



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:- 20240364SW000000BEBD

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4929/2023 / 3042-56
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-299/2023-24 and 29.02.2024
(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	06.03.2024
(ङ)	Arising out of Order-In-Original No. 171/AC/NEW WORLD ENTERPRISE/DIV-II/A'bad South/JDM/2022-23 dated 24.02.2023 passed by The Assistant Commissioner, Central GST, Division-II, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. New World Enterprise, Plot No. 20/1, 68, Yamuna Industrial Estate Phase-I, GIDC, Vatva, Ahmedabad - 382445

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, 4<sup>th</sup> 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 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.

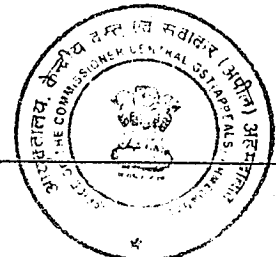
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup>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।

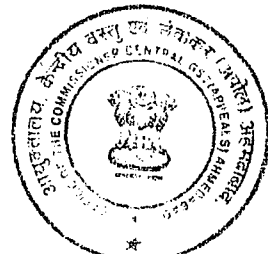
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."

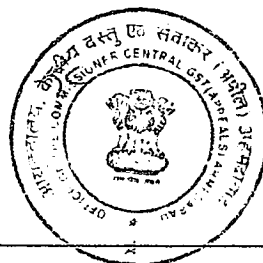


**ORDER-IN-APPEAL**

The present appeal has been filed by M/s. New World Enterprise, Plot No. 20/1, 68, Yamuna Industrial Estate Phase-I, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred to as "the appellant") against Order-in-Original No. 171/AC/NEW WORLD ENTERPRISE/Div-II/A'bad-South/JDM/2022-23 dated 24.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-II, 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 AAGFN8411L. They were requested evidence of their income, which they failed to submit. On scrutiny of the information/documents received from the Income Tax department, it was noticed that the appellant were receiving income Rs. 10,88,814/- during the F.Y. 2014-15. The nature of activities by the appellant suggests that they were not covered under the Negative list as per 66D of the Finance Act (hereinafter referred to as '*the Act*') 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 67 of the Act. Since the appellant failed to submit required details, the taxable value was determined based on available records i.e. 26AS filed by the appellant and IT returns, resulting in a calculated service tax liability.

2.1. Subsequently, the appellant were issued Show Cause Notice No. WS0204/Third Party(14-15)/16/New World/2020-21 dated 23.12.2020 demanding Service Tax amounting to Rs. 1,34,577/- for the period FY 2014-15, 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. The SCN also proposed late fee under Rule 7C of Service tax rule 1994, read with Section 70 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. 1,34,577/- 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 2014-15. Further (i) Penalty of Rs. 1,34,577/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant for each ST-3 return filed late under Rule 7C of Service tax rule 1994, read with Section 70 of the Finance Act 1994.

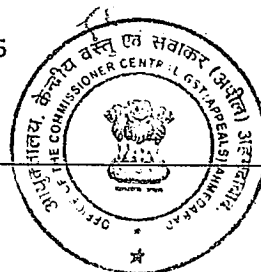
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- Appellant is engaged in the business of sale and job work of parts of machinery fall in HSN-8431 and currently conducting a business under GSTN- 24AAGFN8411L1Z5
- Appellant had declared a sale of Rs. 59,94,144 in income tax return.

Particular	Amount (Rs.)
Sale of services	10,88,814
Sale of Goods	49,05,330
<b>Total</b>	<b>59,94,144</b>

- Appellant did job work only for Kleckner Desma Machinery. At that time, while reconciliation accountant made some unnecessary adjustments in ledger of JOB-WORK INCOME. Below entry made by mistakenly.

Date	Party name	Amount
31-03-2015	Kleckner Desma Machinery	48,500
31-03-2015	Kleckner Desma Machinery	35,400
31-03-2015	Kleckner Desma Machinery	57,700
31-03-2015	Kleckner Desma Machinery	58,400
31-03-2015	Kleckner Desma Machinery	19,500



	Total	2,19,500
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- Appellant actually received income from job work service was Rs. 8,69,314, which was less than the threshold limit of service tax registration.

Party Name	Amount (Rs.)
Klockner Desma Machinery	6,94,462
Rajesh S Panchal	1,52,802
Uniwin Engineering	22,050
Total	8,69,314

- 26AS (FY-2014-15) of income tax department shows taxable turnover (Job Work Income } from Klockner Desma Machinery amounted to Rs. 5,60,510. the documentary evidence to justify above matter.
- Appellant is submitting the detailed ledger of Klockner Desma Machinery in the books of accounts of Appellant, as well as Appellant's detailed ledger in the books of accounts of Klockner Desma Machinery, to justify the above entries made mistakenly by accountant.

5. It is observed from the records that the present appeal was filed by the appellant on 15.06.2023 against the impugned order dated 24.02.2023, which was reportedly received by the appellant on 16.03.2023.

5.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

*“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:*

*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”*



5.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 15.05.2023 further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 15.06.2023. This appeal was filed on 15.06.2023, i.e after a delay of 30 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

5.3 In their application for Condonation of delay in filing the appeal, they submitted that order copy was received by his accounting staff as on 16.03.2023 and forget to communicate the same to them, recently they found the order copy and they have late for filling the appeal for this same. These reasons of delay were also explained by them during the course of personal hearing, the grounds of delay cited and explained by the appellant appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal was condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

6. Personal hearing in the case was held on 13.02.2024. Shri Gopal Patil, Consultant, appeared on behalf of the appellant for personal hearing. He reiterated the contents of the written submission. He requested for two days' time to submit ITR for previous year by email. The appellant have, vide their additional documents submitted on 15.02.2024 as under:

- ITR for the F.Y. 2013-14.
- 26AS for the F.Y. 2013-14.

7. 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 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 2014-15.

8. I find that the main contention of the appellant are that the Income as appearing in the income tax return consists of the income on account of (a) Sale of Goods i.e. machinery fall in HSN-8431, and (b) the income actually received from job work service was Rs. 8,69,314, which was less than the threshold limit of exemption under Notification No.33/2012-ST dated 20.06.2012. It is observed that the adjudicating authority has decided the case ex-parte.

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.

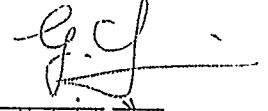
11. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.





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

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

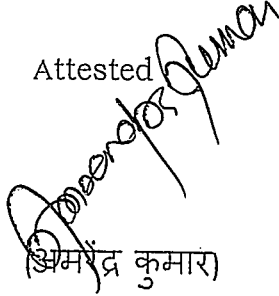


जानचंद जैन

आयुक्त (अपील्स)

Date : 29.02.2024

Attested



अमरेंद्र कुमार

अधीक्षक (अपील्स)

सी.जी.एस.टी,अहमदाबाद



**By RPAD / SPEED POST**

To,

M/s. New World Enterprise,  
Plot No. 20/1, 68, Yamuna Industrial Estate  
Phase-I, GIDC, Vatva, Ahmedabad-382445

Copy to:-

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

