



सत्यमेव जयते

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

By SPEED POST

DIN:- 20240464SW000032323F

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4810/2023 /3798-3800
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-346/2023-24 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. 430/DC/Puransingh /Div-8/A'bad-South/PMT/2022-23 dated 21.03.2023 passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Puransingh B Rajput, F-8, Khodiyarnagar, Opp. Vasna Police Choki, Vasna, Ahmedabad-388640

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 माल पर



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.

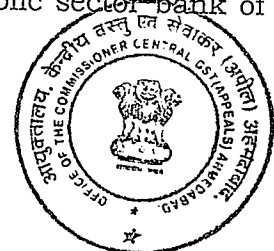
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 present appeal has been filed by M/s Puransingh B Rajput F-8 Khodiyarnagar, Opp Vasna police choki, Vasna, Ahmedabad Gujarat - 388640 (hereinafter referred to as '*the appellant*') against Order in Original No. 430/PURAN SINGH/DIV-6/A'BAD SOUTH/PMT/2022-23 dated 17.03.2023 [hereinafter referred to as '*impugned order*'] passed by the Deputy Commissioner (Technical), CGST & CEx, Ahmedabad South Commissionerate [hereinafter referred to as '*adjudicating authority*'].

2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax and were holding PAN No. ADBPR9776Q. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2015-16, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, in order to seek information, letter dated 23.09.2020 and reminder letter dated 15.10.2020 were issued to the appellant calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers considering the services provided by the appellant as taxable, determined the Service Tax liability for the F.Y. 2015-16 on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	3,98,653/-	14.5%	5,50,804/-

3. The appellant was issued Show Cause Notice No. CGST/WS0801 /O&A/TPD(15-16/ADBPR9776Q/2020-21 dated 22.12.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.5,50,804/- under proviso to Section 73 of Finance Act, 1994 along with applicable interest and penalties.

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- Service Tax demand of Rs. 5,50,804/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.



- Penalty was imposed but not ascertained under Section 77(1) of the Finance Act, 1994.
- Penalty was imposed of Rs. 10,0000/- under Section 77(2) of the Finance Act, 1994.
- Penalty of Rs. 5,50,804/- was imposed under Section 78 of the Finance Act, 1994.

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant is engaged in painting work of offices/residential places.
- Profit and loss accounts contains details of Income on account of labour services (painting) and material purchase for client on behalf of them. These Incomes are related to services provided by the appellant, our only income is labour services provided rest is only material purchased on behalf of client.
- The appellant provides service of painting on contract basis to the person at his/her place (Residential/ Commercial place). The appellant charges for labour service as per rate decided overall or per day basis, sometime they also charge per sqft also, Appellant also have to purchase raw materials many times for clients to provide service as per their needs. Material purchased for clients is not their Income they are solely purchased as their client had asked for its Main income is only labour service income
- The appellant has only service income of labour service charge of paint along with team, their labour charge as well as other labour (helpers) charges are also fixed on daily basis and or sq.ft. basis for any site on which they work jointly. Further many times labour of full team as well as payment of material is given to them by customers. Since customers force them to buy material and/or gather other labours on their behalf. Therefore, the total receipt amount is higher than their actual income as compared to reflected in bank entries/ 26AS etc. Please note that they are having income of only Rs 7 to 9 lakhs per year.
- Due to assignment conditions, all the amount had been paid in their account and they bought paint material, colour and also paid to coworkers in joint assignment taken by them. Therefore, the total receipt amount reflected either in bank statement or 26AS is higher than their actual income.



- Our labour service income is below the threshold limit as every year the amount of service income received is below Rs 10 Lakhs which is not taxable as per notification No 33/2012- service tax dated 20 june 2012. Therefore, we were not required to take service tax registration.
- The details of such Bill copies, date, name of the customers, Labour amount, Journal voucher number in the Sales Register are tabulated as under. Sample details are as under;

Bill No.	Date	Name of the Customers	Material supply Amount	Labour Amount
7	11.04.2015	Avaniben	52700	0
26	24.06.2015	Dhreya Construction	20300	0
31	01.07.2015	ESSDEE Piant's Ltd	149998	0
74	12.20.2015	R Ratilal Brothers	0	43900
91	29.02.2016	Dhreya Construcion	0	34650
98	09.03.2016	Tara Paints	34400	0

- As submitted by the appellant in the aforesaid grounds of appeal, their service is not liable to service tax being service income received is below Rs 10 Lakhs which is not taxable as per notification No 33/2012- service tax dated 20h june 2012. Therefore, we were not required to take service tax registration.

6. It is observed from the records that the present appeal was filed by the appellant on 14.08.2023 against the impugned order, which was reportedly received by the appellant on 14.06.2023.

6.1 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."

6.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 13.08.2023 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 13.09.2023. This appeal was filed on 14.08.2023, i.e after a delay of 01 day from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

6.3 In their application for Condonation of delay in filing the appeal, the reasons of delay were 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.

7. Personal Hearing in the case was held on 26.03.2024. Shri Basant Sharma, Consultant, appeared for personal hearing on behalf of the appellant. He informed that the client did painter work with material. However, labour and paint material has been shown separately. He reiterated the contents of the written submission and requested to allow their appeal.

8. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and those during the course of personal hearing 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 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 FY 2015-16.

9. I find that the main contentions of the appellant are that (i) their income for FY 2015-16 sale of goods income; (ii) their remaining income was below Rs. 10 lakh and exempted from service tax as per Notification No. 33/2012-ST dated 20.06.2012.



10. On scrutiny of the Profit and loss account, sales ledger and invoices submitted by the appellant viz. copies invoices for Trading of goods and copies of invoices for labour work carried out, it appears that the appellant engaged in trading of goods viz. paint and putti, etc. and wall painting labour service. The appellant has earned an income of Rs. 29,41,991/- from Trading of goods and Rs. 8,56,862/- from Labour service. The appellant provides service of painting on contract basis to the person at Residential/ Commercial place. The appellant charges for labour service as per rate decided overall or per day basis, sometime they also charges per Sq.Ft., the appellant also have to purchase raw materials many time for clients to provide service as per their needs and issued material sales invoice separately to their client. I find that the sale of goods / trading of goods falls in Negative List as per Section 66D(e) of the Finance Act, 1994. Hence, the appellant are not liable to pay service tax on the said amount of Rs. 29,41,991/- during the FY 2015-16. Section 66D(e) of the Finance Act, 1994 reads as under:

"SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :-

(a)

(e) trading of goods;"

11. Further, I find that the appellant has contented to avail the benefit of the notification no.33/2012 dated 20.06.2012 reproduce as under.

Notification No. 33/2012-Service Tax dated 20.06.2012

"exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act".

12. As regards the liability of service tax on the remaining income of Rs. 8,56,862/- and that whether the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 is admissible to the appellant or not, I find that the total value of taxable service provided during the Financial Year 2014-15 was Rs. 7,71,797/- as per the Profit & Loss Account for the FY 2014-15 submitted by the appellant, which is relevant for the value-based exemption under Notification No. 33/2012-ST dated 20.06.2012. I also find that the remaining taxable income

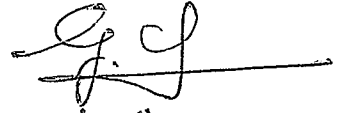


received by the appellant was Rs. 8,56,862/- during the Financial Year 2015-16. Therefore, the appellant are eligible for benefit of exemption upto a value of taxable service amounting to Rs. 10,00,000/- during the FY 2015-16 and they are also not liable to pay Service Tax on remaining amount of Rs. 8,56,862/- for the FY 2015-16.

13. In view of the above, I am of the considered view that the demand of service tax amounting to Rs. 5,50,804/- confirmed vide the impugned order is not sustainable and is liable to be set aside. As the demand of Service Tax is unsustainable, the question of interest and penalty does not arise.

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

15. 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: 28th March, 2024

सत्यापित/Attested :

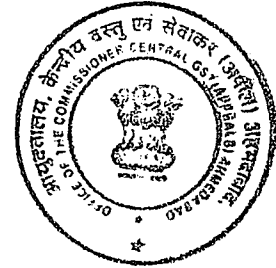


(मोहित कुमार)

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,

M/s Puransingh B Rajput,

F-8 Khodiyarnagar, Opp Vasna police choki,

Vasna, Ahmedabad Gujarat - 388640.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner (RRA), CGST and Central Excise, Ahmedabad South.
4. The Assistant Commissioner, CGST & CEX, Division - VIII, Ahmedabad South Commissionerate.
5. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
6. Guard file.
7. PA File.



