



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

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4297/2023 / 3 USA - 61
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-315/2023-24 and 19.03.2024
(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. MP/267/DC/Div.-IV/22-23 dated 27.02.2023 passed by The Deputy Commissioner, Central GST, Division IV, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mahendrabhai Pavar, 33, Ayodhya Nagar, Near Rangoli Nagar, B/h Gurukrupa Petrol Pump, Narol, Ahmedabad - 382 405

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 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.

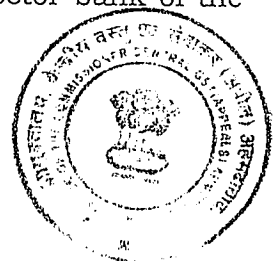
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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।

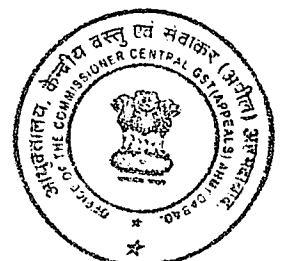
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Mahendrabhai Pavar, 33, Ayodhya Nagar, Near Rangoli Nagar, B/h Gurukrupa Petrol Pump, Narol, Ahmedabad – 382 405 (hereinafter referred to as the “*appellant*”) against Order-in-Original No. MP/267/DC/Div.-IV/22-23 dated 27.02.2023 (hereinafter referred to as “*the impugned order*”) passed by the Deputy Commissioner, Central GST, Division IV, 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. AVGPP6964R. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16 and 2016-17, it was noticed that the appellant had earned an income of Rs. 26,08,490/- during the F.Y. 2015-16 and Rs. 32,58,565/- during F.Y. 2016-17, 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 required documents 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 No. IV/Div.-IV/SCN-547/2021-22 dated 22.04.2021 wherein:

- a) Demand and recover an amount of Rs. 8,67,015/- under proviso to Sub Section (1) of Section 73 of the Act 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(1) and



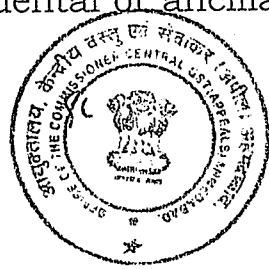
78 of the Act.

2.2 The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein:

- a) The demand of service tax amounting to Rs. 8,67,015/- was confirmed under section 73(1) of the Act by invoking extended period along with interest under section 75 of the Act.
- b) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act as they failed to obtain service tax registration.
- c) Penalty amounting to Rs. 8,67,015/- was imposed under 78 of the Act.
- d) Penalty of Rs. 80,000/- was imposed on the appellant under rule 7C of Service Tax Rule, 1994 read with Section 70 of the Act for not filing service tax returns timely for the relevant period.

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:-

- The impugned order is based on the presumption that the income for the F.Y. 2015-16 and 2016- 17 shown in P&L Account, pertains to taxable services. However, the fact is that this income is related to the Job work sale i.e. repair, alteration, modifications and stitching of clothes and garments of various individual customers and the process performed by us constitutes manufacturing as per section 2(f) of the erstwhile Central Excise Act, 1944, on which no service tax is payable.
- Further, appellant would like to draw kind attention towards Section 2(f) of the Central Excise Act, 1944, which defines "manufacture" to include any process incidental or ancillary to



the completion of a manufactured product. In this case, the appellant have carried out a manufacturing process as job work for other persons.

- Further, Section 66D(f) of Finance Act, 1994 Omitted by the Finance Act, 2017, w.e.f. 31-3-2017. Prior to its omission, clause (f), as substituted by the Finance Act, 2015, w.e.f. 1-6-2015, read as under:

"(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;"

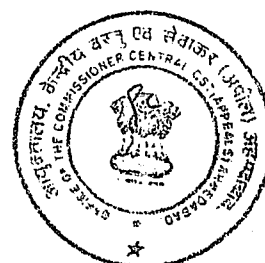
- The appellant also relies on the decision of the Hon'ble Tribunal in case of Manish Enterprise vs. CCE, Pune-1, 2016(42)STR 352 (Tri.-Mumbai), wherein Hon'ble Tribunal while allowing the appeal.
- Further, appellant stated that they were receiving fabrics from various Individual customers for stitching garments, and were also receiving garments for repair, alteration, or modification purposes. The job work was either done on their shop floor by their hired laborers or was sometimes sent to various Individual Job workers, who were working from their homes. They strongly believe that this job work carried out by appellant, amounts to manufacture therefore the same is not subject to levy service tax.
- As per Profit & Loss Account for FY 2015-16, they assert that the revenue from operations consists of Job work sales amounting to Rs. 26,08,490/-, against which the total Job work purchase shows as Rs. 15,56,535/-. The net profits are shown as Rs. 3,75,520/-, which is reflected in the ITR for FY 2015-16. Similarly, as per the Profit & Loss Account for FY



2016-17 the appellant states that the revenue from operations consists of Job work sales and other income, totaling Rs. 32,58,565/-. The majority of the amount pertains to job work sales, i.e., Rs. 27,02,365/-.

- They assert that while going through the debit side of the P&L account, it can be seen that the total Job work purchase shows as Rs. 18,88,496/- and net profits are shown as Rs. 3,81,945/-, which is reflected in the ITR for FY 2016-17. The other income of Rs. 5,56,200/- is related to the sale of goods, which includes the stitching thread, buttons, and patchwork items stitched by us from 'KATRAN OF FABRIC.' There is no revenue from any other services.
- Demand is hit by limitation.
- The appellant submit that the adjudicating authority failed to provide cum -tax benefit to the appellant.
- As the appellant have not contravened any provisions warranting penalties under section 77(1) and 78 and Rule 7C of Service tax Rules, 1994.
- The appellant have submitted following documents: copy of Income Tax Return, copy of P & L Account and Balance Sheet for the impugned period i.e. Financial Years 2015-16 and 2016-17.

4. Personal hearing in the case was held on 07.01.2024. Shri Naresh Satwani, Consultant appeared on behalf of the appellant for personal hearing and reiterated the written submission. He stated that the client does the tailoring work. It is the work of textile job work which amounts to manufacture. Hence, no service tax liability on the client.



5. 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 F.Y. 2015-16 & 2016-17.

6. Accordingly, I find that the following issues are required to be decided by me (1) whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 22.04.2021, (2) whether the contention of the appellant that the services provided by them are exempted in the light of Section 66(D)(f) of the Finance Act, 1994 is sustainable or not.

7. I find that the appellant are engaged in the activity of textiles job work which includes repair, alteration, modifications and stitching of clothes and garments of customers and hence the service provided by them is exempted service as the process performed by them constitutes manufacturing as per section 2(f) of Central Excise Act, 1944, on which service tax is not payable.

7.1. Further, the appellant assert that their income from the textile job work is exempted from service tax in the light of Section 66(D) (f) of the Finance Act, 1994, which reads as under:

SECTION 66D. Negative list of services.

The negative list shall comprise of the following services, namely

“(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption.”



8. In view of the above it is evident that the appellant's textile job-work activities fulfill the criteria for manufacturing under the Central Excise Act, 1944, and qualify for exemption under Section 66(D)(f) of the Finance Act, 1994. Therefore, I hold that the appellant's income from textile job-work activities, including repair, alteration, modification, and stitching of clothes and garments, is exempt from service tax under Section 66(D)(f) of the Finance Act, 1994. Hence, the appellant are not liable for service tax. If there is no liability of service tax on the appellant the question of interest and penalties also does not arise.

9. Reliance is placed upon the judgment of the Hon'ble CESTAT, New Delhi in the case Kaya Designer Launge Vs. CGST C.F. & C.C., Bhopal 2019 (25) GSTL 98 (Tri. Del.) wherein it was held that no service tax can be charged on stitching/tailoring charges.

10. I have perused the judgment of the Hon'ble Tribunal in the said case and find that the issued involved in the present appeal is squarely covered by the said judgment. The Hon'ble Tribunal had in the said case held that:

"6. After hearing the Ld. DR and perusal of record, it is noticed that the Service Tax was paid by the appellant on the amounts recovered by them from their customers. The amounts recovered included the stitching charges, the cost of the materials used, and also amounts collected by them for certain designs undertaken by the appellant at the request of customers. The CBEC has clarified by Circular No. F. No. B/1/2002/TRU of the Finance Act, 2002 dated 1-8-2002 which has clarified as follows:-

A point has been raised as to whether tailors and jewelers will be covered under the Service Tax. Taxable service in this

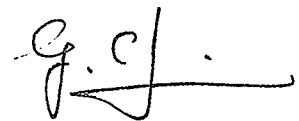


case is designing of goods intended to be worn by human being. A tailor is involved only in the stitching of clothes. As such no designing activity is involved. Hence tailor will not be covered under the tax net.

11. In view of the above clarification by CBEC and judgement of the Hon'ble Tribunal, supra and following the order in appeal AHM-EXCUS-001-APP-097/2022-23 dated 13.12.2022 in the case of the CGST, Ahemdabad South Vs. M/s Rameshwar Mathurprasad Gupta, Ahmedabad issued by this office, I am of the considered view that the appellant is not liable to pay service tax. Since, there is no liability of service tax on the appellant, payment of interest and penalty does not arise. Accordingly, the impugned order is set aside and the appeal is allowed.

12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

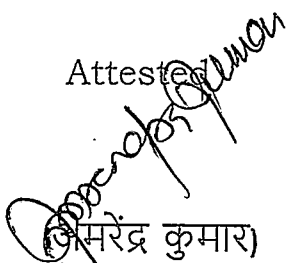
The appeal filed by the Appellant stands disposed of in above terms.



ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 19.03.2024

Attested



जि.सरेन्द्र कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद



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1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division IV, Ahmedabad South
4. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad South (for uploading the OLA)
5. ✓ Guard File.
6. P.A. File.



