



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:- 20240364SW0000555A72

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4926/2023 / 3187 - 91
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-310/2023-24 and 15.03.2024
(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	20.03.2024
(ङ)	Arising out of Order-In-Original No. 298/DC/SAHANI/DIV-8/A'bad South/PMT/2022-23 dated 23.02.2023 passed by The Deputy Commissioner, Central GST (Tech), , Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sahani Dipak Vasnatkumar, House NO. 46, Jay Ambay Nagar, Opp. Pravin Nagar, Vasana, Ahmedabad - 380007

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:

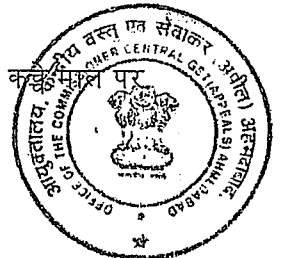
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 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 कटौती 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 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 Sahani Dipak Vasnatkuamr, House No. 46, Jay Ambay Nagar, Opp Pravin Nagar, Vasana, Ahmedabad-380007(hereinafter referred as Appellant) against Order in Original No. 298/DC/Sahani/Div-8/A'bad South/PMT/2022-23 dated 22.02.2023[hereinafter referred to as "impugned order"] passed by the Deputy Commissioner(Technical), CGST, Div-VIII, Ahmedabad South[hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant having PAN BXOPS0097R was found not registered under service tax department. As per ITR/TDS data provided by the CBIC/ New Delhi as gathered from the Income Tax Department, Show Cause Notice no. CGST/WS0804/O&A/TPD(15-16)/BXOPS0097R/2020-21 dated 22.12.2020 was issued by the Assistant Commissioner, Division-VIII, Ahmedabad South Commissionerate, wherein it was proposed to:

- Demand of S. Tax Calculated to the Tune of Rs. 147268/- under Section 73(1) of the Finance Act, 1994, detailed as under:

F.Y	Higher Value(Value of Sale of Services) or (Total Value for TDS) in Rs.	Rate of S. Tax	Service Tax payable in Rs.
2015-16	1015644/-	14.5%	147268/-

- Show cause as to why interest under section 75 of the Act should not be charged;
- Show cause as to why penalty/fees under Section 77(1), 77(2) and 78 should not be imposed.

3. The said SCN was adjudicated vide the impugned order confirming the followings:

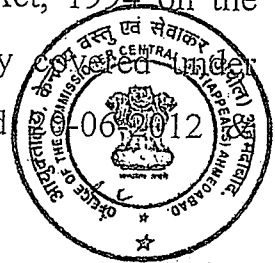
- Demand and recovery of Service Tax of Rs 1,47,268/ - (Rs.One Lakh Forty Seven Thousand Two Hundred and Sixty Eight Only) payable on the taxable



services provided by M/s Sahani Dipak Vasantkumar during the F. Y. 2015-16, under proviso to section 73 (1) of the Finance Act, 1994.

- The recovery of the interest on confirmed amount at the appropriate rate under section 75, of the Finance Act, 1994 from the due date of payment of Service Tax to till the actual date of payment;
 - Penalty under the provisions of the section 77(1) of the Finance Act, 1994,
 - Penalty of Rs. 10,000/- (Rs. Ten Thousand Only) under the provisions of the section 77 (2) of the Finance Act, 1994 for failure to followed provisions of the Finance Act 1994,
 - Penalty of Rs 1,47,268/- (Rs. One Lakh. Forty Seven Thousand Iwo Hundred and Sixty Eight Only) under section 78 of the Finance Act, 1994,
4. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds:

- That the impugned order is ex-facie bad in law and contrary to the correct legal as also factual position.
- That the basic ground of claiming that Gross Service Income of Rs 10,15,644/- is subject to exemption provided in Notification No 33/2012 - Service Tax dated 20-06-2012, the Revenue Authorities has not appreciated facts that net income earned from subject service provided is worked out at Rs 2,76,955/- after considering expenses incurred against same which is disclosed as Income under the head "Profit & Gain from Business or Profession" filed for subject period & same is covered by Exemption Notification No 33/2012 - Service Tax dated 20-06-2012.
- That the impugned Order did not discuss about the applicability of exemption notification No. 33/2012 - Service Tax dated 20-06-2012 as well as actual income earned by appellant from subject service provided.
- That the learned Adjudicating Authority ought to have appreciated that the appellant is a small service provider & value of Service provided during subject period is much below the threshold limit of exemption contained in Notification No 33/2012 - Service Tax dated 20-06-2012.
- That the learned Adjudicating Authority ought not to have levied any penalty either under Section 77 or under Section 78 of Finance Act, 1994 on the ground that subject service provided by appellant is fully Exemption Notification No 33/2012 - Service Tax dated



appellant is not required to make any payment of service tax on said service nor required to obtain Service Tax Registration;

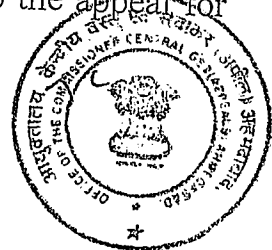
- That the learned Adjudicating Authority ought not to have determined value of Service Income of Rs 10,15,644/- only based on gross income of said amount of Rs 10,15,644/- disclosed under the head Profit & gain from Business or Profession without considering facts that net income earned from said service is at Rs 2,76,955/-;

5. In view of the above the appellant have prayed for the following:

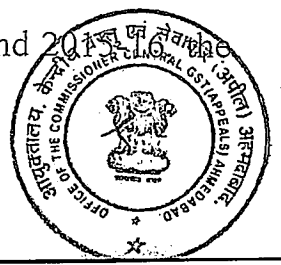
- i. That the Hon'ble Commissioner (Appeals) quashes and set aside the impugned order,
- ii. That the Hon'ble Commissioner(Appeals) passes any such and further order deemed just, fit and proper in the interest of Justice.

6. Ongoing through the appeal memorandum, it is noticed that the impugned order was issued on 22/23.02.2023 and received by the appellant on 30.03.2023. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 05/06/2023, i.e. after a delay of 07 days from the last date of filing appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the delay in filing appeal was caused as they were required to take temporary registration for making pre deposit payment for fillilng appeal and hence requested to consider the prayer of the appellant in granting the condonation for delay of only 08 days in appearing before this Ld. Commissioner (Appeals) for justice and equity.

7. Before taking up the issue on merits, I proceed to decide the Application filed by the appellant for 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 dates 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 07 days and take up the appeal for decision on merits.



8. Personal Hearing in the case was held on 08.03.2024. Shri Bharat Rawal appeared for PH on behalf of the appellant. He reiterated the contents of the written submission and requested for 5 days time to submit additional submission including CA Certificate for turnover of the period in question and previous year. The appellant has submitted additional submission, CA certificates later on 12.03.2024.
9. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the facts available on records. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs. 1,47,268/- confirmed vide the impugned order alongwith interest and penalties is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.
10. I find that the appellant having PAN BXOPS0097R are not registered with the service tax department. Upon perusal of the data received from Central Board of Direct Taxes (CBDT) it was noticed that the appellant had earned substantial Service Income, however they did not obtain Service Tax Registration and did not pay Service Tax thereon. Accordingly, they were served upon the Show Cause Notice dated 22.12.2020 which was further adjudicated by the Impugned Order confirming the Demands/interest/penalties as proposed in the SCN on the ground that the Appellant have failed to provide/produce the documentary proof to substantiate the claim.
11. I find that the appellant have been given ample opportunity, following principle of natural justice, before issuance of impugned order. I find that the appellant vide their submission on record; have submitted that he is engaged in carrying out Job work of painting and color works. During F.Y. 2015-16, sale of service portion is Rs. 8,01,550/- out of total value of turnover of goods and Service of Rs. 10,15,644/- as shown in ITR and the same is fully exempted as provided in mega exemption Notification No. 33/2012-ST dated 20.06.2012. I find that the appellant have also submitted CA certificates for the Service portion turnover for the period 2014-15 & 2015-16. I find that for the F.Y. 2014-15 and 2015-16



service portion turnover is less than the exemption limit as prescribed under the Notification 33/2012-ST dated 20.06.2012.

12. I find that the main issue to decide is as to whether the appellant is eligible for the threshold exemption up to Rs. 10 lac as per Notification No. 33/2012 dated 20-06-2012 for the FY 2015-16 or otherwise.

12.1 For ease of reference, I re-produce the relevant provision Notification No. 33/2012-Service Tax, Dated 20.06.2012, which reads as under:

Notification No. 33/2012 – Service Tax, Dated- 20th June, 2012

G.S.R. (E).- 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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, 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 lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

13. I find that, the appellant have submitted CA certificate as evidential proof, in support of their claim for the income shown by them in the ITR.; they have also submitted the CA Certificate for the service portion turnover of the preceding year 2014-15, which is crucial for the threshold exemption in the FY 2015-16. I find that the sale of Service portion, as per CA Certificate on record, is less than the Threshold limit for the years 2014-15 & 2015-16.

14. In view of above, it is amply clear from the document available on record that the appellant is rightly eligible for the exemption from payment of Service Tax in terms of Notification 33/2012-S.Tax dated 20.06.2012 as discussed para supra.

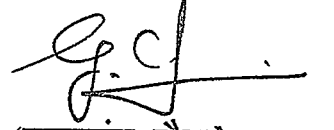
15. In view of the discussion above, I am of the considerate view that the contention of the appellant finds merit as the evidences/CA certificate submitted by the appellant clearly mention the details of the sale of Service portion for the



contended period below the threshold exemption limit and hence the demand against the Appellant is not sustainable. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

16. Accordingly, I set aside the impugned order passed by the adjudicating authority and allow the appeal filed by the appellant.

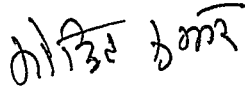
17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 15th March, 2024

सत्यापित /Attested:



(मोहित कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद



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1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST and Central Excise, Ahmedabad South
3. The Deputy/Asstt. Commissioner, Central GST, Division-VIII, Ahmedabad South.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website
5. Guard file.
6. PA File.

