



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 : 20230764SW000022052B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1243/2023 / 1007 - 1011
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-67/2023-24  
दिनांक Date : 21-07-2023 जारी करने की तारीख Date of Issue 31.07.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 100/WS08/AC/KSZ/2022-23 दिनांक: 28.11.2022 passed by Assistant Commissioner, CGST, Division-VIII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Yash Balchandra Soneji  
E-405, Venus Park Land,  
Near Vejalpur Police Chowky,  
Vejalpur, Ahmedabad - 380051

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 :

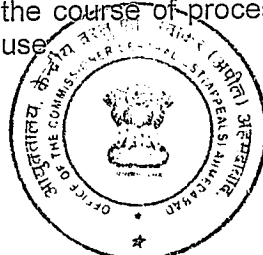
**Revision application to Government of India:**

(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 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 रूपये 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 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 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.

73ण 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.

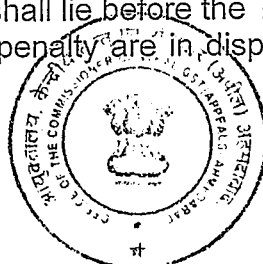
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxxv) amount determined under Section 11 D;  
(lxxxvi) amount of erroneous Cenvat Credit taken;  
(lxxxvii) 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."



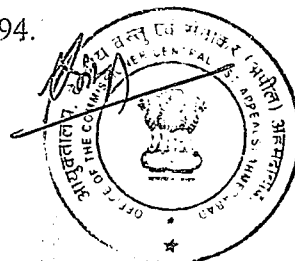
**ORDER-IN-APPEAL**

The present appeal has been filed by M/s. Yash Balchandra Soneji, E-405, Venus Park Land, Near Vejalpur Police Chowky, Vejalpur, Ahmedabad – 380051 (hereinafter referred to as “the appellant”) against Order-in-Original No. 100/WS08/AC/KSZ/2022-23 dated 28.11.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division-VIII, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. BQLPS0042J. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that the appellant had earned an income of Rs. 22,73,078/- during the FY 2015-16 and Rs. 16,46,761/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but have neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/WS0802/O&A/TPD(15-16)/BQLPS0042J/2020-21 dated 22.12.2020 demanding Service Tax amounting to Rs. 5,76,610/- for the period FY 2015-16 and FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,03,935/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 and FY 2016-17. The adjudicating authority has dropped the remaining amount of demand of service tax on the income of Rs. 19,33,857/- for the FY 2015-16 and Rs. 6,15,106/- for the FY 2016-17, considering the same as export of service for which the appellant had provided FIRC Certificates. Further (i) Penalty of Rs. 2,03,935/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.



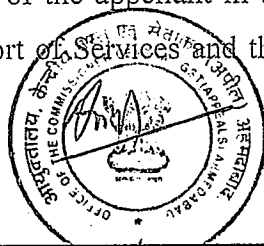
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant is engaged in providing services of website and mobile application designing and development. They provided services out of India and the same is export of service as per definitions and therefore no service tax registration required.
- The adjudicating authority erred in passing the impugned order without giving proper time to submit remaining documents.
- The turnover / income declared in Income Tax Return cannot assumed to be forming taxable value under the Finance Act, 1994. In the ITR it is very specifically mentioned that income arose from Export of Service (Web and Mobile Development Service).
- Further copy of invoices along with Foreign Payment Certificate submitted was enough to prove that income which arose is from services which are zero rated from levy of service tax.
- The ingredients for imposition of penalty under Section 78, Section 77(1)(d) and Section 77(2) are not established by the adjudicating authority before imposing respective penalties.

4. Personal hearing in the case was held on 30.06.2023. Shri Yash Soneji, Proprietor and Shri Anand Tanna, Chartered Accountant, appeared for personal hearing. They submitted that the appellant provided service of Export of Web designing and Mobile applications. The lower authority had dropped the part of the demand for which FIRC was submitted to him but confirmed the remaining demand for which the appellant could not produced the FIRC. They submitted copies of remaining FIRCs along with export invoices and a covering letter at the time of personal hearing. They submitted that the same covers the entire taxable value in the show cause notice. They requested to set aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16 and FY 2016-17.

6. It is observed that the main contentions of the appellant in the appeal memorandum are that (i) they received income from the Export of Services and the adjudicating authority



had dropped the part of the demand for which FIRC was submitted to him but confirmed the remaining demand for which the appellant could not produced the FIRC, (ii) they submitted copies of remaining FIRCs along with export invoices during the course of personal hearing.

7. It is also observed that the adjudicating authority has confirmed the demand of Service tax on the income of Rs. 3,39,221/- for the FY 2015-16 and Rs. 10,31,655/- for the FY 2016-17 treating the same as taxable income as the appellant has not submitted copies of the FIRC for the said amount. The adjudicating authority has also dropped the remaining amount of demand of service tax on the income of Rs. 19,33,857/- for the FY 2015-16 and Rs. 6,15,106/- for the FY 2016-17, considering the same as export of service for which the appellant had provided FIRC Certificates.

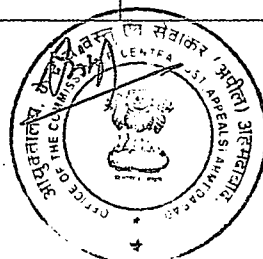
8. Now, the appellant produced the remaining copies of FIRC for the FY 2015-16 and FY 2016-17 as listed below before this authority.

**FY 2015-16**

Sr. No.	Invoice No.	Date of Invoice	Amt. of Invoice in USD	FIRC No.	FIRC Amt. in USD	FIRC Amt. in INR
1	2016-538	31.01.2016	2509	AD-1159546	2422	156531
2	2016-540	15.02.2016	650	AD-1159547	635	40687
3	2016-543	29.02.2016	1001	AD-1159548	924	59077
4	2016-559	28.03.2016	455	AD-1159549	426	27687
						<b>283982</b>

**FY 2016-17**

Sr. No.	Invoice No.	Date of Invoice	Amt. of Invoice in USD	FIRC No.	FIRC Amt. in USD	FIRC Amt. in INR
1	2016-655	30.11.2016	1482	AD-1159550	446	28893
2				AD-1159551	868	55743
3				AD-1159552	152	9735
4	2016-657	31.12.2016	3900	AD-1159553	2541	164285
5				AD-1159554	1325	88136
6	2017-660	31.01.2017	4121	AD-1159555	1734	118943
7				AD-1159556	2358	163796
8	2017-661	28.02.2017	3237	AD-1159557	3220	230298
9	2017-662	31.03.2017	2353	AD-1159558	2307	157562
						<b>1017392</b>



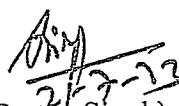
8.1 Thus, the appellant produced the remaining copies of FIRC for the FY 2015-16 and FY 2016-17, which was not produced / submitted by them before the adjudicating authority. As regard the differential amount of Rs. 55,239/- for the FY 2015-16 (Rs. 3,39,221/- - Rs. 2,83,982/-) and Rs. 14,263/- for the FY 2016-17 (Rs. 10,31,655/- - Rs. 10,17,392/-), the appellant submitted that the said amount belongs to bank charges deducted by the bank at the time of conversion of currency and also submitted invoice wise breakup of Bank Charges for the FY 2015-16 and FY 2016-17.

9. In view of the above, I find that the appellant engaged in providing export of services and therefore, the appellant not liable to pay any service tax on the income received by them during the FY 2015-16 and FY 2016-17.

10. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2015-16 and FY 2016-17, is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.


11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Date : 2/7/23

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

To,  
M/s. Yash Balchandra Soneji,  
E-405, Venus Park Land,  
Near Vejalpur Police Chowky,  
Vejalpur, Ahmedabad – 380051

The Assistant Commissioner,  
CGST, Division-VIII,  
Ahmedabad South



Appellant

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

- 5) Guard File
- 6) PA file

