



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4441/2023 / 3267-71
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-345/2023-24 and 28.03.2024
(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	04.04.2024
(ङ)	Arising out of Order-In-Original No. MP/347/DC/Div-IV/2022-23 dated 24.03.2023 passed by The Deputy Commissioner, CGST, Division-IV, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Ramaben Manubhai Prajapati, C/48, Chaitanya Tenament Part-II, Mony Hotel Ni Gali, Isanpur, Ahmedabad - 382443

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:

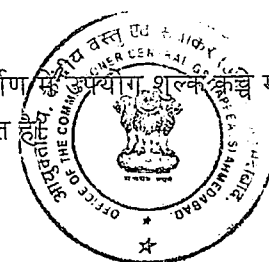
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 के उपयोग, शुल्क कटौत माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित



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 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।

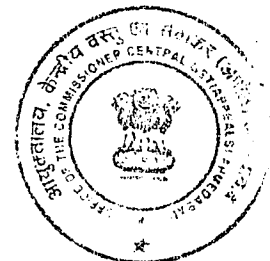
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Ramaben Manubhai Prajapati situated at C48, Chaitanya Tenement Part-II, Mony Hotel Ni Gali, Isanpur, Ahmedabad 382443(hereinafter referred as Appellant) against Order in Original No. MP/347/DC/Div-IV/22-23 dated 24.03.2023[hereinafter referred to as “*impugned order*”] passed by the Deputy Commissioner, CGST, Div-IV, Ahmedabad South[hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that as per the information received from the Income Tax Department, the appellant having PAN No. ANDPP6407G, had earned substantial service income however, they did not obtain service tax registration and did not pay service tax thereon. The service tax payable calculated on the basis value of “sales of services under Sales/Gross receipts from services(Value of ITR)” or as provided by the Income Tax Department for the F.Y. 2015-16, is as below:

F.Y	Taxable Value i.e. Value difference in sale of service as per ITR/TDS & STR	Rate of Service Tax inclusive of EC & SHEC	Service Tax payable(in Rs.)
2015-16	17,53,469/-	14.5%	2,54,253/-

3. In view of the above, Show Cause Notice vide F.No. IV/Div-IV/SCN-578/20-21 dated 22.04.2021(in short ‘SCN’) was issued to the appellant, proposing as to why:

- Service Tax of Rs. 254253/- which was not paid for the F.Y. 2015-16 should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;
- Interest at the prescribed rate should not be demanded and recovered under the provisions of Section 75 of the Finance Act, 1994;
- Penalty under the provisions of Section 77(1) of the Finance Act, 1994, as amended, should not be imposed on them for failure to take Service Tax Registration as per the provisions of Section 69 of Finance Act, 1994.
- Prescribed late fee, should not be recovered for each ST-3 return filed late for the relevant period under rule 7C of the Service Tax rules, 1994 read with section 70 of the Finance Act, 1994 and



- Penalty under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax.
4. The said SCN was adjudicated ex-parte vide the impugned order confirming the followings:
- Demand of Service Tax of Rs. 254253/- (Rupees Two Lakhs Fifty Four Thousand Two Hundred Fifty Three Only) (including Education Cess(EC) and Secondary Higher Education Cess (SHEC) under proviso (1) to Section 73 of the Finance Act, 1994 by invoking extended period as per SCN;
 - Recovery of interest on the confirmed demand at the applicable rates under proviso to Section 75 of the Finance Act, 1994;
 - Penalty of Rs. 254253/- (Rupees Two Lakhs Fifty Four Thousand Two Hundred Fifty Three Only) under Section 78 of the Finance Act, 1994.
 - Penalty of Rs. 10,000/- (Rs. Ten Thousand Only) as the appellant failed to take registration under 77(1) of the Finance Act 1994;
 - Recovery of late fee of Rs. 40,000/- (Rs. Forty Thousand Only) for the Service Tax returns not filed timely for the relevant period i.e. FY 2015-16 under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.
5. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds:
- That they have don laborwork for construction of a single residential house and part of a residential complex in the F.Y. 2015-16 in the name of Ramaben M. Prajapati which was proprietorship concern.
 - As per Govt. Notification No. 25/2012-Service Tax dtd. 20.06.2012 14(b) the labourwork or service for construction of a single residential house and part of a residential complex was exempted from S.Tax in the F.Y 2015-16.
 - That they are submitting herewith the ITR, Profit and Loss A/C, Balance Sheet, Form 26AS for the F.Y. 2015-16 and labour work invoices for construction of single residential house and part of a residential complex for the F.y. 2015-16.
6. In view of the above the appellant have requested to do the needful for the same and oblige.
7. Opportunity of Personal Hearing in the case was granted to the appellant on 08.03.2024 and the appellant vide their letter dated 13.03.2024 have submitted that



they do not want any further PH and requested to decide the case on the basis of submissions.

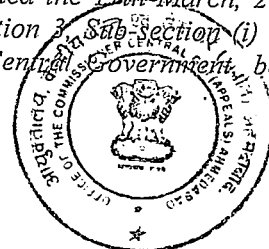
8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the facts available on records. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs. 254253/- confirmed vide the impugned order alongwith interest and penalties is legal and proper or otherwise. The demand pertains to the period F.Y. 215-16.

9. I find that the appellant having PAN No. ANDPP6407G, during the financial year 2015-16 had earned substantial service income. In the instant case, As per the data shared by the CBDT, the Service Tax payable to the tune of Rs. 254253/- on the Service Value of Rs. 1753469/- has been calculated on the basis of value of Sales of Services under Sales/Gross receipts from Services for the financial year 2015-16. Accordingly, they were served upon the Show Cause Notice dated 22.04.2021 which was further adjudicated ex-parte by the Impugned Order confirming the Demands/interest/penalties as proposed in the SCN on the ground that the Appellant have failed pay the service tax on the income shown by them in their ITR and also that they have failed to provide/produce any reasonable cause backed by supporting evidences for failure to pay Service Tax due.

10. I find that the main contention of the appellant is that since they being provider of the services of labor work for construction of a single residential house and part of a residential complex, are not liable to pay Service Tax in terms of the Notification No. 25/2012-Service tax dated 20.06.2012. Further, they have also submitted the ITR, Profit & Loss A/c, Balance Sheet, form 26AS and labour work invoices issued in this regard for the relevant period. I find that none of the documents submitted here were provided to the adjudicating authority, resulting into issuance of Ex-parte order despite adhering to the principal of natural justice. I have gone through the documents/submissions made available. The relevant portion of Notification 25/2012-ST dated 20.06.2012 is re-produced as under:

Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th-March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E). dated the 17th March, 2012, the Central Government being



satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

“(a) railways, excluding monorail and metro;

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.”.substituted vide Notification 9/2016- Service Tax with effect from 1 March 2016.

(b) a single residential unit otherwise than as a part of a residential complex;

10.1 Above quoted notification clearly establish the prerogative of two vital requirements for availing exemption, namely, (i) the service provided should be of ‘original works’ nature and (ii) there should be single residential unit otherwise than a part of a residential complex. As per the documents/submissions on record, I find that the appellant have not submitted any documents Viz. Affidavit/contract copy etc. which would satisfactorily and conclusively establish that the work/service provided is of the nature of original works and also that the services provided pertains to Single residential unit.

11. From the Labour work invoices placed on record I find that the invoices issued is for the amount Rs. 17,39,949.75/- only as against the contention of the adjudicating authority taken for the amount 17,53,469/-.

11.1 The details of the invoices are as under:

Sr. No.	Bill/Invoice No.	Invoice Date	Amount(in Rs.)
1	01	28.04.2015	3,20,000/-
2	02	25.05.2015	5,00,000/-
3	03	05.06.2015	2,21,000/-
4	04	09.07.2015	1,98,950/-
5	05	02.08.2015	4,99,999.75/-
Total			17,39,949.75

11.2 The differential figure has neither been discussed by the appellant in his submission nor has any record been so far produced by them in clarification to the same. Also I am of the view that the appellant cannot seek to establish their

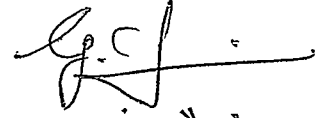


eligibility for exemption at the appellate stage by bypassing the adjudicating authority and hence the documents/submissions made available here must be rightly observed by the adjudicating authority in light of legal veracity and documentary authenticity before reaching to any decision.

12. In view of the facts mentioned at Para-10 & 11 hereinabove, I am of the considered view that the instant matter requires conclusive verifications of the documentary proofs before reaching out any conclusion. Hence, it is in the fitness of the thing that the matter is remanded back so that the adjudicating authority may consider the matter afresh and pass the speaking order. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority during the adjudication proceedings. Needless to say that the principal of natural justice be adhered to. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

12. ~~अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।~~

The appeal filed by the appellant stands disposed off in above terms.



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 28th March, 2024



सत्यापित /Attested:



(मोहित कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By REGD/SPEED POST A/D

To,

M/s Ramaben Manubhai Prajapati

situated at C48, Chaitanya Tenament Part-II,

Mony Hotel Ni Gali, Isanpur,

Ahmedabad 382443.

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST and Central Excise, Ahmedabad South
3. The Deputy/Asstt. Commissioner, Central GST, Division-IV, Ahmedabad South.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website
- ✓ 5. Guard file
6. PA File



