



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:- 20240264SW000000FF9B

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STP/4304/2023 / 1815 - 19 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date | AHM-EXCUS-001-APP-268/2023-24 and 14.02.2024 |
| (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 | 16.02.2024 |
| (ङ) | Arising out of Order-In-Original No. MP/302/DC/Div-IV/2022-23 dated 10.03.2023 passed by The Deputy Commissioner, Central GST, Division-IV, Ahmedabad South. | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s. Pankaj Mohanbhai Vaghela, 15, Shree Ram Park Society, Virat Nagar, Isanpur, Ahmedabad - 382443 |

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 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 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 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. Pankaj Mohanbhai Vaghela, 15, Shree Ram Park Society, Virat Nagar, Isanpur, Ahmedabad-382 443 (hereinafter referred to as "the appellant") against Order-in-Original No. MP/302/DC/Div.-IV/2022-23 dated 13.03.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division-IV, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that as per the information received from Income Tax department the appellant had earned substantial service income without obtaining Service Tax registration. They were holding PAN Number AFAPV5885R. They were requested evidence of their income, which they submitted viz. copy of ITR during the period F.Y. 2014-15 to 2017-18 (upto June 2017) along with balance sheet, Form 26AS etc. On scrutiny of the information/documents received from the appellant, it was noticed that the appellant were receiving income from Labour Income & Sale Income and these were Rs. 13,41,875/-, Rs. 14,70,567/-, Rs. 16,20,679/- and Rs. 16,42,379/- during the F.Y. 2014-15, 2015-16, 2016-17 and 2017-18 (upto June 2017) respectively. Further documents were requested but not provided by the appellant. The nature of activities by the appellant suggests that they are not covered under the Negative list as per 66D of the Finance Act (hereinafter referred to as 'the Act') nor covered under 66E nor exempted under the Notification No. 25/2012-ST dated 20.06.2012 as amended time to time, hence are liable for Service Tax under Section 66B of the Act. Since the appellant failed to submit required details, the taxable value was determined based on available records, resulting in a calculated service tax liability.

2.1. Subsequently, the appellant were issued Show Cause Notice bearing File No. IV/Div-IV/SCN-205/2020-21 dated 23.12.2020 wherein it was proposed to:



a) Demand and recover an amount of Rs. 8,68,547/- for F.Y. 2014-15 to 2017-18 (Upto June 2017) under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as 'the Act').

b) Impose penalty under the provisions of Section 77 (1) and 78 of the Act.

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

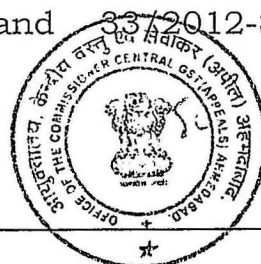
a) The demand of service tax amounting to Rs. 8,68,547/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2014-15 to 2017-18 (Upto June 2017).

b) Penalty amounting to Rs. 8,68,547/- was imposed under section 78 of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act for failure to obtain the Service Tax Registration as per the provisions of Section 69 of the Act.

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

- The appellant undertook various contracts for construction-related works in different financial years.
- These contracts were with M/s Yamunesh Construction and involved projects awarded by government agencies.
- The appellant's services were exempt from service tax under Notifications No. 25/2012-ST and 33/2012-ST dated



20.06.2012 due to their subcontractor status to the principal contractor, who was exempted from service tax.

- The exemption criteria were met based on specific clauses in the Notifications, such as works being predominantly for public use or falling below a certain turnover threshold. Therefore, the appellant was not liable to pay service tax for the specified financial years.
- The adjudicating authority has erred on facts in confirming the demand of Service tax.
- The adjudicating authority has erred on facts confirming the demand of Service tax by invoking extended period of limitation.

5. Personal hearing in the case was held on 22.01.2024. Shri Rohan Thakkar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He stated that the client is sub contractor providing service to main contractor who is providing service to Govt. hence, exempted under Service Tax. He submitted copies of contracts and ledgers at the time of time of Personal hearing.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15 to 2017-18 (Upto June 2017).



8. I find that the following issues are required to be decided by me (1) whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 23.12.2020, (2) whether the contention of the appellant that the services provided by them are exempted as per Sl. No. 12 (a) and Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012 is sustainable or not.

9. Upon through review of the submission of the appellant I find that the main contention of the appellant is that they are not liable to pay service tax owing to their income during the impugned period i.e. 2014-15, 2015-16, 2016-17 and 2017-18 (June, 2017) is exempted in the light of Sr. 12(a) and Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 33/2012-ST dated 20.06.2012. I find it necessary to reproduce Sr. 12(a) and Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 33/2012-ST dated 20.06.2012 which is as under:

Notification No. 25/2012-ST dated 20.06.2012

****the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

29. Services by the following persons in respective capacities –

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

Notification No. 33/2012 - Service Tax

**** the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakhs rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act



(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakhs rupees in the preceding financial year.

9.1. In view of the above provisions, I find that to prove their claim that they are not liable to pay tax as they are exempted from service tax as per the above discussed provisions under sr. no. 12(a) and 29(h) of Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 33/2012-ST dated 20.06.2012, the appellant have submitted sample copy of agreement between Yamunesh Construction and the appellant vide work order dated 01.02.2015 and 15.04.2016. These documents were not submitted before the adjudicating authority, which needs to be examined thoroughly. It is noticed that the appellant were made liable for the recovery of Service tax vide the impugned order during the period F.Y. 2014-15 to F.Y. 2017-18 (Upto June 2017). The sample copy of work order submitted by the appellant does not sufficiently prove that their income during the whole impugned period had been solely received from the Yamunesh Construction. So, they need to furnish more documentary evidences, only on the ground of which they can claim that they had provided exempted service and therefore not liable to be service tax for the impugned period. Furthermore, the appellant also claim that their income is below threshold limit i.e. Rs. 10 lakhs and hence they are exempted under the Notification No. 33/2012-ST dated 20.06.2012. However, I find it necessary after reading the above mentioned Notification No. 33/2012-ST dated 20.06.2012 for claiming the benefit of the Notification No. 33/2012-ST dated 20.06.2012 the aggregate value of taxable services rendered by the appellant from one or more premises, must not go beyond ten lakhs rupees in the preceding financial year. However, to prove the claim of the appellant that their income in the F.Y. 2013-14 did not exceed Rs. 10 lakhs, they have not furnished any documentary evidence. This aspect needs to be examined at the end



of the adjudicating authority, as the demand was confirmed vide the impugned order ex-parte.

10. 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 examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant are directed to submit all the records and documents in support of their claim for exemption from the service tax 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.

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. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

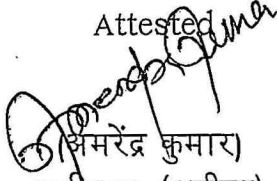


ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 14.02.2024



Attested



(अमरेंद्र कुमार)
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s. Pankaj Mohanbhai Vaghela,
15, Shree Ram Park Society,
Virat Nagar, Isanpur,
Ahmedabad-382 443

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Deputy/Assistant Commissioner, CGST, Div.- IV Ahmedabad South
4. The Superintendent(Appeals),CGST, Ahmedabad South
(for uploading the OIA)
- ✓ 5. Guard File
6. PA file

