



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 : 20230664SW0000621146

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3120/2022 / 1943-28
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-46/2023-24  
दिनांक Date : 30-05-2023 जारी करने की तारीख Date of Issue 01.06.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 55/AC/Salil Karkhanis/Div-6/A'bad-South/JDM/2022-23 दिनांक:  
10.08.2022 passed by Assistant Commissioner, CGST (O&A), Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Salil Sureshbhai Karkhanis  
1st Floor, Shyam Gokul Complex,  
Vijay Cross Roads, Ahmedabad - 380009

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, 4<sup>th</sup> 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 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.

(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.

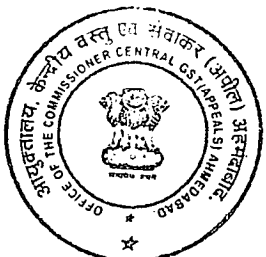
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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(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 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 रु.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.

49P 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' वाखिल करने के लिए पूर्व शर्त बना दिया गया है.

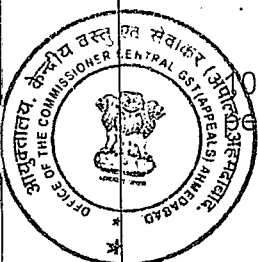
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xiii) amount determined under Section 11 D;
- (xiv) amount of erroneous Cenvat Credit taken;
- (xv) 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. Salil Sureshbhai Karkhanis, situated at 'Darshan Beauty Parlour', 1<sup>st</sup> Floor, Shyam Gokul Complex, Vijay Cross Roads, Ahmedabad-380009 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 55/AC/Salil Karkhanis/Div-6/A'bad-South/JDM/2022-23 dated 10.08.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST (O&A), Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant are holding PAN No. ADCPK5302J. They were engaged in providing taxable services but were found not registered with the Service Tax Department.

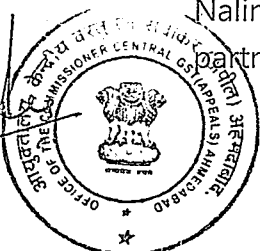
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had in the Income Tax Return/TDS filed with the Income Tax Department declared income of Rs. 53,63,676/- received from the sale of services in the F.Y. 2015-16. As no service tax was paid on such income, letters were issued to the appellant to explain the reasons for non-payment of service tax on such income and also to provide certified documentary evidences for the same. Appellant vide letter dated 28.10.2020 informed that they were holding Service Tax Registration No. AIOPK 9826L ST001, which was in the name of 'Darshan Beauty Parlour' holding PAN No. AIOPK 9826L; that they have filed the returns for the F.Y. 2015-16 and submitted copies of returns filed. It was, however, noticed that the present inquiry initiated was against the appellant holding PAN No. ADCPK 5302 J whereas the documents submitted was for PAN No. AIOPK 9826 L. Hence, the above argument of the appellant was not accepted and service tax liability of Rs. 8,04,551/- for the F.Y. 2015-16, was quantified considering the income of Rs. 53,63,676/- as taxable income.

2.1 Show Cause Notice (SCN) No. V/WS06/O&A/SCN-569/2020-21 dated 30.12.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 8,04,551/- 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) as well as under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein service tax demand of Rs. 8,04,551/- was confirmed alongwith interest. Penalty of Rs. 10,000/- under Section 77(1) and penalty of Rs. 8,04,551/- under Section 78 were also imposed. However, the late fee proposed in the SCN was dropped.

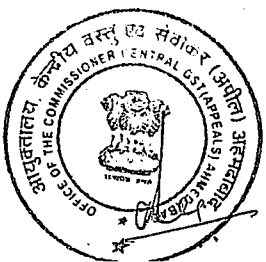
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal alongwith the application seeking condonation of delay in filing appeal, on the grounds elaborated below:-

- The original ST-2 dated 17.09.2002 was allotted based on PAN No. AIOPK9826LST001 of Mrs. Nalini Suresh Karkhanis, Proprietor of M/s. Darshan Beauty Parlour. From 2005 to 2007, a new partnership was formed with Mrs. Nalini Suresh Karkhanis and Mr. Salil Suresh Karkhanis. The PAN of this partnership firm was AAefd62656D. However, from 01.04.2007, Mrs. Nalini



Suresh Karkhanis retired and Mr. Salil Suresh Karkhanis became the Proprietor and continued the business under same trade name but his PAN No is ADCPK5302J.

- In the Income Tax records, the profit of the business of the appellant is shown with Mr. Salil Suresh Karkhanis as the proprietor. Even in ST-3 Returns Mr. Salil Suresh Karkhanis is shown as a Proprietor of Darshan Beauty Parlour. Thus, the department was aware that the PAN AIOPK9826L is of Mr. Salil Suresh Karkhanis, who is the proprietor of Darshan Beauty Parlour. However, these facts were not appreciated by the adjudicating authority.
- The allegation that the ST-3 return filed was of some other assessee is incorrect because ST-3 Return filed for the F.Y. 2015-16 clearly mentions that the Service Tax Number AIOPK9826LST001 is of the appellant, whose Proprietor is mentioned as Mr. Salil Suresh Karkhanis. Copy submitted. Both PAN No. ADCPK5302J and Service Tax Number AIOPK9826LST001 are of the same assessee, the only difference is that after the son took over the business, his PAN number was not updated in the registration. Mere non-updation of service tax number by the appellant does not make them a new assessee altogether. Thus, it is requested that the ST-3 return filed by the appellant under AIOPK9826LST001 should be considered as valid payments towards service tax liability.
- The entire service tax demand is based on the value of turnover shown in ITR which includes Service Tax and various cess levied as shown in P&L Account. As the appellant had a practice of passing the Service Tax Ledger through Profit & Loss Account, there is no difference in value of taxable services as shown on ST-3 and ITR.
- As per Trade Notice No. 03/2014-ST dated 10.07.2014, the department has taken a view that assessee should not be asked to make payment of service tax again for the mistake of registration number. They also placed reliance on following citations.
  - Sai Video Broad cast Pvt. Ltd. -2019 (10) TMI CESTAT Mumbai
  - Printotech Global Ltd.- 2019 (8) TMI – CEGAT Allahabad
  - Auro Pumps Pvt. Ltd.– 2017 (7) TMI 24-Guj H.C.
  - Devang Paper Mills Pvt. Lts- 2016 (1) TMI 389- Guj (HC)
- Suppression cannot be alleged as the details of PAN number and Service Tax Registration both were in the knowledge of the department and such dispute was never raised by the department earlier when the service tax payment and ST-3 returns were filed. Hence the demand is arbitrary. Reliance placed on following case laws
  - OIA No. AHM-EXCUS-001-APP-038/2021-22 dated 15.02.2022, passed by Commissioner (A), A'bad in the case of M/s. JVD Recovery Agency Ltd.
  - Pahwa Chemicals Pvt. Ltd. – 2005(189) ELT 257 (SC)
  - Hindustan Steel Ltd- 1978 (2) ELT J 159 (SC)



- There is no liability to pay tax as the services are exempted vide Notification No. 25/2012-ST dated 20.06.2012 and other amounts on account of being reimbursable expenses. They also claimed cum duty benefit and placed reliance on Vaishali Developers & Builders- 2017 (47) STR 300; Hans Interiors – 2016(44) STR 607 (Tri-Chennai).

4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 10.08.2022 and the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 09.11.2022 i.e. after a delay of 28 days from the last date of filing appeal. The appellant have, on 09.11.2022, filed a Miscellaneous Application seeking condonation of delay stating that the staff was not available due to Diwali festival and were busy filing Income Tax Return. They claim that as they have paid the entire service tax, there is no reason for them to file the delayed appeal. They, therefore, requested to condone the delay of 28 days, which is within the condonable period.

5. Personal hearing in the matter was held on 03.03.2023. Shri Gunjan Shah, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the application for condonation of delay. He stated that the appellant are in the financial hardship. They had filed ST-3 Returns as well as paid their liability in time. He also reiterated the submissions made in appeal memorandum.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 28 days and take up the appeal for decision on merits.

6.1 I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 8,04,551/- 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 F.Y. 2015-16.

7. It is observed that the entire demand has been raised on the basis of income data provided by the I.T. department pertaining to the PAN No. ADCPK5302J. The said PAN number is in the name of the appellant (Shri Salil Sureshbhai Karkhanis), who is not registered with the Service Tax Department. The appellant, however, claim that presently he is the Proprietor of 'Darshan Beauty Parlour'. Earlier 'Darshan Beauty Parlour', a proprietorship firm having PAN based Service Tax Registration No. AIOPK 9826 L ST001, was owned by his mother (Mrs. Nalini Suresh Karkhanis). Thereafter, from 2005 to 2007,



a new partnership was formed in which both Mrs. Nalini Suresh Karkhanis and Mr. Salil Suresh Karkhanis were partners. The PAN of this partnership firm was AAefd62656D. Subsequently, from 01.04.2007, Mrs. Nalini Suresh Karkhanis retired and Mr. Salil Suresh Karkhanis became the Proprietor of 'Darshan Beauty Parlour' and continued the business under same trade name 'Darshan Beauty Parlour' but with PAN No. ADCPK5302J. All the ST-3 returns filed thereafter mentions his PAN number and the name of appellant (Shri Salil Suresh Karkhan) is as assessee.

**7.1** The adjudicating authority, however, has held that the income of Rs. 53,63,675/- reflected in the I.T.R pertained to the appellant, who was holding PAN No. ADCPK5302J, whereas the income declared to the department under ST-3 returns pertains to PAN No. AIOPK9826L. Both are different entity, as they are holding different PAN numbers. Since the appellant did not submit any documentary evidence to the department at the material time, such claim were not accepted. The adjudicating authority, therefore, confirmed the demand on the findings that the income earned by the appellant and reflected in his ITR has escaped levy of service tax.

**7.2** A PAN based entity is distinct and, therefore, the Service Tax registration granted to PAN holder bearing No. AIOPK9826L is different to that of the identity of the appellant holding PAN No. ADCPK5302J. Therefore, the appellant should have timely informed the department about the change in status of 'Darshan Beauty Parlour' from Proprietorship to Partnership and then again to a Proprietorship firm. On going through the facts of the case and the documents submitted by the appellant, it is observed that the appellant had vide letter dated 12.10.2010, while seeking details of new password for ACES, informed the Superintendent, Service Tax Range-IV that he was the proprietor of the firm 'Darshan Beauty Parlour' and the Service Tax Registration mentioned therein is AIOPK9826LST001, which is the PAN number of Mrs. Nalini Suresh Karkhanis. In spite of the fact that the Proprietor's name and PAN number mentioned therein were of different individuals, the department did not raise any objection, which clearly proves that the department has accepted the appellant as the Proprietor of the said firm. Further, it is also evident that the appellant have filed the ST-3 return for the F.Y. 2015-16 under the trade name of 'Darshan Beauty Parlour' under S.Tax Registration No. AIOPK9826LST001 mentioning his name as Proprietor, which was also never questioned by the department.

**7.3** The appellant has relied on the Trade Notice No. 03/2014-ST dated 10.07.2014 issued by Cochin Central Excise, Customs and Service Tax Commissionerate, wherein it is mentioned that in case of mentioning of wrong STC number/ Central Excise Registration number, the assessee should not be asked to pay service tax again in fact they should be asked to submit the surrendered registration and asked to represent the case to the Commissionerate and submit documents to establish the genuine mistake and rectify the error. All these procedures, however, were not followed by the appellant.

**7.4** I have also gone through the ITR filed by Mrs. Naliniben Sureshbhai Karkhanis under PAN No. AIQPK9826L for the F.Y. 2015-16, wherein an income of Rs. 2,80,800/- is shown under Salary Head, Rs. 1,26,000/- as income from House Property and Rs. 1500/- income from other sources. There is no income from sale of service. Thus, Mrs. Naliniben Sureshbhai Karkhanis was only earning salary whereas the appellant for the



same period had earned income of Rs. 53,63,676/- from sale of services based on which the present demand has been raised. This income is also reflected in the P&L Account statement. All these facts corroborate the argument of the appellant that he is the proprietor of 'Darshan Beauty Parlour'.

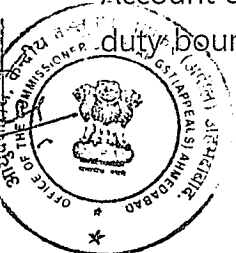
7.5 Nevertheless, it is observed that the judgment of Hon'ble High of Gujarat passed in the case of Devang Paper Mills Pvt. Ltd as reported at [2016 (1) TMI 389- Guj (HC)] is squarely applicable to the present case; wherein Hon'ble High Court has held that;

*5. Whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties. Such amount was deposited by the petitioner with the Government of India and it was duly credited in the Government account. It is not even the case of the respondents that the petitioner had any other code by the number AADCD7232REM001 and for which there was separate manufacturing activity inviting separate duty liability. Indisputably, thus, the petitioner had singular duty liability for which the actual payment was also made. Under the circumstances, the impugned communication dated 5-5-2015 and notice dated 21-7-2015 are quashed. The respondents are directed to give credit of the duty paid by the petitioner for a sum of Rs. 22.15 lacs by making necessary accounting entries on the basis that the same was paid at the relevant time. If thereafter any sum remains unpaid, it would be open for the Department to take further action in accordance with law.*

Similar view was taken in the case of Auro Pumps Pvt. Ltd – 2017 (7) TMI 24-Guj H.C. and Printotech Global Limited- 2019 (8) TMI 597- CESTAT-All. All these decisions were also relied by the appellant in support of their contention.

7.6 Considering the documentary evidences produced along with the appeal memorandum and above judicial pronouncements, I am of the considered view that the service tax paid by the appellant mentioning the name and Service Tax Registration of 'Darshan Beauty Parlour' shall be considered as that paid against the tax liability arrived and demanded against the appellant.

8. Further, on examining the documents submitted by the appellant, it is also observed that the ITR filed by the appellant under PAN ADCPK5302J, reflected income of Rs. 53,63,676/- and on such income they have shown the Service Tax amount of Rs. 6,55,141/- as paid or payable under Sr. No. 36 of the ITR. However, in the ST-3 Returns filed with the department for the F.Y. 2015-16, the appellant have shown the taxable income of Rs. 47,08,602/- (Rs. 21,12,025/- for April to September & Rs. 25,96,527/- for October, 2015 to March, 2016) on which service tax amount of Rs. 6,41,861/- was paid. As the income of Rs. 53,63,676/- reflected in ITR and Profit & Loss Account is more than the taxable income of Rs. 47,08,602/-, reflected in the ST-3 return, I find that it would be essential to examine the taxability of the differential income on which the tax was not discharged by the appellant. The appellant have contended that the amount of Rs. 47,08,534/- reflected in ST-3 is the difference of Gross Turnover as per ITR (Rs. 53,63,675/-) and the service tax paid (Rs. 6,55,141/-). I do not find such argument justifiable because levy of service tax is on the taxable income. When the Profit & Loss Account of the appellant shows Rs. 53,63,675/- as Parlour Income, then the appellant is duty bound to pay the service tax on such income unless otherwise proven. Since the





appellant could not justify the grounds for non-payment of tax on differential income reflected in the Profit & Loss Account vis-a-vis the income declared in the ST-3 returns, I find that the tax liability on such income also needs to be examined.

9. I, therefore, find that the tax liability on the difference of income reflected in Profit & Loss Account vis-a-vis the taxable value declared in the ST-3 Returns needs to be examined vis-a-vis the exemption as well as the cum tax benefit claimed by the appellant.

10. In the interest of natural justice, I find that it would be proper to remand the matter back to the adjudicating authority for the limited issue to decide the tax liability on the differential income and shall decide the case on the findings recorded at Para-8 above. The appellant is also directed to submit the relevant documents/details, reconciliation of income to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions, 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.

11. In view of above discussions and findings, I remand the matter back to the adjudicating authority to pass an order deciding the tax liability on the differential income as discussed at Para- 8 above, after examination of the documents and verification of the claim of the appellant.

12. 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 on limited issue as discussed at **para-8** above.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*Arun Kumar*  
Date: 30.05.2023  
(अखिलेश कुमार)  
आयुक्त (अपील्स) 2023

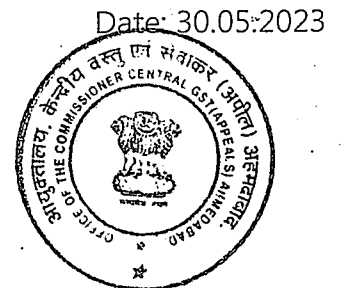
Attested

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

By RPAD/SPEED POST

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The Assistant Commissioner (H.Q.),  
CGST, Ahmedabad South



Appellant

Respondent

Ahmedabad

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division-VI, Ahmedabad South.
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South.

(For uploading the OIA)

- ✓ 5. Guard File.

