



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](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240364SW0000313813

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4907/2023 / 4521-25
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-331/2023-24 and 22.03.2024
(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	30.03.2024
(ङ)	Arising out of Order-In-Original No. 17/DC/CHHAYA/Div-6/A'bad-South/PMT /2023-24 dated 20.04.2023 passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Chhaya Neelkanth Hariprasad, 308, Vrajbhumi Complex, Off CG Road, Navrangpura, Ahmedabad-380009

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, 4<sup>th</sup> 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup>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. Chhaya Neelkanth Hariprasad, 308, Vrajbhumi Complex, Off. CG Road, Navrangpura, Ahmedabad -380009 (hereinafter referred to as “the appellant”) against Order-in-Original No. 17/DC/CHHAYA/Div-6/Ahmedabad-380009 dated 20.04.2023 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant registered under Service Tax with Registration No. ACPPC5045AST001. Scrutiny of their Income Tax Returns (ITR) and Service Tax Returns (STR) revealed discrepancies in the declared values for the financial year 2015-16. The appellant declared a lower value in their ST-3 returns compared to their sales of services in the ITR and total value of TDS (Tax Deducted at Source). Despite a request for documentary evidence regarding their income, the appellant did not respond. Consequently, a Show Cause Notice (SCN) dated 26.12.2020 was issued by the Deputy Commissioner, Division-VI, Ahmedabad South Commissionerate, demanding Service Tax amounting to Rs. 56,178/- under Section 73(1) of the Finance Act 1994. The SCN included interest under section 75 of the Act, and penalty/fees under Sections 77(1)(c), 77(2), and 78 of the Finance Act, 1994.

2.1. Subsequently, the appellant were issued Show Cause Notice No. V/WS06/O&A/SCN-470/2020-21 dated 26.12.2020, wherein it was proposed to:

a) Demand and recover an amount of Rs. 56,178/- 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)(c), 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. 56,178/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act.
- b) Penalty amounting to Rs. 56,178/- was imposed under section 78 of the Act.
- c) Penalty was imposed under section 77(1)(c) of the Act.
- d) Penalty amounting to Rs. 10,000/- was imposed under section 77 (2) 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:
- Based on third party information (Income Tax Department) Show Cause Notice (SCN) was issued alleging that income declared in the Income Tax Return (ITR)/amount reflected in FORM 26AS for the F.Y. 2015-16 are found to be excess of the value of services declared in Form ST-3 and service tax is payable on differential amount.
  - Reply to SCN has been filed by the noticee (i.e., now the appellant) by providing proper reconciliation statement along with necessary supporting documents and shown that the appellant had properly discharged his service tax liability and reconcile ST-3 values with the value declared in ITR and even ledger copy of service tax paid is also attached with the reply.



- IMPUGNED ORDER HAS BEEN PASSED SOLELY ON THE GROUND THAT RECONCILIATION BETWEEN FORM 26AS VALUE AND ST-3 VALUE NOT ATTACHED IN THE REPLY.
- Surprisingly, Order-in-Original (impugned Order) has been passed by the adjudicating authority solely on the ground that "SCN was issued based on the basis of difference of amount of ST-3 returns (Rs. 31,92,333/-) and Total value for TDS (Rs. 35,66,851/-), in his defence reply assessee neither discussed the Total Value of TDS i.e., Rs. 35,66,851/- nor explained the reason for difference between Total Value for TDS amount and Service Tax return filed."
- The appellant would like to mention that he has provided architect services mainly to trust, colleges and university and got professional fees only after deducting TDS amount without charging service tax separately from them. Since this service is taxable but service tax separately not charged and not paid by the service recipients, as per section 67(2) of Finance Act, 1994 the gross amount shall be considered as inclusive of tax and service provider needs to deposit service tax to the government by doing reverse calculation, i.e.,  $\text{gross amount} \times \text{rate of service tax} / 100 + \text{rate of service tax}$ .
- The appellant has followed exactly the provisions of section 67(2) of Finance Act, 1994 and deposited service tax to the account of government. A similar view was taken by the Apex court in Commissioner v. Advantage Media Consultant [2009 (14) S.T.R. 49 (S.C.)] and Gem Star Enterprises (P) Ltd. v. Commissioner of C. Ex. & Cus. Calicut [2007 (7) S.T.R. 342 (Tri. Bang.)].
- The appellant would like to reconcile difference between value declared in ST-3 returns with the value reflected in FORM 26AS.
- For the verification purpose copy of Profit & Loss Account is attached here with as Annexure 5 from that it can be easily verified that on credit side total professional fees (inclusive of service tax) mentioned and on the debit side service tax of Rs. 4,10,132 debited which suggests that accounting done on gross basis.



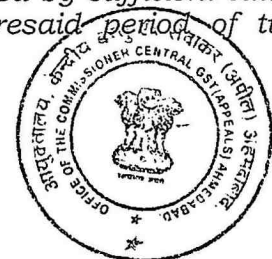
- Based on the above evidences it is clear that the appellant is not liable to pay service tax of Rs. 56,178/- for the F.Y. 2015-16 as demanded in the impugned order.
- At the time of submission of reply to SCN reconciliation statement for difference between ITR value and ST-3 value given but adjudicating authority found it meaning less because SCN has been issued for the difference between value reflected in FORM 26AS and ST-3 values, hence, there is no reason to provide it again here.
- The appellant is requesting to the appellate authority to quash the demand and set aside the impugned OIO, which has been passed merely based on third party information without considering detailed reconciliation statement with proper documentary evidences.

5. Personal hearing in the case was held on 18.03.2024. Sh. Keyur kamdar appeared for PH on behalf of the appellant. He stated that the difference is due to the reverse calculation of the TDS amount of service tax purpose, as service tax was not separately charged. (Section 67(2) of the F.A., 1994). Further he requested for condonation of delay.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. It is observed from the records that the present appeal was filed by the appellant on 16.08.2023 against the impugned order dated 20.04.2023 and received by the appellant on 24.05.2023. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant portion 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."*

7.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 24.07.2023 and 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 24.08.2023. This appeal was filed on 16.08.2023, i.e. after a delay of 24 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

7.3 In their application for condonation of delay in filing the appeal, the appellant is seeking to appeal to the appellate authority to condone the delay in filing their income tax return (ITR). They explain that despite the approaching deadline and the lack of extension from the government, they were unable to find a professional, such as a Chartered Accountant, to assist with filing the appeal. The appellant, a 72-year-old architect with no technical knowledge in tax filing, eventually engaged a CA firm after the deadline. They request to consider their appeal and waive the delay, citing Section 85(3A) of the Finance Act, 1994. 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.

8. The appellant has submitted a reconciliation statement along with necessary supporting documents, demonstrating that the service tax liability was properly discharged. It has been clarified that the appellant, providing architect services primarily to trust, colleges, and universities, received professional fees net of TDS without separately charging service tax. In accordance with Section





67(2) of the Finance Act, 1994, the appellant argued that the gross amount received is considered inclusive of tax, requiring the service provider to reduce service tax from the gross value via reverse calculation.

8.1 Furthermore, the appellant has drawn attention to relevant judicial precedents such as Commissioner v. Advantage Media Consultant and Gem Star Enterprises (P) Ltd. v. Commissioner of C. Ex. & Cus. Calicut, supporting their interpretation and implementation of section 67(2).

8.2 The reconciliation between the value declared in ST-3 returns and the value reflected in FORM 26AS has been produce in below table:

As per ST-3 (Amount in Rs.)		As per P & L (Amount in Rs.)	As per 26AS (Amt. in Rs.)
Total value	Service Tax	33,56,803 (incl. of Service tax Rs.	35,66,851/-
31,92,333/-	4,10,132/-	4,10,132/-)	

9. Therefore, in light of the submission and accompanying documentary evidence provided by the appellant, I am of the opinion that the appellant is not liable to pay service tax. Since there is no liability of service tax, question of interest and penalty does not arise.

10. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

11. 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 : 22.03.2024

Attested

*(Signature)*  
(अमरेंद्र कुमार)

अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

**By RPAD / SPEED POST**

To,

M/s. Chhaya Neelkanth Hariprasad,

308, Vrajbhumi Complex,

Off. CG Road, Navrangpura,

Ahmedabad -380009

**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-VI, Ahmedabad South.
4. The Supdt. (Appeals), CGST, Ahmedabad South (for uploading the OIA)
5. Guard File
6. PA file

