



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:- 20240264SW0000804738

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/505/2023 / 1677 - 81
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-254/2023-24 and 08.02.2024
(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	13.02.2024
(ङ)	Arising out of Order-In-Original No. 151/AC/Dhiren M Patel/ /DivII/A'bad-South/JDM/2022-23 dated 01.02.2023 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. 3 rd Floor, GST Bhavan, Ahmedabad.
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Responded	M/s. Dhirenkumar Mahendrakumar Patel, 39-Dharmbhumi Co. Op. Housing Society, B/h Smrutimandir, Vatva, Ahmedabad-382440

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-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डार 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.

(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 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- 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."

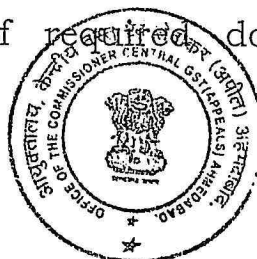


ORDER-IN-APPEAL

The following appeals have been filed under section 84(1) of the Finance Act, 1994 (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division-II, Ahmedabad South Commissionerate (hereinafter referred as 'appellant') in compliance to Order-in-Review Nos. 09/2023-24 dated 26.04.2023 passed by Commissioner, Central GST, Ahmedabad South (hereinafter referred to as. the "the reviewing authority" also) against two Order-in-Original No. 151/AC/Dhiren M Patel/DivII/A'bad-South/JDM/2022-23 dated 01.02.2023 (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 Dhirenkumar Mahendrakumar Patel, 39-Dharmbhumi Co. Op. Housing Society, B/h Smrutimandir, Vatva, Ahmedabad-382440 (hereinafter referred as "the Respondent").

Sr. No.	Appeal No. & Date	Review Order No. & Date	Order-In-Original No. & Date
01.	GAPPL/COM/STD/505/2023-APPEAL dated 24.05.2023	09/2023-24 dated 26.04.2023	151/AC/Dhiren M Patel /Div2/A'bad-South/JDM/2022-23 dated 01.02.2023.

2. Briefly stated, the facts of the case are that the respondent, having PAN No. BDEPP1607C had earned substantial service income during the F.Y. 2015-16 to 2016-17. On scrutiny of the data received from Income Tax department, it was noticed that the respondents had earned an income of Rs. 15,44,174/- during the F.Y. 2015-16 and Rs. 19,20,863/- during the F.Y. 2016-17. Accordingly, it appeared that the respondent 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 respondent were called upon to submit copies of ^{required} documents for



assessment for the said period. However, the respondent had not responded to the letters issued by the department.

2.1 The respondent were issued Show Cause Notice No. from File No. WS0205/Third Party Data(2015-16)/38/20-21 dated 28.12.2020 during the period 2015-16 and from File No. WS0205/TPD-16-17)/SCN-Dhirenkumar Mahendrakumar Patel/2020-21 dated 30.03.2022, wherein:

a) Demand and recover an amount of Rs. 5,13,384/- under the provision to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Act.

b) Imposed prescribed late fee for each ST-3 return not filed/ filed late for the relevant period under with Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Act, penalty under Section 77(1) of the Act for failure to take service tax registration as per the provision of Section 69 of the Act, and penalty under Section 78 of the Act for non-payment of service tax by willfully suppressing the facts from the department with intent to evade the payment of service tax..

3. After considering the submission of the respondent the adjudicating authority vide the impugned order dropped the proceedings initiated against the respondent vide the show cause notice.

4. The 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. 09/2023-24 dated 26.04.2023 to file an appeal before undersigned within the stipulated period for



determination of the legality and correctness of the impugned order on the following grounds:

- That the adjudicating authority has dropped the proceedings initiated vide the SCN, mainly on the ground that the service provider was undertaking labour Job- Work of "Shri Umiya Engincering Work" related to reaping and maintenance of Textile Machinery and parts of textile machinery and no service tax is applicable thereon.
- However, the adjudicating authority without discussing under which legal provisions of Finance Act, 1994, the impugned activity / services provided by the service provider is exempted has dropped the demand of service tax in respect of the service provider, which is legally not correct.
- The period covered under the present dispute is financial year 2015-16 and 2016-17. For the period post 01.07.2012 i.e., after introduction of negative list regime, all the services/activities, except the services/ activities mentioned in the Negative list under Section 66D of the Finance Act, 1994, or, granted exemption under Mega exemption Notification No. 25/2012-ST dated 20.06.2012, are taxable.
- Thus, in order to claim exemption from service tax, the service provider was required to prove with documentary evidences that activities carried out services provided by him were either covered under Negative List under Section 66D of the Finance Act, 1994, Or, were exempted under the relevant clause/ Sr. No. of the Mega exemption Notification No. 25/2012-ST dated 20.06.2012.



- But it is observed from the facts recorded in the impugned OIO that the service provider had not provided any such documentary evidences to prove that his activities/services fall within the purview of Negative list under Section 66D of the Finance Act, 1994 or were exempted under Mega exemption Notification No. 25/2012-ST dated 20.06.2012 nor cited any such legal provisions under which the impugned services/ activities could be exempted.
- It is also observed that the adjudicating authority has also not recorded any findings as to how and under which legal provisions i.e., Negative list under Section 66D or Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, the services provided / activities carried out by the service provider were exempted. Thus, the impugned OIO is totally silent and non-speaking one in this regard and hence, legally the impugned OIO is unsustainable.
- The adjudicating authority has dropped the proceedings observing that the service provided by the service provider was labour job work, and, the same is outside the purview of service tax.
- It appears that while making the above observations, the adjudicating authority has lost sight of the fact that no outright exemption from service tax is available to any job work/labour job work activities/services. Mainly, the exemption to the processes/ job work activities is covered under Sr. No. 30 of the Mega exemption Notification No. 25/2012-ST dated 20.06.2012.
- Thus, the adjudicating authority without examining whether the impugned business activities of the service provider would fall within the purview of Sr. No. 30 of the



Mega exemption Notification supra or otherwise, has come to the conclusion that the same is exempted from service tax which is not justified.

5. The respondent were called upon to file a memorandum of cross objection against the appeals. Personal hearing in the case was held on 24-01-2024. Shri Naimesh K. Oza, Advocate, 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.

6. The respondent submitted following documents in their additional submission (1) copy of Income Tax Returns during the F.Y. 2015-16 to F.Y. 2016-17, (2) copy of 26AS (TDS certificate) for F.Y. 2015-16 to F.Y. 2017-18, (3) copy of job-work challans, (4) copy of ledgers.

7. I have carefully studied the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, 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.

8. In the submission of the appellant they have contended that the adjudicating authority dropped the proceedings against the respondent without properly discussing the legal provisions i.e. Negative list under Section 66D of the Finance Act, 1994 or Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, exempting the service provided/activities carried out by the respondent from service tax.



8.1 The appellant have contended that neither the respondent provided any documentary evidence/documents to establish their services provided were exempted in the Finance Act or Mega Exemption Notification No. 25/2012-ST, nor did the adjudicating authority properly establish how the services provided fell under the purview of exemptions in the Finance Act or Mega Exemption Notification No. 25/2012-ST. Furthermore, the appellant argues that the adjudicating authority erroneously concluded that the impugned service provided/activities carried out by the respondent was job-work and therefore assumed the services provided by the respondent fell outside the purview of service tax. The appellant asserts that the adjudicating authority did not consider the fact that no outright exemption from service tax is available to any job-work/labour job-work activities/services.

9. In the objection against the appeal filed by the department the respondent have submitted that the respondent were engaged in labor work, specifically job work machining, supplied with materials by the principal manufacturer under Rule 4(5)(a) of the Cenvat Credit Rules, 2002. These materials were subjected to various processes mentioned in the challan and returned to the supplier. This activity is claimed to be exempted under Entry No. 30 of Notification No. 25/2012-ST dated 20/06/2012. The respondent cites previous decisions in the case of Kantilal Dharamsing Patel [OIA No. AHM/EXCUS/001/APP/144/2023-24 dated 16.10.2023] to support the claim of exemption.

10. I have carefully gone through the submission of appellant and respondent and find that the respondent, in support of their claim of exemption from service tax, presented various supporting documents only during the appeal stage, skipping the adjudicating authority's analysis. Recognizing the importance of ensuring proper verification of documents and eligibility, I believe



that the respondent should have presented these records before the adjudicating authority, who is better equipped to verify their authenticity and eligibility for exemption. In the spirit of fairness and justice, I find it necessary to remand the case to the adjudicating authority for a comprehensive review. The appellant is urged to furnish all pertinent records and documents to the adjudicating authority, enabling a thorough reevaluation of the case while upholding the principles of natural justice.

11. 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.

12. 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.

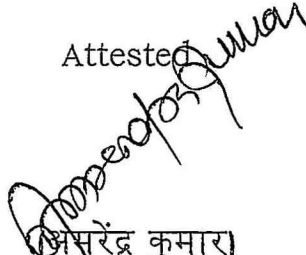


ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 08.02.2024



Attested


असुरेंद्र 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 Dhirenkumar Mahendrakumar Patel,
39-Dharmbhumi Co. Op. Housing Society,
B/h Smrutimandir, Vatva,
Ahmedabad-382440.

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Deputy/Assistant Commissioner, Central GST, Division-II, Ahmedabad South.
4. The Assistant Commissioner (Appeal), CGST, Ahmedabad South (for uploading the OIA)
- ~~5.~~ Guard File
6. PA file

