



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3377/2023 / 1682-86
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-264/2023-24 and 13.02.2024
(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. CGST-VI/Dem-218/LJ Purani/AC/DAP/2022-23 dated 17.01.2023 passed by The Assistant Commissioner, Central GST, Division VI, Ahmedabad South .	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. L J Purani & Associates, 303, Gala Business Centre-I, St. Xavier's College corner, Ahmedbad-380009

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 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 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.

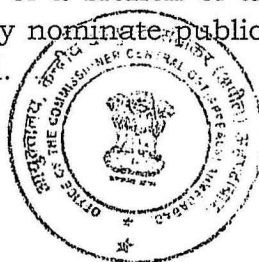
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, 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 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 present appeal has been filed by M/s. L J Purani & Associates, 303, Gala Business Centre-I, St. Xavier's College corner, ahmedbad-380009 (hereinafter referred to as "*the appellant*") against Order-in-Original No. CGST-VI/Dem-218/LJ Purani/AC/DAP/2022-23 dated 17.01.2023(hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant, an architectural services provider holding service tax registration No. AAAFL2574JST002, was audited by the officers of audit Commissionerate, Ahmedabad for the period from October 2014 to June 2017. The audit raised objection regarding the incorrect availing of exemption Notifications, which was summarized in Revenue Para 1 of Final Audit Report No. 839/Service Tax/2019-20 dated 28.05.2020. The appellant did not agree with the objection raised by the audit team and accordingly the Revenue Para 1 remained unsettled. Subsequently, a Show Cause Notice No. 285/2019-20 dated 28.05.2020 was issued by the Assistant Commissioner, Circle III, CGST Audit Commissionerate, Ahmedabad, wherein:

- a) An amount of Rs. 13,99,885/- 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*') was proposed to be demanded and recovered from the appellant. The amount of Rs. 91,178/- which was paid by the appellant was proposed to be appropriated.
- b) Penalty under the provisions of Section 78 of the Act was proposed to be demanded and recovered from the appellant.



3. The SCN was adjudicated parte vide the impugned order wherein:

- a) The demand of service tax amounting to Rs. 13,99,785/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act. The tax liability of Rs. 13,99,785/- already paid by the appellant was appropriated against the confirmed demand.
- b) Proposed demand and recovery of interest from the appellant was confirmed on the outstanding amount under Section 75 of the Act. An interest amount Rs. 11,66,979/- paid by the appellant was ordered to be appropriated by the adjudicating authority.
- c) Proposed demand and recovery of penalty of Rs. 13,99,885/- was confirmed under Section 78(1) of the Act. Rs. 2,09,982/- already paid by the appellant towards the penalty confirmed under Section 78(1) of the Act was ordered to be appropriated by the adjudicating authority. According to clause (ii) of the second proviso to Section 78(1), if the confirmed service tax amount and the related interest are paid within thirty days from the receipt of this order, the penalty will be reduced to twenty-five percent of the total amount. This reduced penalty must also be paid within the same thirty-day period.

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

- The appellant is engaged in the business of providing service namely architect services to the Govt. of Gujarat for construction of Hospitals for which they have received consideration.
- The appellant states that during the course of audit of accounts, there was some difference in income reflected in the



books of account and the Service tax Returns (ST-3) filed by the appellant.

- The appellant argues that they are eligible for an exemption under a specific notification but were found to be wrongly availing it by the department.
- The appellant states that they have paid the service tax, interest, and penalty imposed, but contest the penalties, stating they did not intend to evade tax.
- They argue against the imposition of penalties, claiming there was no intention to evade tax and no deliberate withholding of information. They request the dropping of penalty proceedings.

4. The appellant were given opportunities for Personal Hearing on 29.12.2023. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He stated that they have paid service tax, interest and 15% penalty. However, due to technical glitch they could not file DRC-03 for the tax, interest and penalty amount only within 30 days, however the challan for tax interest and penalty was already paid and the cash balance was on the GST portal on 06.10.2020. It was Covid time. Their accountant expired. DRC-03 was having problem in filing. So finally we could make the payment by DRC on 14.05.2021 two years before the OIO. Further, he requested for one week time to make additional submission.

4.1. The appellant submitted following documents in their additional submission (1) copy of SCN dated 28.05.2020, (2) copy of electronic ledger, (3) challan copy.

5. 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.

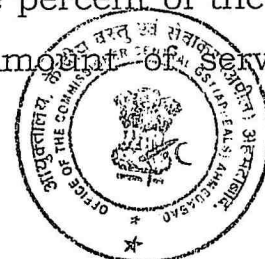
8. I find that the main contention of the appellant is pertain to the demand of penalty under Section 78 (1) of the Act despite they have already paid the service tax, interest, and 15 % penalty by DRC-03 on 14.05.2021, two years before the OIO dated 17.01.2023.

9. Upon perusing the appellant's submission, it becomes evident under the paragraph 7 of the 'Ground of Appeal' part of the submission of the appellant; they are found to be not contesting the liability to pay service tax and the interest thereon. The contest in the instant appeal is confined to the penalties imposed under Section 78 (1) of the Act. It is also noticed that the appellant have already paid 15 % penalty by DRC-03 on 14.05.2021, before the issuance of OIO and which was appropriated in the impugned order.

10. I read the paragraph 15(iii) of the impugned order which is reproduced as under:

"however, in view of clause (iii) of the second proviso to Section 78 (1), if the amount of service tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days."

11. In view of the above provision mentioned in para (iii) of the impugned order, I find that the if the appellant pay service tax along with interest thereon and twenty five percent penalty within period of thirty days from the date of receipt of the impugned order the penalty amount will be reduced to twenty five percent of the service tax. I find that the appellant have paid amount of service tax



confirmed and interest thereon and 15 % of the service tax well before the issuance of OIO considering the proviso of 78(1)(i) of the Act. Now I go through the proviso of 78 of the Act which reads as under:

SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. — (1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of- the date of service of notice under the proviso to

- (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;
- (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period.

11.1. In view of the above provisions, in case the appellant found to have paid the service tax along with interest and penalty amounting




to fifteen percent of such service tax within a period of thirty days of the date of service of notice, the penalty amount will be reduced to fifteen percent of the service tax. I find that the Show Cause Notice issued on 28.05.2020 was not received by the appellant till date. However, on scrutiny of the copy of SCN I find that it was dispatched to the appellant by speed post/hand delivery. This needs to be verified at the end of the adjudicating authority whether they have been received by the appellant or otherwise. It is noticed that the appellant have paid service tax along with interest and 15 % penalty by DRC-03 on 14.05.2021. However, the appellant submitted that they have already paid service tax, interest and penalty on 06.10.2020 vide CIN No. ICI20102400075782, and thus they credited the amount on 06.10.2020 in Electronic Credit ledger but debited the same on 14.05.2021. This aspect also needs to be verified at the end of the adjudicating authority.

12. In view of above discussion, the appeal is allowed by way of remand back.

13. 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: 12.02.2024



सत्यापित / Attested:

(अनिरुद्र कुमार)

अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. L J Purani & Associates,

303, Gala Business Centre-I,

St. Xavier's College Corner,

Ahmedabad-380009.



Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Deputy/Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- ✓ 5) Guard File
- 6) PA file

