



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 : 20230664SW000000C71C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/22/2023 /1912 - 16
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-48/2023-24  
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. 65/AC/Tapan Indubhai Amin/Div-6/A'bad South/JDM/2022-23 दिनांक:  
13.10.2022 passed by Assistant Commissioner(H.Q.), CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Tapan Indubhai Amin  
2, Teen Murti Park Society,  
Inqualab Society Lane,  
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 :

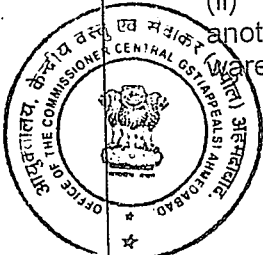
**Revision application to Government of India:**

(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, 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 प्रकिया 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 इका 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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-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.

47<sup>प</sup> 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.

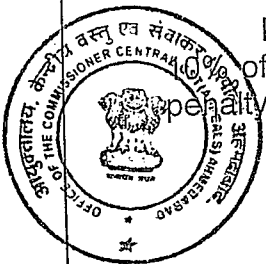
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (vii) amount determined under Section 11 D;
- (viii) amount of erroneous Cenvat Credit taken;
- (ix) 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 of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



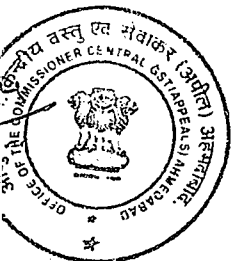
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Tapan Indubhai Amin, 2, Teen Murti Park Society, Inqualab Society Lane, Ambawadi, Ahmedabad – 380015 (hereinafter referred to as the “appellant”) against Order in Original No. 65/AC/Tapan Indubhai Amin /Div-6/A'bad South/JDM/2022-23 dated 13.10.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner (H.Q.), CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were registered with the Service Tax department and holding Registration No. AASPA4980DSD001. On perusal of the data received from CBDT, it was noticed that the appellant had declared different values in their ST-3 returns and Income Tax Returns for F.Y. 2015-16. It was noticed that the appellant had declared less taxable value amounting to Rs. 9,07,020/- in the ST-3 returns filed by them and on which service tax amounting to Rs. 1,36,053/- was short paid/not paid. The appellant were issued letter dated 17.07.2020 calling for details. However, the appellant did not submit the required details. Therefore, the appellant were issued Show Cause Notice bearing No. V/WS06/O&A/SCN-572/20-21 dated 30.12.2020 wherein it was proposed to :

- a) Demand and recover service tax amounting to Rs. 1,36,053/- under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- b) Impose penalty under Sections 77(1)(c), 77(2) and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs. 1,36,053/- was confirmed along with interest. Penalty amounting to Rs. 10,000/- was imposed under Section 77(1)(c) and 77(2) of the Finance Act, 1994. Penalty amounting to Rs. 1,36,053/- was imposed under 78 of the Finance Act, 1994.



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

- i. They had crossed the basic limit of service tax in F.Y. 2015-16. In F.Y. 2014-15, they were having consultancy income along with interest and capital gains amounting to Rs. 1,96,091/-. Copy of the P&L Account, Balance Sheet and ITR were filed before the adjudicating authority.
- ii. The adjudicating authority has mentioned at Para 16 of the impugned order that they had not filed any proof showing that the taxable income for F.Y. 2014-15 was less than Rs. 10 lakhs and eligibility for SSI exemption cannot be ascertained. This is totally incorrect as they had filed all the details regarding income of F.Y. 2014-15 with documents.
- iii. The adjudicating authority has erred in not considering the submissions filed by them wherein details of F.Y. 2014-15 were given which shows that there is no taxable service provided by them in excess of Rs. 10 lakhs.
- iv. In view of the above facts, they should get the benefit of exemption limit of Rs. 10 lakhs in F.Y. 2015-16.
- v. The adjudicating authority has wrongly confirmed the demand along with interest and penalty.
- vi. The adjudicating authority has erred in issuing notice under Section 73 which is barred by time.

5. Personal Hearing in the case was held on 19.04.2023. Shri Dipen Sukhadia, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted a written submission during the hearing.

6. In the written submissions dated 14.04.2023 filed during the course of personal hearing, the appellant contended, inter alia, that :

- The demand of service tax has been worked out on the amount of Rs. 9,07,020/-, which is the difference between the total sale of service as mentioned in the ITR amounting to Rs. 15,10,150/- and Rs. 6,03,130/- on which service tax was already paid.

They had informed the adjudicating authority that they had crossed the exemption limit of Rs. 10 lakhs for the first time during F.Y. 2015-16 and



had obtained Service Tax Registration and paid service tax on Rs. 6.03.130/-.

- The adjudicating authority has not given the benefit of basic exemption of Rs. 10 lakhs as per Notification No. 33/2012-ST on the grounds that they had not submitted any proof of taxable income of F.Y. 2014-15.
- The adjudicating authority has not gone through the details filed by them and not verified the details submitted before him. They enclose a copy of the submission made before the adjudicating authority vide letter dated 18.01.2021 and 11.05.2022.
- On perusal of their ITR for F.Y. 2014-15, it can be seen that the sale of service is of Rs. 1,96,091/- which is below Rs. 10 lakhs. Copies of the Balance Sheet and P&L Account for F.Y. 2014-15 are submitted.

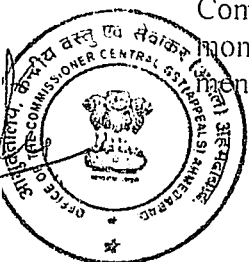
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made during the personal hearing and the materials available on records. The issue before me for decision is whether the impugned order confirming the demand of service tax, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to F.Y. 2015-16.

8. It is observed that the demand of service tax was issued to the respondent on the basis of the data received from Income Tax department. It is stated at Para 4 of the impugned order that the appellant was called upon to submit documents/details, however, they failed to submit the same. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

8.1. I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that :

“It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued,



adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.”

8.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground, the demand raised vide the impugned SCN is liable to be dropped.

9. It is observed that the appellant had in their submissions before the adjudicating authority claimed the benefit of threshold exemption of Rs. 10 lakhs. However, the adjudicating authority has at Para 16 of the impugned order recorded his finding that “*Further, to be eligible for the above exemption, taxable turnover for preceding year needs to be looked in to. I find that the noticee did not submitted any proof showing his taxable income for F.Y. 2014-15. In absence of any documentary evidence, his eligibility for S.S.I exemption cannot be ascertained.*” However, the above finding of the adjudicating authority is contrary to Para 10 of the impugned order, wherein it is recorded that the appellant had submitted, among other documents, Form 26AS for F.Y. 2014-15 and F.Y. 2015-16 and ITR for F.Y. 2015-16. It is further observed that the appellant had vide letter dated 27.11.2020, which was received on 03.12.2020, submitted copy of their ITR for F.Y. 2014-15 (A.Y. 2015-16). The appellant have submitted a copy of their ITR for F.Y. 2014-15 as part of their additional written submissions and on perusal of the same, I find that the income earned by them from Sale of Services has been declared to in the ITR as amounting to Rs. 1,96,091/-, which is well below the threshold exemption limit of Rs. 10 lakhs. Consequently, the appellant are eligible for exemption under Notification No. 33/2012-ST dated 20.06.2012 for F.Y. 2015-16.

10. From the submissions of the appellant made before the adjudicating authority as well as in their additional written submissions, it is evident that the adjudicating authority has adopted a very casual approach in passing the impugned order inasmuch as the documents and submissions of the appellant have been totally ignored. The document submitted by the appellant *prima facie* indicate that they are eligible for exemption in terms of Notification No. 33/2012-ST dated 20.06.2012 and, therefore, the service tax, if any, payable by



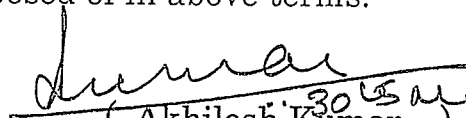
the appellant would have to be re-worked out after extending the benefit of threshold exemption.

10.1 It is further observed that as per the Table under Para 3 of the impugned order, the appellant had in their ST-3 returns declared a taxable value amounting to Rs. 6,03,130/-. This amount has been deducted from the income, declared in the ITR, amounting to Rs. 15,10,150/- and service tax has been demanded on the differential value amounting to Rs. 9,07,020/-. However, considering the fact that the appellant are eligible for the benefit of threshold exemption in F.Y. 2015-16, as their taxable value in F.Y. 2014-15 was below Rs. 10 lakhs, the appellant were liable to pay service tax only on the taxable value exceeding the threshold exemption limit. In the instant case, the appellant had paid service tax on the taxable value amounting to Rs. 6,03,130/- which is not disputed by the department. Therefore, no further service tax remains to be paid by the appellant. Consequently, the service tax confirmed vide the impugned order is neither proper nor legally tenable.

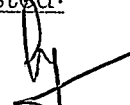
11. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

  
( Akhilesh Kumar )  
Commissioner (Appeals)  
Date: 30.05.2023

Attested:

  
(N.Suryanarayanan. Iyer)  
Assistant Commissioner (In situ),  
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

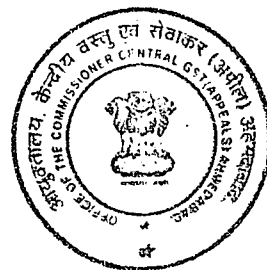
To

M/s. Tapan Indubhai Amin,  
2, Teen Murti Park Society,  
Inqualab Society Lane,  
Ambawadi, Ahmedabad – 380015

Appellant

The Assistant Commissioner,

Respondent





H.Q., CGST,  
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.  
(for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.



