefit of *ab-initio* exemption from payment of service tax under the said Notification No. 12/2003-ST dated 01.07.2013 as amended, cannot be extended to the respondent. In addition to the above, I have perused copy of ledgers account to M/s Meghmani Industries Ltd for the impugned period submitted by the respondent, which indicates that the respondent charged service tax for specific vouchers e.g. (i) Voucher No. 190 dated 30.10.2015 involving value of Rs. 8,77,193/- and service tax thereon Rs. 1,22,807/- and (ii) Voucher No. 205 dated 07.11.2015 involving value of Rs. 3,25,688/- and service tax of Rs. 45,596/- issued to M/s Meghmani Industries Ltd., however they didn't deposit them. Hence, it is quite evident that the respondent despite charging service tax in respect of above mentioned vouchers have not deposited the same in the Government account and claimed exemption on the entire value of Rs. 1,02,49,290/- which is



inclusive of the value of the above mentioned vouchers. Therefore, it appears that the adjudicating authority failed to consider these vouchers, rendering the order legally incorrect and subject to being set aside.

7. It is also noticed that the respondent had suppressed the material facts regarding provisions of above services without valid documents form the department and hence, the service tax thereon is required to be recovered invoking extended period under the provision of Section 73 of the Act. The respondent are also liable for penalty under Section 77 and 78 of the Act.

8. In view of the above discussion, I pass the following order:

8.1. The impugned order is set aside allowing the appeal in respect of service tax for which the respondent is liable to pay service tax at the appropriate rate on the value of Rs. 1,02,49,290/- along with interest under Section 75 of the Act.

8.2. Penalty under Section 77 of the Act is also allowed to be imposed on the respondent.

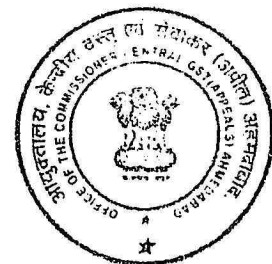
8.4. Penalty equal to the service tax liability under Section 78 of Act as per para 8.1 hereinabove is also allowed to be imposed on the respondent.

9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

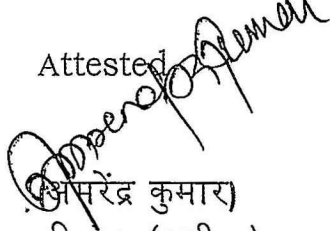
The appeal filed by the appellant stands disposed of in above terms.

ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 24.01.2024



Attested



(अनंद कुमार)
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,
The Assistant Commissioner,
Central GST, Division-II,
Ahmedabad South.

Appellant

M/s. S.B. Engineering Works,
13, Shiv Park, Vandarvad Talav,
Vatva Ind. Estate,
Ahmedabad-382 445.

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner Central GST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division IV, Ahmedabad South
4. The Deputy/Assistant Commissioner (RRA), Ahmedabad South
5. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad South (for uploading the OIA).
- ~~6.~~ Guard File.
7. P.A. File.



