



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240364SW0000323142

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4647/2023/4328 - 33
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-322/2023-24 and 20.03.2024
(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	21.03.2024
(ङ)	Arising out of Order-In-Original No. 49/WSO8/AC/KSZ/2023-24 dated 27.04.2023 passed by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Rajeshbhai Dahyabhai Patel, FF/113, Siddhee-Sarjan, Opp. Kanak Kala, 100 Ft. Ring Road, Vejalpur, Ahmedabad-380051

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 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 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."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Rajeshbhai Dahyabhai Pate, FF/113, Siddhee-Sarjan, Opp. Kanak Kala, 100 ft. Ring Road, Vejalpur, Ahmedabad - 380051 (hereinafter referred to as "the appellant") against Order-in-Original No. 49/WS08/AC/KSZ/2023-24 dated 27.04.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-VIII, 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. AFSP5644LST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 14,48,589/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. The appellant were called upon to submit clarification for difference along with supporting 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. CGST/WS0801/O&A/TPD(15-16)/AFSP5644L/2020-21 dated 21.12.2020 demanding Service Tax amounting to Rs. 2,10,045/- for the period FY 2015-16, 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 and Section 78 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. 2,10,045/- 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 2015-16. Further Penalty of Rs.



2,10,045/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) 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:

- The appellant above named is a farmer and acts as commission agent in trading of agricultural produce in APMC market also. The appellant is registered under Service Tax Rules and had filed ST-3 returns regularly.
- The appellant submits that the difference in value as mentioned in ITR and ST-3 return noticed by the department has not been investigated by the department. The department failed to ascertain and confirm as to whether the income shown in ITR was received from taxable service provided by the appellant. However, the show cause notice has been issued in violation of the instruction issued by the Government. Central Board of Indirect Taxes & Customs has issued various instruction on 01.04.2021, 23.04.2021 and 26.10.2021 to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts. It was also urged that in case show cause notices have already been issued, the adjudicating authority is expected to pass a judicious order after verification of facts.
- The appellant submits that the adjudicating authority has not even gone through the Income Tax Return filed by the appellant before deciding that the difference in income shown in ITR and ST-3 is from any taxable service so as to confirm service tax by the impugned order. Had he gone through the Income Tax return or at least glanced at the submission made by the appellant it would have known to him that the differential income was Agricultural income as shown in the profit and loss account and Income Tax return filed by him.
- Appellant submits that the difference in income arrived at by the adjudicating authority amounting to Rs.14,48,589/-, on which he confirmed demand of service tax, is agricultural income i.e income from sale of agricultural produce. An amount of Rs.14,48,589/- is shown in the profit and loss account of the appellant for the F.Y 2015- 16 as income from agriculture, and the same amount



is shown in the Income Tax Return also as income from agriculture and claimed exemption from income tax. The appellant submits that since the agricultural income is from sale of agricultural produce, the same is not a service as defined under Section 668(44) of the Finance Act, 1994 and hence not exigible to levy of service tax.

- The appellant submits that transfer of title of goods i.e. sale of goods is not included in the definition of 'service'. As the income of Rs.14,48,589/- shown in the profit and loss account and Income Tax return is from sale of agricultural produce, the impugned order demanding service tax on such sale of goods is not sustainable under law.
- Reconciliation Statement with the reply submitted on 2% April 2021 as under:

S.No.	Particulars	Amount
1	Agriculture Income	1448589
2	Brokerage Income	693732
3	Total Income	2141961
4	Value Declared in Service Tax Return	693372
5	Difference in STR and ITR	1448589

- Appellant submits that he had already paid service tax on brokerage income of Rs,6,93,372/- and filed ST-3 returns regularly. Income of Rs. 14,48,589/- is not from providing any service and hence it was not required to show the said amount in ST-3 return. As show cause notice was issued without verification of any records of the appellant and the adjudicating authority has issued the impugned order without adducing any evidence of the appellant providing taxable service and without ascertaining that the income has earned from any taxable service, the impugned order is not sustainable and is required to be quashed and set aside.
- The appellant further submits that the books of account and other documents were audited by the department. The officers from the office of Commissioner of CGST, Audit, Ahmedabad had audited the records of the appellant for the period from October 2014 to June 2017 on 13.01.2020 and no objection was raised. Copy of Audit Report No. 1442/2019-20 dated 23.03.2020 is appended to this appeal as Exhibit-E. When the records have already been audited by the department, it cannot be alleged that the appellant had suppressed vital facts from the department and hence the demand confirmed invoking extended period of limitation is not sustainable.



4. Personal hearing in the case was held on 12.03.2024. Shri Rajeshbhai Dahyabhai Patel, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He informed that the difference is due to agriculture income which is not liable to service tax. Service tax Audit was also conducted. No objection was found.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, additional written submission, 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.

6. It is observed that the main contentions of the appellant in the appeal memorandum are that (i) that the adjudicating authority has ignored departmental audit report for the period October-2014 to June -2017, in which the period under dispute is already covered; and (ii) the difference in the income as per IT data and the service tax return filed by them was on account of agriculture income which is not liable to service tax.

7. On verification of the Balance Sheet and P&L Account, I find that the appellant sold the agriculture produce worth Rs. 14,48,589/- during the FY 2015-16. The said income has been made the appellant from the agriculture produce and falls under negative list of services under Section 66D of the Finance Act, 1994.

8. Further, on verification of the Final Audit Report No. 1442/2019-20-Service Tax dated 23.03.2020, I find that the audit officer conducted audit for the period from October-2014 to June-2017 and NIL Para raised in the said FAR. Since, no objection was found by the Audit party at the time of Audit and thus, FAR found to be concluded.




9. In view of the above, I am of the considered view that when the audit of the financial records of the appellant has already been conducted for the period under dispute and the appellant had paid the required service tax for the said period in their ST-3 Return and no objection was found during the audit, the present show cause notice is not legally sustainable and is required to be concluded as the same period already covered under the audit. The impugned order confirming the demand of service tax on the basis of present show cause notice is also required to be set aside. Since the demand of service tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. 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: 20th March, 2024



सत्यापित/Attested :

अमरेंद्र कुमार
अधीक्षक (अपील्स)
सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D

To,
M/s Rajeshbhai Dahyabhai Pate,
FF/113, Siddhee-Sarjan, Opp. Kanak Kala,
100 ft. Ring Road, Vejalpur,
Ahmedabad - 380051.

Copy to :

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



