



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:- 20240364SW00001631C7

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4931/2023 / 3132 -36
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-317/2023-24 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. 260/AC/Joshi Caterers/Div.-II/A'bad South/JDM/2022-23 dated 16.03.2023 passed by The Assistant Commissioner, Central GST, Division-VII, Ahmedabad South	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Joshi Caterers, Cadmarch Engineering, Nr. Old Nirma Limited, Trikumpura, 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:

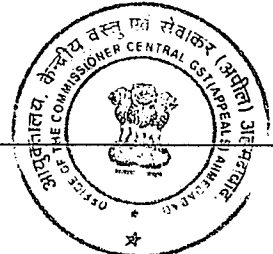
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 प्रकिया 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 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 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 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।

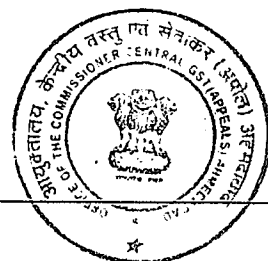
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



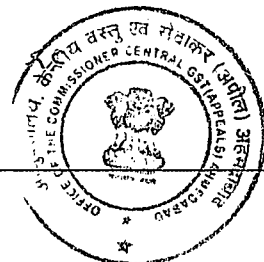
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Joshi Caterers, Cadmarch Engineering, Nr. Old Nirma Limited, Trikumpura, Vatva, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 260/AC/Joshi Caterers/Div.-II/A'bad South/JDM/2022-23 dated 16.03.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAKFJ1151BSD001. The Income Tax Department provided data indicating taxable income for the financial year 2015-16. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had earned an income of Rs. 30,93,250/- during the F.Y. 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 not paid the applicable service tax thereon. The appellant were called upon to submit required details of service provided during the F.Y. 2015-16, however, they did not respond to the letters issued by the department. The appellant's failure to register for service tax, respond to correspondence, and properly assess service tax liability led to allegations of willful suppression of facts and evasion of payment. As a result, a demand for service tax payment of Rs. 4,48,521/- for the F.Y. 2015-16, along with interest and penalties, was issued.

2.1. Subsequently, the appellant were issued Show Cause Notice No. WS02/Range-I/TPD/Techno(2015-16)/2020-21 dated 28.12.2020, wherein it was proposed to:

a) Demand and recover an amount of Rs. 4,85,521/- for F.Y.



2015-16 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 (hereinafter referred to as 'the Act').

b) Impose penalty under the provisions of Section 77 (1) and 77(2) and 78 of the Act.

3. The SCN was adjudicated vide the impugned order wherein:

a) The demand of service tax amounting to Rs. 4,85,521/- for F.Y. 2015-16 & 2016-17 was confirmed under proviso to Sub-Section (1) of Section 73 of the Act.

b) Penalty amounting to Rs. 4,85,521/- was imposed under section 78 of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act.

4. 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 appellant submitted that the department has erred in levy of service tax of Rs. 4,85,521/- that during the period under reference the appellant were engaged in providing canteen services to factories
- The appellant further have drawn attention to Notification No.25/2012-ST dated 20.06.2012, which is produced hereunder.

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1904) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1) vide number G.R.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66(8) of the said Act, namely:



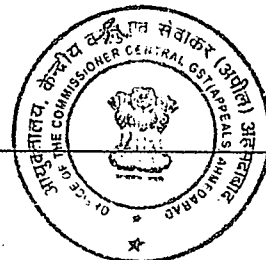
19 Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment. at any time during the year

19A Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air- heating at any time during the year

- Accordingly, the appellant claimed exemption under Entry No. 19A of the Notification No. 25/2012-ST respectively.
- The Ld. Assistant Commissioner has erred in law and on facts in invoking extended period of limitation u/s 73 of the Finance act, 1994.
- The Ld. Assistant Commissioner has issued SCN after caseation/ dissolution of partnership firm and death of partner.
- The Ld. Assistant Commissioner has erred in levy of Penalty Rs 4,48,521/- under section 78 of the Finance Act, 1994.
- The Ld. Assistant Commissioner has erred in levy of Penalty Rs 10,000/- under section 77(1) of the Finance Act, 1994.
- The Ld. Assistant Commissioner has erred in levy of interest on Rs 4,48,521/- under section 75 of the Finance Act, 1994.

5. Personal hearing in the case was held on 15.03.2024. Sh. M.S.Chhajed, CA, appeared for PH. He stated that the client is providing Canteen Services in the factory which is exempt. Hence no liability of service. He also reiterated the contents of written submission dated 15.03.2024.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions



made in the Appeal Memorandum as well as those made during the course of personal hearing 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. The appellant submitted that the department has erred in confirming demand of service tax of Rs. 4,85,521/, that during the impugned period the appellant were engaged in providing Canteen services/Restaurant services to factories viz. Cadmach Machinery Company Private Limited and Cadila Healthcare Limited.

7.1. The appellant further have drawn attention towards the Notification No. 25/2012-ST dated 20.06.2012, which exempts the service provided by the appellant, which is produced hereunder.

****** the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 668 of the said Art, namely:*

19 Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment. at any time during the year

19A Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air- heating at any time during the year

7.2. Accordingly, the appellant claimed exemption under Entry No. 19A of the Notification No. 25/2012-ST dated 20.06.2012.

8. On the aforesaid exemption, I find that the expression used "services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factory Act, 1948" clearly implies availability of conditional exemption if maintained in a factory which is covered under the Factory Act, 1948. I find that the appellant have submitted the copy of license issued to them by



the Directorate Industrial Safety & Health, Ahmedabad, valid upto 31.12.2021 approving the premise of Cadmech Machinery Co. Pvt. Ltd.'s premises for use as a factory. The appellant have also submitted copy of contract entered by them with Cadila Healthcare Limited, according to which, the appellant have provided the catering services at the canteen within the factory premises of the later. I also find that Cadila Healthcare Limited, Ahmedabad and Cadmech Machinery Co. Pvt. Ltd. are Public Limited Company and Private Limited Company duly incorporated under the provisions of Companies Act, 1956. Further, I find that as per Section 2 (m) of the Factory Act, 1948

"(m) "factory" means any premises including the precincts thereof whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (i) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,*
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.*

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place"

8.1. From the above, I have observed that the appellant have provided the service of canteen to the establishments under Factory Act, 1948 and for that purpose claimed exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as per Entry No. 19A.

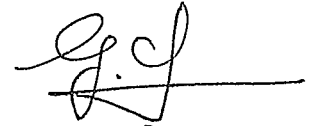


9. Therefore, in view of the above, I hold that exemption claimed by the appellant are available to them as per entry no. 19A of the Notification No. 25/2012- ST dated 20.06.2012 as amended by Notification No. 14/2013-S.T, dated 22-10-2013, for providing service at the canteen of Cadila Healthcare Limited and Cadmech Machinery Co. Pvt. Ltd., which is a public limited company and Private Limited Co. respectively, duly incorporated under the provisions of Companies Act, 1956. Hence, the appellant are not liable to pay service tax. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

12. Accordingly, in view of my foregoing discussions and finding, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

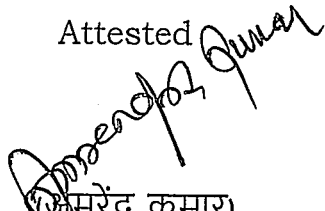
13. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

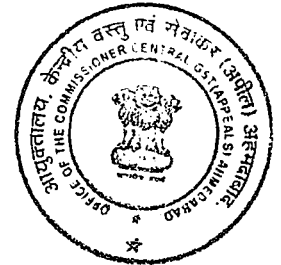
The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन
आयुक्त (अपील्स)
Date : 19.03.2024

Attested


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



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

