



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:- 20240364SW0000444B14

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/352/2023 / 45/b - 20
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-329/2023-24 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. 322/AC/Div-I/HKB/2022-23 dated 11.01.2023 passed by The Assistant Commissioner, CGST, Division-I, Ahmedabad South	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner CGST, Division-I, Ahmedabad South, 4 th Floor, GST Bhavan, Ahmedabad
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Responded	M/s. Popatbhai Kanabhai Mudhwa 23, Riddhi Siddhi Avenue, Nr. GOR Na Kuva, Nr. Canal Maninagar(East), Ahmedabad - 380008

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 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 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 following appeals have been filed under section 84(1) of the Finance Act, 1994 (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division-I, Ahmedabad South Commissionerate (hereinafter referred as 'appellant') in compliance to Order-in-Review Nos. 02/2023-24 dated 17.04.2023 passed by Commissioner, Central GST, Ahmedabad South (hereinafter referred to as. the "the reviewing authority" also) against Order-in-Original No. 322/AC/Div-I/HKB/2022-23 dated 11.01.2023 (hereinafter referred as "the impugned order") passed by the Assistant Commissioner, CGST, Division - I, Ahmedabad South (hereinafter referred as "the adjudicating authority") in the case of M/s Popatbhai Kanabhai Mundhwa, 23, Riddhi Siddhi Avenue, Nr. GOR Na Kuva, Nr. Canal; maninagar (East), Ahmedabad, Gujarat-380008 (hereinafter referred as "the Respondent").

Sr. No.	Appeal No. & Date	Review Order No. & Date	Order-In-Original No. & Date
01.	GAPPL/COM/STD/352/2023-APPEAL Dated 19.04.2023	02/2023-24 dated 17.04.2023	322/AC/Div-I/HKB/2022-23 dated 11.01.2023

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AATPB6297K. The Income Tax Department provided data indicating taxable income for the financial years 2014-15 and 2015-16. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Years 2014-15 & 2015-16, it was noticed that the appellant had earned an income of Rs. 16,48,572/- during the F.Y. 2014-15 and Rs. 17,57,275/- 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 and 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. 4,58,568/- for the F.Y. 2014-15 and 2015-16, along with interest and penalties, was issued.

2.1 The respondent were issued Show Cause Notice No. V15-285/Div.-I/POPATBHAI KABABHAI MUNDHWA/2020-21 dated 17.12.2020 during the period 2014-15 and 2015-16 wherein:

a) Demand and recover an amount of Rs. 4,58,568/- under the provision to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Act.

b) Imposed penalty under Section 77(1) of the Act for failure to obtain service tax registration as per the provision of Section 69 of the Act and penalty under Section 78 of the Act for non-payment of service tax by wilfully suppressing the facts from the department with intent to evade the payment of service tax.

4. The Commissioner, Central GST, Ahmedabad South, in exercise of the power conferred on him under Subsection 1 of Section 84 of the Act in order to satisfy himself as to the legality and propriety of the impugned order, directed the adjudicating authority vide Review Order No. 02/2023-24 dated 17.04.2023 to file an appeal before undersigned within stipulated period for determination of the legality and correctness of the impugned order on the following grounds:

➤ The adjudicating authority while allowing the benefit of exemption under Bob-flection (6) of Section 660 of the Finance Act, 1994, in respect of services provided by the Service provider, had not discussed as to which documents were



verified try him to satisfy that the exempted service is provided by the Service provider

- As per Section 65B (25) of the Finance Act, 1904, "goods" means every kind of movable property other than actionable claim and money, and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale
- As per conman parlance, "the Trading" means purchase or sale of goods, materials of any other things, where such goods, materials or any other things are purchased from one person are sold to any other person customers in such transactions, the payment to suppliers are made directly by the trader either before or after receipt of the delivery of such goods, materials or any other things and after loading of profit margin to such purchase cost, the sale cost are recovered from customers
- Section 66D of the Finance Act, 1994 The Section 660 introduced in the Finance Act. 1994 states that the negative list would be comprising of the following-
 - (a) *Services by Government or a local authority*
 - (b) *Services by the Reserve Bank of India*
 - (c) *Services by a foreign diplomatic mission located in India*
 - (d) *Services relating to agriculture or agriculture produce*
 - (e) *Trading of goods*
 - (1) *Any process amounting to manufacture or production of goods*
 - (g) *Selling of space or time slots for advertisements*
 - (h) *Service by way of access to a road or a bridge on payment of toll charges etc.*
- From the definition of goods and trading, it appears that trading activity involve purchase of goods and sale of the same



to another person. Since the service provider takes water from his plant and serve this water with the help of water lanker to another place/service recipient there is no purchase and sale of goods involved. Thus, it is opined that the service would not fall within the negative list given under Section 660 of the FA, 1994 When the services provided by the service provider is not covered under Negative list, only exemption available is under Mega exemption Notification No. 25/2012-ST dated 20 06 2012 However, in the instant case, neither the service provider nor the adjudicating authority has contended that the services provided by the service provider are exempted under the Notification supra.

5. The respondent were called upon to file a memorandum of cross objection against the appeals. Personal hearing in the case was held on 15-03-2024. Ms. Shenal Thakkar, Chartered Accountant, appeared for personal hearing on behalf of the respondent. He reiterated the contents of the written submissions. He informed that the client sells water through tanks which is goods. Hence the same is not liable to service tax. Therefore the impugned order may be upheld.

6. I find that the appellant contend that the adjudicating authority granted exemption under Sub-Section (e) of Section 66D of the Finance Act, 1994, without discussing which documents were verified to confirm that the exempted service was provided by the respondent. According to Section 65B(25) of the Finance Act, 1994, "goods" means every kind of movable property other than actionable claims and money, and includes securities, growing crops, and grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. "Trading" commonly refers to buying or selling goods, materials or any other things, where such goods, materials or any other things are purchased from



one person are sold to any other person customers. In such transactions, the payment to suppliers are made directly by the trader either before or after receipt of the delivery of such goods, materials or any other things and after loading of profit margin to such purchase cost, the sale cost are recovered from customers. Section 66D of the Finance Act, 1994, outlines services exempted from taxation, including government services, services by the RBI, service by a foreign diplomatic mission located in India, agricultural services, and trading of goods. Since the service involves transporting water without buying or selling goods, it doesn't fall under the trading exemption. Therefore, if not covered in the negative list, the service might be eligible for exemption under Notification No. 25/2012-ST, but neither the respondent nor the adjudicating authority claimed such exemption in this case.

7. The respondent have contended that their business involves the sale of loose water, which qualifies as a sale of goods rather than a taxable service under the Finance Act, 1994. They have provided various documents (1) IT return copy for FY 2014-15, 2015-16 (A.Y. 2015-16 & 2016-17), (2) Computation of Total Income for F.Y. 2014-15, 2015-16 (A.Y. 2015-16 & 2016-17) (3) Profit & Loss & Balance Sheet for F.Y. 2014-15, 2015-16, (4) Form 26 AS for FY 2014-15, 2015-16 to support their claim, (5) sample invoices, and images of their business operations to demonstrate that their business involves the sale of water, which qualifies as goods and is exempt from service tax. They argue that water falls under the definition of goods, as recognized by Gujarat VAT laws. They cite Schedule I of the Gujarat Value Added Tax Act, which exempts the sale of loose water from taxation, further supporting their claim that water is considered goods. The appellant cites a ruling by the Hyderabad CESTAT in the case of United Post services Pvt. Ltd. Vs. CCE, ST Hyderabad-II (Service Tax appeal No. 22246 of 2015, Service Tax



Appeal No. 31287 of 2017) in their favor, which states that water supply constitutes a sale of goods and is outside the purview of the Finance Act, 1994. They argue that the power to tax the sale of water falls within the legislative competence of the State government, not the central government, as it is considered a sale of goods. The appellant also refers to a CBEC circular No. 334/1/2012-TRU dated 16.03.2012 stating that transactions dominated by the sale of goods should be treated as such, further supporting their argument that their business involves the sale of water, not a taxable service. They argue that exemption Notification No. 25/2012-ST is not relevant to their case because the dominant nature of their transaction is the sale of water, for which no service tax should be levied.

8. After careful consideration of the submissions from both the appellant and the respondent, I find that the appellant contends that the adjudicating authority erred in providing exemption under Sub-Section (e) of Section 66D of the Finance Act, 1994, without proper discussion and verification of the documents pertaining to the exempted service provided by the respondent. Additionally, they argue that the service provided by the respondent, involving the transportation of water, does not fall under the trading exemption under Section 66D, as it does not involve the buying or selling of goods. Furthermore, they assert that neither the respondent nor the adjudicating authority claimed exemption under Notification No. 25/2012-ST.

8.1. On the other hand, the respondent contends that their business involves the sale of loose water, which qualifies as a sale of goods exempt from service tax under the Finance Act, 1994. They have provided various documents and legal references to support their claim, including IT returns, Profit and Loss statements, sample invoices, and interpretations of relevant laws and judicial precedents.

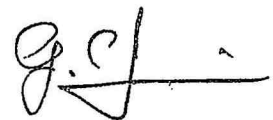


8.2 Considering the issues raised by both parties, it is imperative to remand the matter back for fresh adjudication. The adjudicating authority must conduct a thorough examination of all relevant documents. The adjudicating authority should also consider the applicability of Notification No. 25/2012-ST and whether the dominant nature of the transaction conducted by the respondent is indeed the sale of water, as claimed by the respondent. In the interest of justice and clarity, I hereby remand back the order for fresh adjudication

9. In view of the above discussion, the impugned order is set aside and the matter is remanded back for fresh adjudication.

10. 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.

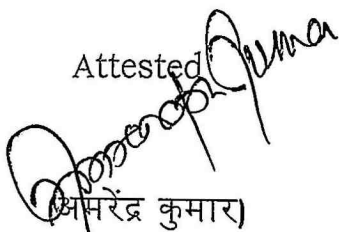


ज्ञानचंद जैन

आयुक्त (अपील्स)

Date : 20.03.2024

Attested



(अमरेंद्र कुमार)

अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद



By RPAD / SPEED POST

To,
The Assistant Commissioner,
Central GST, Division-I,
Ahmedabad South.

Appellant

M/s Popatbhai Kanabhai Mundhwa,
23, Riddhi Siddhi Avenue,
Nr. GOR Na Kuva,
Nr. Canal; maninagar (East),
Ahmedabad, Gujarat-380008

Respondent

Copy to:

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



