



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 - टेलीफैक्स 07926305136



DIN : 20230764SW000012121D

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3115/2023 / 2901 - 2909

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-52/2023-24
दिनांक Date : 30-06-2023 जारी करने की तारीख Date of Issue 10.07.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of OIO No. 39/WS08/AC/HKB/2022-23 दिनांक: 15.06.2022 passed by Assistant
Commissioner, CGST, TAR Section, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Varsha Ajay Verma
5-A, Mittal Apartments,
Near Jivraj Tolnaka,
Jivraj Park, Ahmedabad

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 :

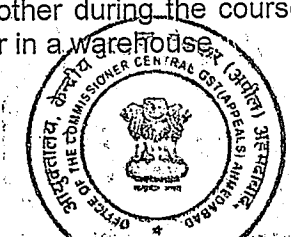
Revision application to Government of India:

(1) केंद्रीय 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 हों।

(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.

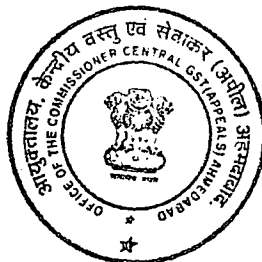
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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.

58प 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.

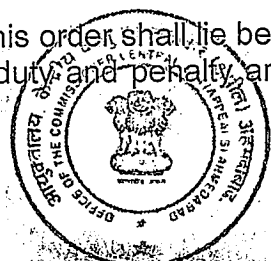
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xi) amount determined under Section 11 D;
- (xli) amount of erroneous Cenvat Credit taken;
- (xlii) 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 मांग 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. Varsha Ajay Verma, 5-A Mittal Apartments, Near Jivraj Toll Naka, Jivrajpark Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 39/WS08/AC/HKB/2022-23, dated 15.06.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, TAR Section, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding PAN No. ABTPV6256G.

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 had declared an income of Rs. 23,53,330/- from sale of services, in the ITR, filed for the F.Y. 2014-15. Though the appellant had earned substantial income they neither obtained the Service Tax registration nor did they discharge any service tax liability. 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. 2,90,871/- was thereafter quantified considering the income of Rs. 23,53,330/- as taxable income, based on the data provided by the Income Tax Department.

2.1 Show Cause Notice (SCN) No. CGST/Div-VIII/O&A/TPD/107/ABTPV6256(15-16)/ABTPV6256G/2020-21 dated 21.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 2,90,871/- not paid on the taxable income received during the F.Y. 2014-15 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77 (1) & 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 2,90,871/- was confirmed alongwith interest. Penalty of Rs.10,000/- each was imposed under Section 77(1) & 77(2) and penalty of Rs. 2,90,871/- was also imposed under Section 78.

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, on the grounds elaborated below:-

- The appellant has been singing songs in musical events, marriage functions, birthday party, bhajans, religious functions etc. The appellant is a member of the group who enters in contract with the Organizers or Event Manager and get consideration from the team leader or group leader or from the organizer.
- In a similar notice SCN No. DGGI/AZU/GR-B/36-10/2020-21 dated 29.05.2020 the demand was dropped vide OIO No. 01/CGST/Ahmd-South/ADC/MA/2021 dated 18.01.2021. The appellant put forth this fact before the adjudicating authority but the same was not considered.
- The present notice does not specify the service rendered. The appellant sings in events and it is the services of Event Management Service which is taxable and on



such service appropriate tax was already discharged by the Event Managers and therefore the appellant is not required to pay service tax on the amount received from Event Managers. As the relation between the appellant and the Event Manager is like an employer and employee. Hence such service falls under the exclusion clause of the interpretation of 'service' as provided under Section 65B (44) (b) of the F.A., 1994.

- The amount received as consideration from Event Management Service is exempted under Sr. No. 16 of the Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No. 06/2015-ST dated 01.03.2015.

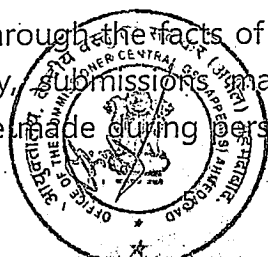
4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 15.06.2022 and the same was received by the appellant on 02.08.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 21.10.2022 i.e. after a delay of 19 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that as she was busy performing in events during Navratri festival hence she could not obtain temporary service tax registration for making pre-deposit, hence there was delay of 21 days in filing the appeal. As the delay is within the condonable period, they requested to condone the delay in terms of the proviso to Section 85 of the F.A., 1994.

5. Subsequently, the appellant also filed the additional written submission filed on 23.04.2023, wherein they contested the demand on limitation. They stated that the demand has been issued on the basis of information provided by the I.T. Department and therefore the demand should have been issued on or before 20.10.2018, however the same was issued on 21.09.2020. They placed reliance on the decision passed in the case of J.P. Iscon Pvt. Ltd.- 2022 (63) GSTL 64, Balajee Machinery- 2022 (66) GSTL 440.

5.1 Personal hearing was granted on 30.06.2023 in the matter. Shri R.R.Dave, Consultant, appeared for person hearing on behalf of the appellant and reiterated the submissions made in the appeal memorandum and those made in the additional written submissions. He argued that the issue on limitation and requested to set-aside the O-I-O.

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 19 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority. Submission made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided



in the present appeal is whether the service tax demand of Rs. 2,90,871/- 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.

7.1 It is observed that the appellant are not registered with the department and entire demand has been raised on the basis of third party shared by CBDT. It is alleged that the appellant had earned taxable income of Rs. 23,53,330/- on which no service tax was paid. The appellant however have contended that the income reflected in the ITR is in fact the consideration received for singing songs, poetry during events organized by Event Managers or events held by Corporate House or Government. The appellant is not rendering services to organizers but is performing in the events organized by the Event Managers and the payment to the appellant is made by the Event Managers. They have claimed that music is exempted vide Notification No. 25/2012-ST dated 20.06.2012. The adjudicating authority denied the exemption to the appellant on the observation that the appellant has not produced any documents in support of their claim to establish that the activities performed are covered under above notification.

7.2 It is observed that the appellant is claiming exemption under Notification No. 25/2012-ST dated 20.06.2012. In terms of Sr. No. 16 of Notification No.25/2012-ST, the services by a performing artist in folk or classical forms of music, dance or theater are exempted. Relevant entry is reproduced below.

"16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador"

7.3 The appellant however could not produce any documentary evidences either before the adjudicating authority or before the appellate authority to substantiate their claim that the services rendered were by a performing artist in folk or classical form of music.

7.4 It is a well settled position of the law that a person who claims the exemption has to prove that he satisfies all the conditions of the Notification so as to be eligible to the benefit of the same. References can be made to the Hon'ble Supreme Court Constitutional Bench decision in the case of *CCE v. Harichand Shri Gopal* 2010 (260) E.L.T. 3 (S.C.); *Mysore Metal Industries v. CC, Bombay* 1988 (36) E.L.T. 369 (S.C.); *Moti Ram Tolaram v. Union of India - [1999 (112) E.L.T. 749 S.C.]*; *Collector v. Presto Industries - 2001 (128) E.L.T. 321 and *Hotel Leela Ventures v. Commissioner - 2009 (234) E.L.T. 389 (S.C.)*. Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company— 2018 (361) E.L.T. 577 (S.C.)* held that burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption. In view of the above said judgments, I find that the appellant is not entitled to the benefit of aforesaid notification as they have failed to establish their claim for exemption by submitting any documentary evidences.*

7.5 It is well settled position that burden lies on the department to prove taxability as well as classification of the service and similarly burden lies on the assessee to prove



exemption. From the mere fact that services are covered under exemption notification, it cannot be presumed that it was a exempted service unless it was proved. The appellant have miserably failed to establish their claim that the services rendered by them was in the form of singing folk or classical art form and covered under the mega notification.

8. Another argument put forth by the appellant is that extended period of limitation cannot be invoked as they had disclosed all transactions in income-tax returns and therefore, there is no suppression. It is observed that the appellant failed to file ST-3 returns though they were rendering taxable service. They never responded to various correspondences made by the department seeking clarifying for non-payment of taxes and also failed to produce any documentary evidence in support of their claim that the services rendered were exempted under Notification No. 25/2012-ST. All these actions clearly show their intent to evade payment of service tax. I find that filing of income-tax returns would not suffice the requirement to file ST-3 returns. On such score, I do not find any grounds to interfere with the findings of the adjudicating authority confirming the willful suppression of facts and invocation of extended period thereof.

9. In view of the above, I find that the penalty imposed under Section 78 of the Finance Act, 1994, is also justifiable as it provides for penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. The appellant were aware of their tax liability but chose not to discharge it correctly, which undoubtedly bring out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

10. As regards the penalty under Section 77, the appellant have not made out any case to counter the imposition of said penalty. This penalty was imposed for failure to obtain registration in terms of Section 69 of the F.A., 1994, failure to furnish the information as called for from them and failure to pay tax electronically and file Returns in terms of Section 70. I, therefore, find that the penalty of Rs. 10,000/- each imposed under Section 77(1) & 77(2) of the Act is sustainable.

11. In view of above discussions and findings, I uphold the impugned order and reject the appellant filed by the appellant.

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

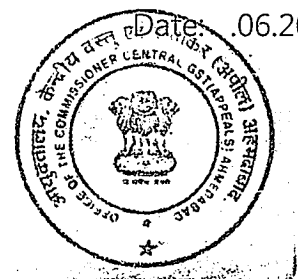
12. The appeal filed by the appellant stands disposed off in above terms.

(Signature)
30.06.23

(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Attested

(Signature)
(Rekha A. Nair)
Superintendent (Appeals)



CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Varsha Ajay Verma,
5-A Mittal Apartments,
Near Jivraj Tolnaka,
Jivrajpark, Ahmedabad

Appellant

The Assistant Commissioner (TRC),
CGST, Ahmedabad South
Ahmedabad

Respondent

Copy to:

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

