



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

DIN:- 20240464SW0000333FF2

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4560/2023 / 3750 - 61
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-347/2023-24 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. 36/AC/RJB/Vastu Organisers/Div-6/A'bad South/JDM/2022-23, dated 11/05/2023 passed by The Assistant Commissioner (Rajbhasha), CGST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. VASTU ORGANISORS PVT LTD., B-412, Himalaya Arcade, Nehru Park, Vastrapur, Ahmedabad-380015

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 से 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 उपयोगी शुल्क कटौत (डिड्यूट) 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 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.

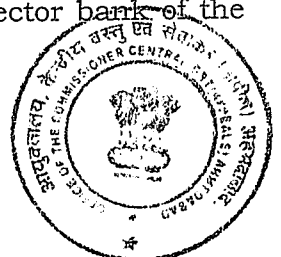
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(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. Vastu Organisers Pvt. Ltd. B-412, Himalaya Arcade, Nehru Park, Vastrapur, Ahmedabad-380015 (hereinafter referred to as "appellant") against Order-in-Original No. 36/AC/RJB/Vastu Organisers/Div-6/A'bad South/JDM/2022-23 dated 11.05.2023 (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 were holding Service Tax Registration No. AACCV8029RST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the gross value declared by them in their Income Tax Return (ITR)/TDS Returns. Accordingly, it appeared that the appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1 Subsequently, the appellant were issued Show Cause Notice File No. WS06/O&A/SCN-587/2020 dated 30.12.2020 demanding Service Tax amounting to Rs. 4,69,545/- for the period F.Y. 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under



Section 77(1)(c) and 77(2) of the Finance Act, 1994 & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,69,545/- was confirmed 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 for the period FY 2015-16. Further (i) Penalty of Rs. 4,69,545/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) and 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- It is submitted that the impugned order is incorrect and not tenable. The demand is raised on the ground of difference in turnover between 26AS and ST-3 return.
- The appellant is mainly engaged in providing manpower service to Sterling Hospital. The month wise reconciliation of taxable service as per Income tax data/26AS and ST-3 for the year 2015-16.
- The error mentioned were unintentional, and during the service tax regime, there was no provision for submitting an annual reconciliation statement/return for making corrections.
- The appellant cited CBIC's instruction dated April 23, 2021, regarding direction to field formations to seek a reconciliation statement from taxpayers when analyzing ITR-TDS data,
- Reference is made to a judgment by Hon'ble CESTAT in the case of Kush Construction v. CGST NACIN 2019 (24) G.S.T.L.



606, stating that demands shouldn't be raised solely on differences in Form 26AS values without examining the reasons.

➤ The appellant have also submitted that interest and penalties shouldn't be imposed as no tax liability exists.

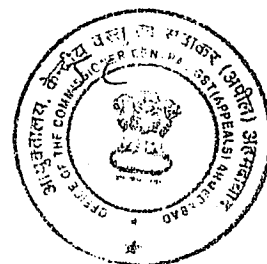
➤ The appellant have submitted following documents.

- a) Copy of 26AS for the FY 2015-16,
- b) Copy of all service tax Challan paid during 2015-16.
- c) Copy of ST-3 Returns for F.Y. 2015-16.
- d) List of invoices issued to Sterling Ahmedabad and copy of sample invoices
- e) Audited Balance Sheet and P & L Account for the F.Y. 2015-16

4. Personal hearing in the case was held on 18.03.2024. Shri Meet Jadawala, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested for 3 days time to make additional submission.

5. The appellant submitted an additional reply on 26.03.2024, wherein they provided a yearly reconciliation of income along with supporting documents for the year 2015-16.

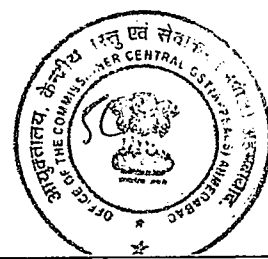
6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax 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 F.Y. 2015-16.



6. I find that the main contention of the appellant is that the value as shown in ITR/26AS amounting to Rs. 2,42,35,930/- includes service tax. They clarified that the amount disclosed in ST-3 Returns, Rs. 2,11,05,624/-, represents the taxable value excluding service tax. I have perused reconciliation chart provided by the appellant as shown below vide which they compare value shown in ST-3 returns vis-à-vis value as per 26AS/ITR for the Financial year 2015-16.

Sr. No.	Particulars	Amount (in Rs.)	Remark
1	Value as per P & L Account/ITR/26AS	2,42,35,930	Inclusive of Service Tax
2	Service Tax	28,44,020	As per ITR
3	Net Taxable value	2,13,91,910	
4	Less: Value on which Service Tax already paid but not shown in ST-3 Return	19,20,176	S.Tax Rs. 2,78,423/- vide Challan CIN No. 69103332701201610003 dated 27.01.2016
5	Differential Value (Sr. No. 3-4)	1,94,71,734	
6	Value as per ST-3 Returns (F.Y. 2015-16)	2,11,05,624	
7	Differential Value (Sr. No. 5-6)	-16,33,890	S.Tax paid on the value for the service provided in F.Y. 2014-15 and incorrectly shown in ST-3 Return in F.Y. 2015-16

7. Upon careful examination of the above reconciliation chart provided by the appellant along with supporting documents viz. (A) challan copy of Rs. 2,78,423/- already paid but not shown in ST-3 Returns, (B) Income Tax Return for the F.Y. 2015-16, (C) Audited Profit & Loss Account, and (D) Form 26AS Certificate for the F.Y. 2015-16, I find that the value shown in P & L Account/ITR/26AS for the Financial Year 2015-16 is inclusive of service tax. Thus, it is evident that the amount disclosed in ST-3 Returns by the appellant represents the taxable value excluding service tax. Therefore, the comparison between the gross amount inclusive of service tax and



the taxable value as per ST-3 is not valid. Moreover, the appellant have disclosed the challan details regarding the service tax Rs. 2,78,423/- already paid but not accounted for in the ST-3 returns for the impugned period.

8. In light of the foregoing analysis, I am of the opinion that the appellant are not required to pay service tax and since the demand of service tax is not sustainable on merits there does not arise any question of interest or penalty in the matter.

9. Therefore, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of differential income received by the appellant during the F.Y. 2015-16, is not legal and proper and deserve to be set aside.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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.

- g.c.j -

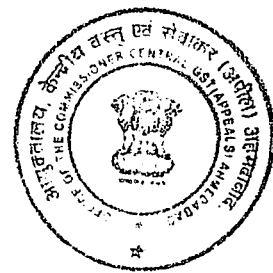
ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 28.03.2024

Attested

Amendra Kumar

(अमरेंद्र कुमार)
अधीक्षक (अपील्स)
सी. जी. एस. टी, अहमदाबाद



By RPAD / SPEED POST

To,
M/s. Vastu Organisers Pvt. Ltd. B-412,
Himalaya Arcade, Nehru Park,
Vastrapur, Ahmedabad-380015.

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner Central GST, Ahmedabad South.
3. The Deputy/Assistant Commissioner, CGST, Division VI, Ahmedabad South
4. The Superintendent (Appeal) Central GST, Ahmedabad South (for uploading the OIA).
5. Guard File.
6. P.A. File.

