



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240264SW0000015514

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4933/2023/2555 - 2562
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-284/2023-24 and 22.02.2024
(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	28.02.2024
(ङ)	Arising out of Order-In-Original No. 55/WS08/AC/KSZ/2023-24 dated 27.04.2023 passed by The Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Design Dimension, 609, Pinnacle Business Park, Corporate Road, Prahladnagar, Ahmedabad

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 से 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 or excise on goods exported to any country 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 हों।

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 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 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."



अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Design Dimensions, 609, Pinnacle Business Park, Corporate Road, Prahladnagar, Ahmedabad- 380051 (hereinafter referred to as '*the appellant*') against Order in Original No. 55/WS08/AC/KSZ/2023-24 dated 27.04.2023 [hereinafter referred to as '*impugned order*'] passed by the Assistant Commissioner, CGST & CEx, Division-VIII, Ahmedabad South Commissionerate [hereinafter referred to as '*adjudicating authority*'].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAHFD1514HSD001 and engaged in providing service namely Professionals (others). As per the information received from the Income Tax department discrepancies were observed in the total income declared by the appellant in their Income Tax Return (ITR) when compared with Service Tax Returns (ST-3) filed by them for the period F.Y. 2015-16. Accordingly, in order to verify the said discrepancy, the appellant were calling for the details of services provided during the period. But they didn't submit any reply. Further, the services provided by the appellant during the relevant period were considered taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) or "Total amount paid/credited under Section 194C, 194I, 194H & 194J of Income Tax Act, 1961" shown in the ITR-5 and Taxable Value shown in ST-3 return for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	2,97,99,616/-	14.5%	43,20,944/-

3. The appellant was issued Show Cause Notice No. CGST/WS0801/O&A/TPD(15-16)AAHFD1514H/2020-21 dated 21.12.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.43,20,944/- under proviso to Section 73 of Finance Act, 1994 along with applicable interest and penalties.



4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :
- Service Tax demand of Rs.43,20,944/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
 - Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
 - Penalty of Rs.43,20,944/- was imposed under Section 78 of the Finance Act,1994 with option for reduced penalty in terms of clause (ii).
5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:
- The appellant is engaged in the service activity of works contract service and interior decorators service.
 - The appellant submitted that the Departmental Audit by Audit Commissionerate was totally ignored before adjudication process as they had already submitted the audit report vide letter 02.02.2021.
 - They further submitted the copy of FAR No. 1824/2018- 19 dated 23.05.2018 issued for the period Oct-2012 to March-2017, wherein FY 2015-16 was already covered. During the course of audit, the officer on duty have verified all the details of the Income reflected in the books of accounts, ITR, 26AS and ST-3 return and was satisfied that there is no amount left to be declared in ST-3 returns on which The Appellant was liable to pay service tax.
 - They requested to quash and set aside the impugned order on the above grounds.
6. Personal Hearing in the case was held on 13.02.2024. Shri Pravin Dhandharia, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission. He stated that the impugned period was already audited by the department and no difference of value found in FAR No.1824/18-19 dated 23.05.2018. The difference in impugned order is only because 50% liability of RCM and advance payment as reflected on page no. 17 of the appeal memo. Hence, no liability is there.



7. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing and the facts available on records. The issue before me for decision in the present appeal is whether the demand for Service Tax amounting to Rs.43,20,944/- confirmed alongwith interest and penalties vide the impugned order in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

8. It is observed from the case records that the appellant are registered under Service Tax and have filed their half yearly Service Tax Returns (ST-3) during the period F.Y. 2015-16. However, the SCN in the case was issued only on the basis of data received from the Income Tax department without classifying the services provided by the appellant. Hence, it is apparent that, no further verification has been caused by the jurisdictional office before issuing the SCN and impugned order had also been issued *ex-parte*.

9. I find that the appellant has also produced documents which confirm that the 'Service Tax Audit' of their records were conducted for the period Oct, 2012 to March, 2017 and Final Audit Report No.1824/2018-19 dated 23.05.2018 was issued by the Assistant Commissioner, Central Tax Audit, Circle-IV, Ahmedabad vide F.No.VI/1(b)-271/C-IV/Audit/AP-73/2017-18 wherein it is recorded that:

...
Services provided : *Works Contract Service*
/ *Interior Decorators*
Services received : *Interior Decorators*
Period of Last Audit : *First Audit Conducted*
Period for which current Audit undertaken : *Oct, 2012 to March, 2017;*

Revenue para – 1: Short payment of service tax on account of reconciliation. (Audit Code: VSR030)

During the course of audit, on reconciliation of Works Contract Service, it was noticed that the Assessee has short paid the Service Tax amounting to Rs.76,243 along with interest and penalty for the period F.Y.2012-13 to F.Y. 2016-17.

On being pointed out, the assessee is agreed with the above objection and paid the amount vide challan being CIN No. 05102470105201850102 dated 01.05.2018.

...

10. In view of the above facts, it is established that the department was fully aware of the services rendered by the appellant during the relevant period i.e. F.Y. 2015-16 as well as of the Service Tax paid and ST-3 returns filed. Further, upon verification of the ST-3 returns vis-à-vis Financial records of the appellant, it is found that



Audit Report No.1824/2018-19 dated 23.05.2018 was issued. The assessment for the period Oct, 2012 to March, 2017 was finalized by the above FAR. Further, the objections raised by audit was nowhere similar to the discrepancies raised vide the SCN and confirmed vide the impugned order. It is also observed that the audit report was issued much before the issuance of SCN. Hence, I find that the SCN as well as the impugned order has been issued indiscriminately without causing any verification and is therefore legally unsustainable and liable to be set aside.

11. I find it necessary to go through the reconciliation statement prepared by the audit officer during the time of conduction of Audit for the period October 2012 to March 2017, wherein F.Y. 2015-16 was also covered. The reconciliation statement pertaining to the impugned period as shown below compares the income reflected in books of account vis-a-vis income reflected in ST-3 returns.

Sr. No.	Particulars in F.Y. 2015-16	Amount (in Rs.)
1.	Gross receipt as per ledger (Credit side)	58285136
2.	Deduction	
(a)	50% RCM Value	22849198
(b)	advance payment adjusted on which ST paid in previous year	8863055
(c)	Interior income	3574850
(d)	Total deduction	35287103
3.	Net tax payable	22998033
4.	Taxable value as per ST-3 return	23365131
5.	Service tax liability	-367098

11.1. On perusing the above shown reconciliation statement I find that service recipient of the appellant as body corporate paid service tax on 50% under partial Reverse Charge Method (RCM) in accordance with Notification No. 30/2012-ST dated 20.06.2012. Further, on going through the ST-3 Returns and perusing the above shown reconciliation statement, I come to the conclusion that the appellant had only reported 50% of the value for service tax in their ST-3 returns, which seems to be the reason for short reporting compared to their books of account in the impugned period. The appellant have been deducted by the amount of Rs. 88,63,055/- against advance received in the previous year on which the service tax has already been paid by the appellant. It is also found that the appellant had discharged service tax in Interior decorator income as per ST-3 returns filed and



which they also got deduction in reconciliation statement. Thus, the appellant is found to have paid service tax in excess in the year 2015-16 as illustrated by the reconciliation statement.

12. In view of the discussions carried out in the foregoing I am of the considered view that the demand of Service Tax amounting to Rs.43,20,944/- confirmed vide the impugned order is unsustainable legally as well as on merits and liable to be set aside. As the demand of service tax fails to sustain, question of interest and penalty does not arise. Accordingly, the demand for service tax, confirmed vide the impugned order along with interest and penalty are set aside and the appeal filed by the appellant is allowed.

13. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

14. 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.

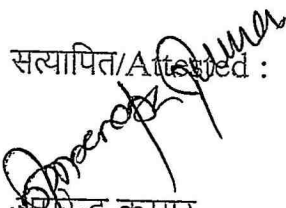


ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 06 February, 2024

सत्यापित/Attested :



अमरेंद्र कुमार

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,
M/s Design Dimensions,
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Corporate Road, Prahladnagar,
Ahmedabad- 380051.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad North.
3. The Assistant Commissioner, CGST & CEX, Division - VIII, Ahmedabad South Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. ✓ Guard file.
6. PA File.



