



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad. 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20230564SW0000000ED8

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2833/2022 /ISHG-50
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-36/2023-24
दिनांक Date : 15-05-2023 जारी करने की तारीख Date of Issue 17.05.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-090/AC-RAG/2022-23 दिनांक: 22.08.2022
passed by Assistant Commissioner, Division VII, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Jitendra Jasubhai Patel
4-Twinkle Star Apartments,
Near Hirabaug Railway Crossing,
Ambawadi, 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 या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) 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।

(ii) 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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.

(1) 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 भीतर मूल-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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appel) 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 पढ़ी 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 Appellate 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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 कान्यायालय 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.

25^प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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.

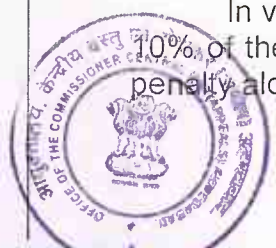
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (clxxxiv) amount determined under Section 11 D;
(clxxxv) amount of erroneous Cenvat Credit taken;
(clxxxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

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

M/s. Jitendra Jasubhai Patel, (Proprietor of M/s. Natraj Builder), 4-Twinkle Star Apartments, Near Hirabaug Railway Crossing, Ambawadi, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WS07/O&A/OIO-090/AC-RAG/2022-23 dated 22.08.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant are holding PAN No. AGPPP9802Q. They were engaged in providing taxable services but were not registered with the Service Tax Department.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant, in the Income Tax Return/TDS filed with the Income Tax Department, had declared income of Rs. 1,55,00,305/- received from the sale of services. As no service tax was paid on such income, letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 19,15,838/- for the F.Y. 2014-15 was, therefore, quantified considering the income of Rs. 1,55,00,305/- as taxable income.

2.1 Show Cause Notice (SCN) No. V/WS07/O&A/SCN-371/AGPPP9802Q/2020-21 dated 29.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 19,15,838/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Late fees under Section 70, imposition of penalties under Section 77 (1) and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated ex-parte vide the impugned order, wherein service tax demand of Rs. 19,15,838/- was confirmed alongwith interest. Late fees of Rs. 40,000/- , penalty of Rs. 10,000/- under Section 77(1) and penalty of Rs. 19,15,838/- under Section 78 were also imposed.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- Shri Jitendra Jasubhai Patel is Proprietor of M/s. Natraj Builder, which is engaged in providing constructions service under works contract to various Governmental/Body Corporate/Firms/Excise Dealers /Factories. They have obtained registration on 10.07.2015 bearing No. AGPPP9802QSD001.
- The impugned order has wrongly considered the income as taxable income without considering the facts that the appellant is registered person. The order has been passed mechanically and without any investigation.
- In terms of Notification No. 25/2012-ST dated 20.06.2012, construction of police station, general public utility building, irrigation, drainage and water system work are exempted service, so the question of service tax payment does not arise.
- Out of total taxable value of Rs.1,55,00,305/-, services worth Rs. 1,49,31,617/- was rendered to Gujarat State Police and services worth Rs. 5,67,589/- was rendered to



Ahmedabad Irrigation Division, which are exempted services in terms of aforesaid mega notification.

- The appellant has not received any letter seeking details however reply was submitted on 12.10.2020, which was not taken on record and was decided based on ITR data and without any investigation. They placed reliance on following decisions;
 - Amrish Rameshchandra Shah- TS-77-HC-2021 Bom ST)
 - Sharma Fabricators & Erectors Pvt. Ltd- 2017 (5) GSTL 96
 - Alpa Management Consultants Pvt. Ltd- 2007 (6) STR 181
- When there is no liability to pay tax, charging suppression and invoking extended period is not valid.

5. Personal hearing in the matter was held on 19.04.2023. Shri Prakash Nandola, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is whether the service tax demand of Rs. 19,15,838/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise ?

The demand pertains to the period F.Y. 2014-15.

7. It is observed that the entire demand has been raised based on the income data shared by CBDT, on which no service tax was paid by the appellant. The adjudicating authority finds that the appellant did not file any reply to the SCN nor did they appear for personal hearing. He, thereafter, decided the case ex-parte based on the third party data, without giving any findings on the nature of service rendered by the appellant. The appellant, however, have claimed that they did file a reply to SCN on 12.10.2020 but the same was not considered by the adjudicating authority. They vide letter dated 18.05.2022, also sought an opportunity to make further submission but their pleas were unheard and the matter was decided hurriedly. I find that the entire demand has been raised merely on the basis of the sales of the services under Sales/Gross Receipts from services, which in no way corroborate the allegation that the appellant was actually rendering taxable service. Board, vide Instruction dated 26.10.2021, has directed that where the show cause notice were issued based on the third party data, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. I find that the adjudicating authority has failed to follow Board's above instruction and hence the impugned order is vague.

7.1 Further, the appellant have also claimed that during the relevant period, they rendered Construction Service to Gujarat State Police Aavas Nigam Ltd. and to the Executive Engineer, Ahmedabad Irrigation Division, which is exempted from levy of service tax, in terms of Notification No. 25/2012-ST dated 20.06.2012. They submitted copy of ST-1, ST-2, ITR for the F.Y. 2015-16, Form -26AS, Leger Account showing Income received under Works Contract Service, Vouchers and Work Order dated 14.03.2013.

issued by Gujarat State Police·Aaavas Nigam Ltd for construction work to be carried out from 30.03.2013 to 29.06.2014, Work Contracts entered with Executive Engineer Ahmedabad Irrigation Division for removing silt, debris and garbage from canal, in support of their exemption claim.

7.2 On going through the Registration Certificate-ST-2, it is observed that the appellant was issued registration on 10.07.2015. Thus, the appellant were already registered with the department for providing "Construction service other than residential complex, including commercial / industrial buildings or civil structures", "Construction of residential complex service" & "Works Contract Service", prior to issuance of SCN in the case.

7.3 It is the contention of the appellant that the services rendered by them are exempted in terms of Notification No. 25/2012-ST. Relevant text of the notification is reproduced below;

Notification No. 25/2012-ST.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

(b) *a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*

(c) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*

(d) *canal, dam or other irrigation works;*

(e) *pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

(f) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;*

Going by the text of Sr. No. 12 of Notification No. 25/2012-ST above, it is clear that the construction of civil work or any other original work meant for use other than commerce; industry or any other business or profession are exempted. The appellant have claimed that from the total taxable value of Rs.1,55,00,305/-, services worth Rs. 1,49,31,617/- was rendered to Gujarat State Police and services worth Rs. 5,67,589/-/- was rendered to Ahmedabad Irrigation Division. This fact is also forthcoming in the ledgers accounts submitted by the appellant. They, vide letter dated 12.10.2020, informed the adjudicating authority that the activities carried out by them were exempted vide aforesaid notification but the same was not considered while issuing the impugned order dated 22.08.2022. Hence, the adjudicating authority did not examine the contentions made by the appellant to that extent; I find that the impugned order is a non-speaking order. Further, it is also observed that the appellant have, during the personal hearing, submitted a copy of Order-in-Original dated 23.11.2022 wherein the adjudicating authority, in the subsequent notice issued to the appellant, covering F.Y. 2015-16, on the same issue, has dropped the demand. Hence,



the decision of the adjudicating authority is contradictory and is arbitrary, on the same set of facts.

8. On going through the impugned order, it is noticed that three personal hearings (01.08.2022, 04.08.2022 & 08.08.2022) were communicated to the appellant vide a single letter dated 14.07.2022. Giving choice of three dates for personal hearing in one letter by the adjudicating authority is not in accordance with the principle of natural justice. This lapse on the part of the adjudicating authority brings to the fore a legal infirmity in the impugned order. Hence, the impugned order passed by adjudicating authority is not legally sustainable being passed in violation of principles of natural justice, as discussed above.

9. I, therefore, in the interest of justice, remand back the case to the adjudicating authority to decide the case afresh and for passing the speaking order in view of submission made by the appellant and keeping in mind the CBIC Instruction dated 26.10.2021 as well as the observations made above. The appellant is also directed to submit all the relevant documents like reconciliation statement showing the income received from said activity during the disputed period, copy of Contracts, invoices, ITR, corroborating their above contention, to the adjudicating authority, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice. The appellant is also directed to avail the opportunity of personal hearing granted in the matter and make necessary submission before the adjudicating authority.

10. In view of above discussion, I remand back the matter back to the adjudicating authority who shall pass the order after examination of the documents and verification of the claim of the appellant.

11. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

Arun
(अखिलेश कुमार)
आयुक्त(अपील्स)
15 May 2023

Date: 15.05.2023

Attested

Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Jitendra Jasubhai Patel,
4-Twinkle Star Apartments,
Near Hirabaug Railway Crossing,
Ambawadi, Ahmedabad

Appellant



The Assistant Commissioner
CGST, Division-VII,
Ahmedabad South

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South.
(For uploading the OIA)
- ✓ 4. Guard File.

