



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
Website : www.cgstappealahmedabad.gov.in



आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240464SW0000777C3C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/508/2023 / 3762 - 66
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-348/2023-24 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. 441/AC/Div-I/HKB/2022-23 dated 07-02-2023 passed by The Assistant Commissioner, CGST, Division-I, Ahmedabad South	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner, Central GST, Division-I, Ahmedabad South. GST Bhavan, Ahmedabad.
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Responded	M/s. Mitesh Goverdhan Joshi, 1608, Patea Sheri Djanasuthar ni Pol, Kalupur, Ahmedabad-380001

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 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 रूपये 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.

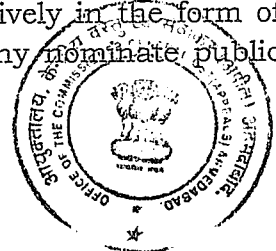
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 और 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 following appeals have been filed under section 84(1) of the Finance Act, 1994 (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division-I, Ahmedabad South Commissionerate (hereinafter referred as 'appellant') in compliance to Order-in-Review Nos. 24/2023-24 dated 08.06.2023 passed by Commissioner, Central GST, Ahmedabad South (hereinafter referred to as. the "the reviewing authority" also) against Order-in-Original No. 441/AC/Div-I/HKB/2022-23 dated 07.03.2023 (hereinafter referred as "the impugned order") passed by the Assistant Commissioner, CGST, Division - I, Ahmedabad South (hereinafter referred as "the adjudicating authority") in the case of M/s Mitesh Gordhandas Joshi, 1608, Patea Sheri, Djanasuthar ni Pole, Kalupur, Ahmedabad (hereinafter referred as "the Respondent").

Sr. No.	Appeal No. & Date	Review Order No. & Date	Order-In-Original No. & Date
01.	GAPPL/COM/STD/508/2023- APPEAL Dated 13.06.2023	24/2023-24 dated 08.06.2023	441/AC/Div-I/HKB/2022-23 dated 07.03.2023

2. Briefly stated, the facts of the case are that the respondent, having PAN No. ABBPJ6420D had earned substantial service income during the F.Y. 2014-15. On scrutiny of the data received from Income Tax department, it was noticed that the respondent had earned an income of Rs. 1,17,86,596/- during the F.Y. 2014-15. Accordingly, it appeared that the respondent had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The respondent were called upon to submit copies of required documents for assessment for the said period. However, the respondent had not responded to the letters issued by the department.



2.1 The respondent were issued Show Cause Notice bearing F.No. V/15-155/Mitesh Gordhandas Joshi/Div-I/2020-21 dated 22.12.2020 wherein:

a) Demand and recover an amount of Rs. 14,56,823/- under the provision to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Act.

b) Imposed penalty under Section 77(1) of the Act for failure to take service tax registration as per the provision of Section 69 of the Act, and penalty under Section 78 of the Act for non-payment of service tax by wilfully suppressing the facts from the department with intent to evade the payment of service tax.

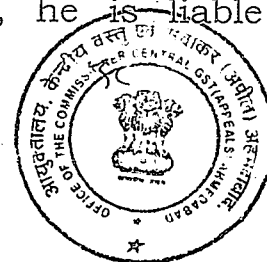
4. The Commissioner, Central GST, Ahmedabad South, in exercise of the power conferred on him under Subsection 1 of Section 84 of the Act in order to satisfy himself as to the legality and propriety of the impugned order, directed the adjudicating authority vide Review Order No. 24/2023-24 dated 08.06.2023 to file an appeal before undersigned within stipulated period for determination of the legality and correctness of the impugned order on the following grounds:

- It is observed that the adjudicating authority has dropped the proceedings initiated vide the SCNs, mainly on the ground that while allowing the benefit of exemption under Sr. No. 14(b) of the Notification No 25/2012-ST dated 20.06 2012, the adjudicating authority has not analyzed the conditions of the exemption Notification.
- It is apparent that the benefit of the above exemption is available only in the cases where a service is provided by way of construction of a single residential unit which is not a part of a residential complex
- It appears that the adjudicating authority has given the benefit of the exemption on the basis of the affidavit submitted by the



service receiver. In this regard sample affidavits of the service recipient concerned have been examined.

- It is evident from the details of the residential units constructed by the service provider are parts of an Apartments and hence, in view of the definition of 'residential complex these residential units are required to be considered as part of a residential complex. Further, the benefit of exemption under Sr. No. 14(b) of the Notification No 25/2012-ST dated 20.06.2012 as amended is given only if the work is original works pertaining to single residential unit and the benefit is not available for reconstruction or renovation work. Consequently, the service provider is not entitled to the benefit of exemption from service tax.
- It is a settled legal position that any exemption notification/clause is required to be strictly interpreted and burden to prove that all the conditions of the exemption notification/clause have been fulfilled, is upon the person claiming such exemption In this regard, reliance is placed upon the Hon'ble Supreme Court's judgment in the case of Commissioner of Customs (Import) Mumbai Vs Dilip Kumar & Co (2018(361) ELT 577(SC) and CCE New Delhi Vs. Han Chand Shri Gopal (2010(260)ELT 3(SC).
- In the present case, the service provider has failed to prove with reliable documentary evidences that he was eligible for exemption from the service tax under the relevant exemption notifications When the service provider failed to discharge the burden cast upon him and failed to prove that the services provided by him were exempted, the adjudicating authority has wrongly dropped the demand of service tax and acted against the settled legal position 8 In view of above discussions, it is opined that the service provider was neither eligible for exemption from service tax under Sr. No. 14(b) of the exemption Notification No 25/2012-ST dated 20.06.2012 and hence, he is liable for



payment of applicable service tax on entire amount of Rs. 1,17,86,596/- for the year 2014-15 as alleged in the SCN.

5. The respondent were called upon to file a memorandum of cross objection against the appeals. The personal hearing in the case was fixed on 22.01.2024, 15.02.2024, 15.03.2024, and 26.03.2024. Neither the respondent nor authorized representative on behalf of the respondent attended personal hearing on the above said dates.

6. I have carefully gone through the impugned order dated 07.03.2023 and submission made by the appellant, I find that adjudicating authority failed to properly analyze the conditions of the exemption provided under Sr. No. 14(b) of Notification No. 25/2012-ST dated 20.06.2012.

7. I find that the adjudicating authority granted exemption to the respondent based on the provision mentioned in 14(b) of the Notification No. 25/2012-ST dated 20.06.2012 that exempts a single residential unit otherwise than as a part of a residential complex from service tax. However, the residential units constructed by the respondent were part of apartments, which qualify as a residential complex according to the definition provided in the Notification. Moreover, the exemption is intended for original works pertaining to single residential units, not reconstruction or renovation work, which was not established by the respondent when I go through the impugned order. The respondent failed to provide sufficient documentary evidence before the adjudicating authority to demonstrate eligibility for exemption. Hence, I am of the opinion that despite the lack of evidence to support eligibility for exemption, the adjudicating authority wrongly dropped the demand for service tax. Therefore, I find that the respondent is liable for demand of the erroneously dropped service tax amount of Rs. 14,56,823/- along with interest and penalty as proposed in the Show Cause Notice.



8. In view of the above the impugned order is set aside and the appeal filed by the appellant is allowed.

9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

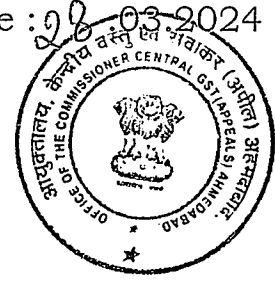
The appeal filed by the appellant stands disposed of in above terms.

G.C.

ज्ञानचंद जैन

आयुक्त (अपील्स)

Date : 28-03-2024



Attested

Amrendra Kumar

(अमरेंद्र कुमार)

अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,
The Assistant Commissioner,
Central GST, Division-I,
Ahmedabad South.

Appellant

M/s Mitesh Gordhandas Joshi,
1608, Patea Sheri,
Djanasuthar ni Pole,
Kalupur, Ahmedabad

Respondent

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