



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:- 20240364SW000000C168

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4911/2023/ 4466-20
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-328/2023-24 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. 208/WS03/AC/CSM/2022-23 dated 24.03.2023 passed by The Assistant Commissioner, CGST, Division - III, Ahmedabad South	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Baldevbhai Kantilal Patel, (New Address) Prop. Dalal Baldevbhai Rameshchandra, 406, Radhe Time Square, Nr. Hotel Management College, Bhajipura Chokdi, Kudasan, Gandhinagar - 382421

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 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 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 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. Baldevbhai Kantilal Patel, Prop. of Dalal Baldevbhai Rameshchandra, 406, Radhe Time Square, Nr. Hotel Management College, Bhajipura Chokdi, Kudasan, Gandhinagar-382421 (hereinafter referred to as "*the appellant*") against Order-in-Original No. 208/WS03/AC/CSM/2022-23 dated 24.03.2023 (hereinafter referred to as "*the impugned order*") passed by the Deputy Commissioner, Central GST, Division III, 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. ACCPP4233A. The Income Tax Department provided data indicating taxable income for the financial years 2015-16 and 2016-17. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Years 2014-15, it was noticed that the appellant had earned an income of Rs. 12,11,775/- 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 neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit required details of service provided during the F.Y. 2014-15, 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. 1,49,775/- for the F.Y. 2014-15, along with interest and penalties, was issued.

2.1 Subsequently, the appellant were issued Show Cause Notice bearing F.No. V/15-501/Div.-I/BALDEVBHAI KANTILAL PATEL/2020-21 dated 22.12.2020 demanding Service Tax

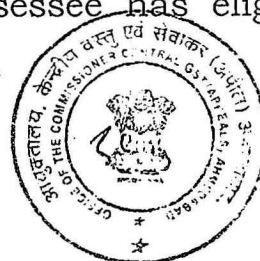


amounting to Rs. 1,49,775/- for the period Financial Years 2015-16 and 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1) and 78 of the 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. 1,49,775/- 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 Financial Years 2014-15. Further (i) Penalty of Rs. 1,49,775/- was 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.

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

- The Respondent erred in demanding service tax and interest and imposing penalties under Section 77 (1) and 78 upon the Appellants on the premise that the Appellant has not paid Service Tax under the category of "Commission Agents General Commission Agents". Since the impugned order is misconceived both on facts and in law, the same is required to be quashed and set aside in the interest of justice.
- The Respondent erred in Calculating tax on Rs. 12,11,775/- @ 12.36% on the total receipt of the year, The Appellant has to submit that F.Y. 2014-2015 is the first year in which gross receipt has cross the threshold limit Rs. 10,00,000/- and in F.Y. 2013.14 gross receipt of the assessee had Rs. 9,37,826/- and being the first year the assessee has eligible to claim threshold limit of Rs. 10,00,000/-.



- Benefit of cum duty value ought to be granted.
- Extended period of limitation cannot be invoked.
- Interest and penalty cannot be demanded.

5. It is observed from the records that the present appeal was filed by the appellant on 05.06.2023 against the impugned order dated 28.03.2023, which was reportedly received by the appellant on 31.03.2023.

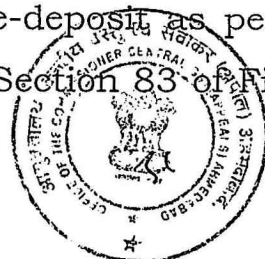
5.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(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 31.05.2023 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 30.06.2023. This appeal was filed on 05.06.2023, i.e after a delay of 6 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 the pre-deposit, as per Section 35F of Central Excise Act, 1994 read with Section 83 of Finance Act, 1994



is mandated before filing the Appeal. The appellant submitted vide COD letter that they did not register with the service tax department but followed a circular procedure laid down in CBIC-24017/14/2022-Service Tax Seciton-CBEC dated 28.10.2022 for pre-deposit under Section 83 of the Finance Act, 1994. Despite attempts to register online, they were unable to make the payment. They applied for manual registration on 31.05.2023, which was granted on the same day. In that circumstance they could not pay pre-deposit in time. Finally, the payment was made, however it took time, therefore the appellant could not file appeal within the prescribed limit as per the law and as such the delay of 06 days in filing the appeal has occurred. 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 07.03.2024. Sh. U G Patel, Advocate appeared for PH. He stated that the client is commission agent for agricultural goods. Further the requested for two days time to submit copy of ITr for current and previous year i.e. 2014-15 and 2013-14 (F.Y.). He informed that they have paid tax with interest above 10 lakhs rupees.

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 Financial Years 2014-15.



6. In additional submission the Appellant have submitted copy of ITR pertaining to F.Y. 2014-15 and the preceding financial year 2013-14, sample bill copies and challan CIN No. 20230601130157274093 dated 01.06.2023 for the amount of service tax with interest Rs. 55,693/- (including Education Cess and Secondary Higher Education Cess).

7. I have gone through the submission of the appellant during filing of the Appeal Memorandum and oral submission during personal hearing and documents on record, particularly as mentioned in the column for "Nature of business or profession" of ITR, I find that the appellant are engaged in the business falling under the category of "Commisison Agents-General Commission Agents".

8. I find that as per the Profit a Loss Account the gross income received by the appellant during the F.Y. 2015-16 and 2014-15 is as under:-

Sr. No.	F.Y.	Amount (in Rs.)
1.	2014-15	12,11,775
2.	2013-14	9,37,826

9. Further, I find that the appellant have stated that they are eligible to avail Notification No. 33/2012-ST dated 20.06.2012. This Notification establishes a basic exemption limit of Rs. 10 lakhs for small service providers. Upon reviewing the Income Tax Returns for the preceding year of the impugned period i.e. F.Y. 2013-14 submitted by the appellant, I find that their total income from 'sale of service' is Rs. 9,37,826/-, which is also below the threshold limit. Hence the appellant would be exempted from paying service tax on the taxable value not exceeding 10 lakhs in the light of Notification No. 33/2012-ST dated 20.06.2012.

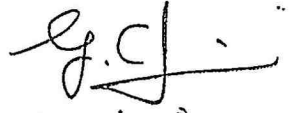


10. Further, I find that the client is commission agent for agricultural goods. As per Section 66(D)(d)(vii) service provided by a commission agent for sale or purchase of agricultural produce falls under negative list of service. Hence the appellant is not liable to pay service tax. As the appellant is not liable to pay service tax, the question of interest and penalty does not arise.

11. In view of the above discussion and findings 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.

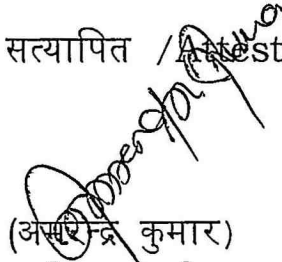


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 20.03.2024

सत्यापित / Attested:



(अनन्द कुमार)

अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद



By RPAD / SPEED POST

To,
M/s. Baldevbhai Kantilal Patel,
Prop. of Dalal Baldevbhai Rameshchandra,
406, Radhe Time Square,
Nr. Hotel Management College,
Bhajipura Chokdi, Kudasani,
Gandhinagar-382421

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Deputy/Assistant Commissioner, CGST, Division III, Ahmedabad South
- 4) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file

