

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 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 साला, 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 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 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 present appeal has been filed by M/s. Jignesh Hargovinddas Gajjar, C/o Vastukala, Dhanlaxmi Complx, Jivraj Park, Ahmedabad (hereinafter referred to as "the Appellant") against Order in Original No. 49/WS08/DC/KP/2022-23 dated 17.06.2022 [hereinafter referred to as "impugned order"] passed by the Deputy Commissioner (Technical), CGST, Ahmedabad South (hereinafter referred to as "adjudicating authority").

2. Briefly stated, the facts of the case are that the Appellant were not registered with Service Tax department holding PAN Card No. AHDPG1668G. As per the information received from the Income Tax Department, the Appellant did not pay service tax on the value of service income neither did they obtain service tax registration. The Appellant failed to submit required details/documents.

3. Therefore, the Appellant were issued Show Cause Notice No. CGST/WS0804/O&A/TPD(15-16)/ AHDPG1668G /2020-21 dated 22.12.2020, wherein it was proposed to:

a) Demand and recover an amount of Rs. 4,26,685/- for the F.Y. 2015-16 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 70, 77 and 78 of the Act.

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

a) The demand of service tax amounting to Rs. 4,26,685/- was confirmed along with interest.

b) Penalty amounting to Rs. 4,26,685/- was imposed under 78 of the Act.



c) Penalty amounting to Rs. 10,000/- was imposed under 77(1)(a) of the Act for failure to obtain service tax registration.

d) Penalty amounting to Rs. 10,000/- under section 77(2) of the Act for failure to assess himself the tax due on the services provides by him and furnish ST-3 Returns.

5. 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 Works Contract Services.
- The Appellant has provided Services exclusively to Sheth Anandji Kalyaniji Trust (A Religious Charitable Trust). During the period under the consideration, the appellant has provided services by way of construction and maintenance of temples to Sheth Anandji Kalyanji.
- In this regard, the appellant further submits that the service provided by him fall under section 66B(13)(C) of the Finance Act, 1994 covered under mega exemption notification no. 25/2012- ST dated 20.06.2012.
- In law and in the facts and circumstances of the appellant's case, he was not liable of pay service of Rs. 4,26,685/- since he was engaged in providing services mentioned under mega exemption notification 25/2012 and no such interest and penalty are chargeable in the case of the appellant.

6. Personal Hearing in the case was held on 12.02.2024 Shri Parth Patel, Chartered Accountant, appeared on behalf of Appellant for the hearing. He stated that the appellant is engaged in providing construction and maintenance services with material to religious temples. Therefore, the client is exempt under Sr. No. 13(C) of the notification No. 25/2012 dated 20.06.2012.

7. 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 2015-16.

8. I find that in the SCN in question, the demand has been raised for the periods FY 2015-16 based on the Income Tax Returns filed by the appellant. I further find that the order has been passed ex-parte.

9. I find that the main contention of the appellant is that they are engaged in activity of providing construction and maintenance services with material to religious temples. Therefore, the client is exempt under Sr. No. 13(C) of the notification No. 25/2012 dated 20.06.2012, which is reads as under:

Notification No. 25/2012-Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994)(hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 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:-

13. Services provided by way of construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;



(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

10. Further, I find that the appellant, in support of the contention that they are not liable to pay tax as they are exempted from service tax as per the above discussed provisions under Sr. No. 13(c) of the Notification No. 25/2012-ST dated 20.06.2012, have documents for the impugned period (1) Certificate issued by Sheth Ananadji Kalyanji (A Religious Charitable Trust), wherein they stated that they are duly register charitable and Religious Trust with the office of the Charity Commission, Ahmedabad vide Registration No. A/1299/Ahmedabad. As a part of charitable and religious services of the trust, they construct vari temple for the general public at large. During the F.Y. 2015-16, have received service of jignesh hargovinddas gajjar for the construction maintenance of Religious temple and further confirm by them those invoices raised by the appellant are inclusive of material cost. (2) copy of Form 26AS (TDS) certificate for the F.Y. 2015-16 and (3) copy of invoices issued by the appellant. On analysis of the documents submitted by the appellant, it is observed that the appellant were engaged in the activity of providing Constriction and maintenance service with material to religious temples, which is exempt vide entry No. 13(C) of mega exemption Notification No. 25/2012 dated 20.06.2012. The entry No. 13(C) of mega exemption Notification No. 25/2012 dated 20.06.2012 states that "a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public" is exempt from Service Tax. Therefore, I hold that the services provided by the appellant is exempted in terms of entry No. 13(C) of mega exemption Notification No. 25/2012 dated 20.06.2012. Due to the above finding, I am of the considered opinion that the appellant are not liable for service tax.

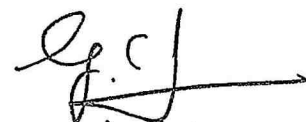
11. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the Appellant.



12. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

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. .

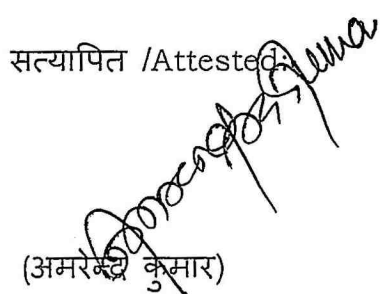


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 19.02.2024

सत्यापित /Attested:



(अमरेंद्र कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद



By RPAD / SPEED POST

To,

M/s. Jignesh Hargovinddas Gajjar,

(New Address)

13, OM Shayona Arcade,

Near Silver Oak University, Gota,

Ahmedabad - 382481.

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 VIII, Ahmedabad South
- 4) The Assistant Commissioner(RRA), CGST, Ahmedabad South
- 5) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- ✓ 6) Guard File
- 7) PA file