



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20230564SW00008187E9

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/247/2022 /1556-60
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-33/2023-24
दिनांक Date : 12-05-2023 जारी करने की तारीख Date of Issue 17.05.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-075/AC-RAG/2022-23 दिनांक: 29.07.2022
passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VII, Ahmedabad South
3rd Floor, APM Mall, Anandnagar Road,
Satellite, Ahmedabad -15

Repondent

- M/s Hareshbhai Sukhabhai Ambaliya
10-217, Dr. Ambedkar Colony,
Behind C.N. Vidhyalay, Ambawadi,
Ahmedabad-380006

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) 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।

(ii) 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.



- (क) 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 हैं।
- (A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

- (c) 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.

- (1) 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। इसके 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.

- (2) 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 :-

- (क) उक्तलिखित परिच्छेद 2 (1) क 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

- (a) 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 in para-2(i) (a) above.



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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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 कान्यायालय 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.

- 30 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (ccxli) amount determined under Section 11 D;
(ccxlii) amount of erroneous Cenvat Credit taken;
(ccxlili) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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 Assistant Commissioner, CGST Division-VII, Ahmedabad South has filed the present appeal on behalf of the Principal Commissioner, Central GST & Central Excise, Ahmedabad South (hereinafter referred to as "the Appellant Department") in pursuance of the direction and authorization issued under Review Order No. 46/2022-23 dated 26.10.2022 under Section 84(1) of the Finance Act, 1994 against Order-in-Original No. CGST/WS07/O&A/OIO-075/AC-RAG/2022-23 dated 29.07.2022 (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") in the case of M/s. Hareshbhai Sukhabha Ambaliya, 10-217, Dr. Ambedkar Colony, Behind C. N. Vidhyalay, Ambawadi, Ahmedabad (hereinafter referred to as 'Respondent').

2. The facts of the case, in brief, are that the Respondent were engaged in providing services. On scrutiny of information received from the Income Tax Department, it was found that the Respondent had earned substantial service income during the FY 2015-16, FY 2016-17 and FY 2017-18 (up to June-2017). However, the Respondent was not found registered with Service Tax Department. To ascertain whether the services provided by the Respondent were liable to service tax or not, they were asked to furnish relevant information / documents like Income Tax Return, Form 26AS, Annual financial accounts, contract/agreement etc. for the said period by the Jurisdiction Range Superintendent. Since, no response was received from Respondent, service tax was determined on the basis of information received from the Income Tax Department.

2.1 The Show Cause Notice No. V/WS07/O&A/SCN-486(FY 2015-16)/2020-21 dated 24.12.2020 was issued to the Respondent demanding service tax amounting to Rs. 3,33,583/- under proviso to Section 73(1) of the Finance Act, 1994 for the period from FY 2015-16, FY 2016-17 and FY 2017-18 (up to June-2017), along with interest under Section 75 of the Finance Act, 1994. It was also proposed for late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and for imposition of penalties under Sections 77 and 78 of the Finance Act, 1994.

2.2 The above Show Cause Notice was adjudicated by the Adjudicating Authority vide the impugned order who dropped the demand by observing as under:

6.4.4 *I find that the above mentioned service is enumerated in the reverse charge Notification No. 30/2012 under serial no. 8 as any service provided or agreed to be provided by way of supply of manpower for any purpose or security service and the Service Tax is payable by Service receiver.*

6.4.5 *As per the provision in the notification the service tax under reverse charge on supply of manpower for any purpose or security service was paid partially by*



the service provider and service receiver in the ratio of 25:75 respectively up to 31st March, 2015. The proportion of service tax liability paid in the ratio of 25% and 75% has been amended to substitute to NIL and 100% with effect from 01.04.2015 vide notification no. 7/2015 dated 1st March, 2015.

6.5.6 *I find that the noticee is an individual and as the provisions of Notification No. 30/2012-ST dated 20.06.2012, the service tax is to be paid by the person other than the service provider, respective entry is as under:*

.....

6.6 *I find that noticee has provided Services of Man Power Supply to business entity which is evident from the TDS deducted by these entities, hence, the noticee is not liable to pay Service Tax as 100% of the Service Tax was to be paid by the service recipient.*

6.7 *Therefore, I hold that demand of Service Tax is not sustainable against the noticee. Consequently, there shall be no question of charging any interest or imposing penalty under Section 78 of Finance Act, 1994."*

3. The impugned order was reviewed by the Appellant Department and appeal has been filed on the following grounds:

(i) On going through the above order it appears that the Adjudicating Authority has erred in dropping the demand of Service Tax of Rs. 3,33,583/- without recording full facts on the merit of the case. The above order passed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad South is non speaking order and required to be set aside.

(ii) The noticee, in their defence reply dated 17.12.2020, mainly contended that they are receiving an amount from the service receivers which include service fee and labour payments and further contended that they have received service charges which has not crossed Rs. 10 Lakhs and therefore, eligible for the benefit of Notification No. 33/2012-ST dated 20.06.2012. Therefore, they were not registered and not required to file ST-3 returns.

(iii) At para 6.1 of the Order, a Table showing summary of amounts received by the noticee during the FY 2015-16, FY 2016-17 and FY 2017-18 was shown according to which in all the years, amount credited was more than Rs.10 Lakhs. Further, though demand was issued for the FY 2015-16 to FY 2017-18, he has not discussed about the income earned by the noticee during FY 2014-15 for considering the exemption benefit for the FY 2015-16. Thus, it is a non-speaking order in this respect.



(iv) Further, at Para 6.5.6 of the Order, the Adjudicating Authority has observed that the noticee is an individual and as per the provisions of Notification No. 30/2012-ST dated 20.06.2012, the service tax is to be paid by the person other than the service provider.

(v) After going through the entry 8 of the Notification No. 30/2012-ST, at Para 6.6 of the Order, the Adjudicating Authority has observed that *"I find that noticee has provided Services of Man Power Supply to business entity which is evident from the TDS deducted by these entities, hence, the noticee is not liable to pay Service Tax as 100% of the Service Tax was to be paid by the service recipient."*

(vi) Though the Adjudicating Authority has observed that the Services of Man Power Supply to business entity, he has not discussed as to whether the said business entities are registered as Body Corporate or otherwise as mentioned in the Notification No. 30/2012-ST dated 20.06.2012. As per the details of names of service receivers mentioned in the Table at Para 6.1 (Page 4) of the impugned order, the names are Hardik Ghanshyambhai Thakkar and Kamlesh Somabhai Patel in FY 2015-16; Kamlesh Somabhai Patel in FY 2016-17; and Mahendrakumar Chhaganlal Patel and Reliance Formulation Pvt. Ltd. in FY 2017-18. Except Reliance Formulation Pvt. Ltd., which appears to be a Body Corporate, other person appear to be individuals and does not appear to be business entities registered as Body Corporate. As the above-mentioned benefit of Notification No. 30/2012-ST dated 20.06.2012 (Sl. No. 8) is available only to the service provider if the service receiver is a business entity registered as body corporate located in the taxable territory, the Adjudicating Authority should have discussed in detail how the Service Receivers can be considered as business entities registered as body corporates, which is not done by the Adjudicating Authority in the present case. Hence, this is a non-speaking order in this aspect.

(vii) The Adjudicating Authority has not given any clear finding in respect of the Service Receivers as to whether they are business entities registered as body corporate or otherwise and without giving clear reasoning in this aspect, simply allowed the benefit of Notification No.30/2012-ST dated 20.06.2012 to the noticee. The order passed by the Adjudicating Authority is a non speaking order and bad in law and is required to be set aside.

4. The Respondent have not filed any Cross Objection till date.

4.1 Opportunities for Personal Hearing in the matter was granted on 09.02.2023, 22.02.2023, 03.03.2023 and 19.04.2023. However, neither Respondent nor any representative on behalf of the Respondent appeared on any of the given dates. As sufficient opportunities for hearing has been given in the case, I take up this case for decision on the basis of the materials available on



5. I have carefully gone through the facts of the case, the impugned order, and the appeal memorandum. The issue to be decided in the present appeal is whether the impugned order passed by the Adjudicating Authority dropping the demand of Service Tax, in facts and circumstances of the case, is legal and proper or otherwise.

6. I find that the SCN has been issued merely on the basis of data received from the Income Tax department without even specifying the category of service in respect of which service tax is sought to be levied and collected. I also find that on receiving reply from the Respondent, the Adjudicating Authority considered the service provided by the Respondent as Manpower Supply Service and by extending the benefit of Notification No. 30/2012-ST dated 20.06.2012, he has dropped the demand of service tax.

7. It is observed that the Appellant Department have filed the present appeal mainly on two grounds; (i) the Adjudicating Authority has not discussed in detail how the Service Receivers can be considered as business entities registered as body corporate; and (ii) the Adjudicating Authority has not discussed about the income earned by the Respondent during FY 2014-15 for considering the exemption benefit under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2015-16. I also find that the Appellant Department have not contested that the Respondent had provided Manpower Supply Service. I also find that in the impugned order, the Adjudicating Authority has not discussed any thing in respect of granting of benefit of Notification No. 33/2012-ST dated 20.06.2012 to the Respondent, as contended by the Appellant Department.

8. On verification of the Form 26AS and as mentioned in the impugned order, the income received by the Respondent from the various entities during the FY 2015-16 to FY 2017-18 are as under:

Financial Year	Name of the Party	Total amount credited (in Rs.)
2015-16	Hardik Ghanshyambhai Thakkar	36,600/-
	Kamlesh Somabhai Patel	9,66,000/-
	Total	10,02,600/-
2016-17	Kamlesh Somabhai Patel	11,49,719/-
	Total	11,49,719/-
2017-18 (up to Jun-2017)	Mahendrakumar Chhaganlal Patel	1,07,990/-
	Total	1,07,990/-

8.1 It is observed that the image of the Form 26AS for the FY 2015-16, shown in the impugned order, was not related to Respondent and wrongly pertained to another party i.e. Chhagan Haresh Ambaliya. Hence, the impugned order suffer from factual error to that extent.



9. I find that in the impugned order, the Adjudicating Authority has extended the benefit of Notification No. 30/2012-ST dated 20.06.2012 to the Respondent. The benefit of Notification No. 30/2012-ST dated 20.06.2012 (Sl. No. 8) is available to the service provider only if the service receiver is a business entity registered as body corporate located in the taxable territory. The Adjudicating Authority has, in Para 6.6 of the impugned order, observed that the service recipients are 'business entity', however, without clarifying the status of the service recipients as to whether they are registered as body corporate or otherwise, the Adjudicating Authority simply allowed / extended the benefit of the said notification to the Respondent. Hence, I am in agreement with the Appellant Department's contention to that extent.

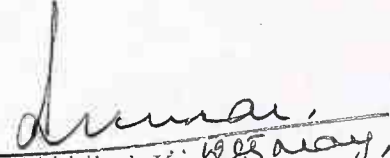
9.1 In my considered view, the Adjudicating Authority, being quasi-judicial authority, was required to give clear finding in respect of status of the Service Receivers as to whether they are business entities registered as body corporate or otherwise. However, the Adjudicating Authority failed to do so in the present case. Further, the impugned order is silent on the aspect of threshold exemption under Notification No. 33/2012-ST dated 20.06.2012.

9.2 Considering the facts of the case as discussed herein above and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the Adjudicating Authority to decide the case after examining the actual status of the Service Receivers viz. Hardik Ghanshyambhai Thakkar, Kamlesh Somabhai Patel and Mahendrakumar Chhaganlal Patel and thereafter decide the benefit of Notification No. 30/2012-ST dated 20.06.2012. Further, the income of the Respondent during FY 2014-15 for considering the exemption benefit under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2015-16 is also required to be ascertained.

10. In view of the above discussion, I set aside the impugned order and remand the matter back to the Adjudicating Authority to reconsider the issue in light of above discussion and pass a speaking order.


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.


(Akhilesh Kumar)
Commissioner (Appeals) 2023..

Date : 12.05.2023

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,

The Assistant Commissioner,
CGST Division-VII,
Ahmedabad South

Appellant

M/s. HareshbhaiSukhabhaAmbaliya,
10-2017, Dr. Ambedkar Colony,
Behind C. N. Vidhyalay, Ambawadi,
Ahmedabad

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
 - 2) The Commissioner, CGST, Ahmedabad South
 - 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad South
 - 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
- (for uploading the OIA)

- 5) Guard File
- 6) PA file



