



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

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4927/2023 / 1720-82
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-276/2023-24 and 19.02.2024
(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	20.02.2024
(ङ)	Arising out of Order-In-Original No. 461/AC/Div-I/HKB/2022-23 dated 21.03.2023 passed by The Assistant Commissioner, Central GST & C.Ex., Division - I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Pankaj Kumar Vinubhai Veghela, 11, Gap Para Vas, Village Gatrad, Taluka Daskroi, Ahmedabad-382449

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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतत 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 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 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 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 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।

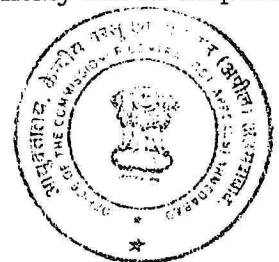
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Pankaj Kumar Vinubhai Veghela, 11, Gap Para Vas, Village Gatrad, Taluka Daskroi, Ahmedabad - 382449 (hereinafter referred to as “the appellant”) against Order-in-Original No. 461/AC/Div-I/HKB/2022-23 dated 21.03.2023 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, CGST, Division-I, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AMVPV3042J. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 13,86,500/- during the FY 2015-16, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. Accordingly, it appeared that the appellant 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 appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice and demanding Service Tax amounting to Rs. 2,07,975/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,07,975/- was confirmed 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 for the period from FY 2015-16. Further (i) Penalty of Rs. 2,07,975/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

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

- The Appellant is engaged in construction service in the capacity as works contractor. As the services rendered by the appellant is covered under declared service, however, its taxable value is well below Rs.10 Lakhs as stipulated in terms of Notification No.30/2012-ST read with Rule 2A of Service Tax Rules, 1994 read with Notification No.33/2012-ST, they are not liable to pay service tax and accordingly, have not obtained Service Tax Registration as required under Section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994.
- The learned adjudicating authority have not appreciated various provisions for determining the value on which service tax payable on the service portion in execution of works contract and confirm entire demand of service tax without considering following law and procedure applicable to the appellant. The appellant would like to submit herewith relevant law and procedure to determine the value on which service tax is payable for service portion in execution of works contracts as under.
- The learned adjudicating authority has erroneously confirmed demand of Service tax of Rs.2,07,975/- as could be seen from the following submission of the appellant. The appellant would like to submit herein below financial year wise works contract Income recorded in Profit and loss account and category wise service recipient to service is provided:

Head wise Income and category of service recipient	
P&L	F.Y. 2015-2016
Works Contract Income	13,86,500/-



- Since execution of works contract is declared service and is covered in notification No.30/2012-ST issued under Section 68(2) of the Finance Act, 1994 their service attracts partial reverse charge in the hands of service provider.
- According to the said notification the service rendered by proprietary firms to body corporate, partnership firm attracts service tax to the extent of 50% in the hands of service recipient and 50% in the hands of service provider. For the remaining service recipient it attracts service tax 100% in the hands of service provider. Further the value of taxable services provided shall be calculated as per the provisions of Rule 2A(ii) of Service Tax Rules, 1994 for the repair and maintenance works carried out. Accordingly abatement of 30% is available to the service provider. Additionally, the taxable value for the FY 2014-15 is well below Rs.10 Lakhs, the appellant is entitled to exemption stipulated in the Notification No.33/2012- ST for the service rendered by the appellant in terms of Section 68(1) of the Finance Act, 1994.
- Therefore it would be necessary to derive value on which service provider i.e. appellant is liable to service tax. From the above tables it could be seen that, the total value of Works Contract Service provided by the assessee is Rs. 13,86,500/-. Considering all the services provide by the assessee covered under forward charge mechanism and as per section 67(ii)(B) i.e. repair and maintenance service and giving the benefit of abatement the portion of taxable services shall be derived as below.

Taxable value in the hands of Service Provider	
P&L	F.Y. 2015-2016
Works Contract Income	13,86,500/-
70% Taxable value after abatement of 30%	9,70,550/-
Less exemption of Rs.10 Lakhs Noti.33/2012-ST	10,00,000/-
Taxable Value	-29 450/-



- From the above Table it could be seen that the taxable value for the FY 2015-16 is well below Rs. 10 Lakhs, the appellant is not liable to service tax. Hence the demand of Rs.2,07,975/- is not sustainable under the law and procedure.
- The appellant would like to submit that in view of above grounds of appeal, the appellant is not liable to pay any service tax in terms of Section 68(1) read with Rule 6 of the Service Tax Rules, 1994; and therefore they are not liable to be registered under section 69 of the Finance Act, 1994 read with Rule 4 of Service tax Rules, 1994, however the learned adjudicating authority erred in concluding that the appellant is liable to be registered.

4. Personal hearing in the case was held on 24.01.2024. Shri Sumit Ghanshyamdas Kherajani, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He stated that appellant is eligible for 30% in respect of works contract for repair and maintenance. Further, previous year turnover is less than 10 Lakh, so threshold benefit is available.

5. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 18 days and take up the appeal for decision on merits.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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.

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

8. Further, it is observed that the main contentions of the appellant are that they are engaged in construction service in the capacity as works contractor. As the services rendered by the appellant is covered under declared service, however, its taxable value is well below Rs.10 Lakhs as stipulated in terms of Notification No.30/2012-ST read with Rule 2A of Service Tax Rules, 1994 read with Notification No.33/2012-ST. However, I find that the turnover of Services is shown as Rs. 12,70,120/- in previous years, which is above threshold, the appellant is claiming that the turnover is related to Works Contract service while in the ITR for the F.Y. 2014-15 the nature of business is shown as trading. Due to these contradicting claims the matter needs verifications.

9. I also find that the appellant submitted various documents in support of their claim for exemption from service tax, which was not produced by them before the adjudicating authority and first time submitted at appeal stage. In this regard, I am of the considered view that the appellant cannot seek to establish their eligibility for exemption at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption.

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.

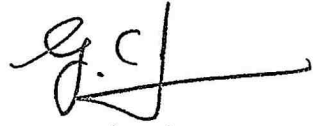


The appellant is directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following 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. 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: 19th February, 2023

सत्यापित /Attested:



(अनंद कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. Pankaj Kumar Vinubhai Veghela,

11, Gap Para Vas, Village Gatrad, Taluka Daskroi,

Ahmedabad – 382449.

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division I, 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



