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

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. 07926305065 – टेलेफैक्स07926305136

सत्यमेव जयते

NATION TAX MARKET

DIN : 20230464SW000000F3C9

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2860/2022 /623 - 27

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-08/2023-24**
दिनाँक Date : **21-04-2023** जारी करने की तारीख Date of Issue 24.04.2023

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **56/AC/Umang A Shah/Div-6/A'bad-South/2022-23** दिनाँक: **10.08.2022** passed by Assistant Commissioner, CGST, HQ, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Umang Ashokbhai Shah
101, Samrat Complex,
Near Choice Gali, Swastik Char Rasta,
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 पूवोक्त 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 मे 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.

केन्द्रीय कर आयुक्त (अपील) अहमदाबाद OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

(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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हैतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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(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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 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.

12ण 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:

(cxxxiii) amount determined under Section 11 D;
(cxxxiv) amount of erroneous Cenvat Credit taken;
(cxxxv) 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

The present appeal has been filed by M/s. Umang Ashokbhai Shah, 101, Samrat Complex, Near Choice Gali, Swastik Char Rasta, Ahmedabad – 380 009 (hereinafter referred to as the "appellant") against Order in Original No. 56/AC/Umang A Shah/Div-6/A'bad –South/2022-23 dated 10.08.2022 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, H.Q., Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACUPS2465BST001. As per the information received from the Income Tax Department, it was found that the appellant had declared different value in their ST-3 return and in the ITR for F.Y. 2015-16. Scrutiny of the data indicated that the appellant had declared lesser taxable value amounting to Rs.10,73,366/- in the ST-3 Returns on which service tax amounting to Rs.1,61,005/- was not paid. The appellant were called upon to submit the 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-553/2020-21 dated 28.12.2020, wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.1,61,005/- 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 :

a) The demand of service tax amounting to Rs.1,61,005/- was confirmed.

b) Interest was ordered to be recovered under Section 75 of the Finance Act, 1994.

c) Penalty amounting to Rs.1,61,005/- was imposed under Section 78 of the Finance Act, 1994.

d) Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The adjudicating authority has erred in confirming the demand of service tax along with interest and penalties without any reason and discarding their evidences and claim of abatement.

ii. No finding has been recorded for discarding their contention that the turnover was less than Rs. 10 lakhs.

iii. The adjudicating authority has failed to appreciate that the basis of the SCN was not any independent inquiry but on the basis of the details available with Income Tax. Their explanation with evidences have not been accepted.

4.1 The appellant vide letter dated 09.02.2023 submitted copies of P&L Account, Balance Sheet, Capital Account and Trial Balance for F.Y. 2014-15 and also copies of invoices raised for Works Contract service and copies of invoices for purchase of material and labour. It was also requested by them to grant abatement @ 30% on Works Contract Service. Accordingly, their turnover would be less than the threshold limit of Rs. 10 Lakhs during F.Y. 2015-16.

5. Personal Hearing in the case was held on 22.02.2023. Shri A.P. Nanavaty, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in the appeal memorandum. He stated that he would submit additional written submissions containing documents of Income Tax assessment for F.Y. 2014-15.

6. The appellant vide letter dated 22.02.2023 submitted that the SCN pertains to F.Y. 2015-16 and that since there is no misstatement or suppression or fraud, the SCN is time barred. They relied upon the judgment in the case of P.V.R. Ltd. Vs. Commissioner of Service Tax and Vam Oil and Gas Exploration Services Ltd. Vs. CST, New Delhi.

Subsequently, the appellant vide letter dated 25.02.2023 submitted copies of P&L Account, Balance Sheet, Capital Account and Trial Balance for F.Y. 2014-15 and F.Y. 2015-16. They also submitted copies of invoices raised for Works Contract service and copies of invoices for purchase of material and labour.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing and the materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming the demand of service tax amounting to Rs. 1,61,005/- along with interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

8. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the appellant had declared less taxable value in their ST-3 returns as compared to that declared by them in their ITR. It is observed that as per the SCN, the appellant had not declared any taxable value in their ST-3 returns for F.Y. 2015-16. It is also observed that nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Finance Act, 1994. No cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. 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 in 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. Coming to the merits of the case, it is observed that the appellant had in their written reply dated 05.11.2020 informed the adjudicating authority that they had applied for surrender/cancellation of their Service Tax Registration vide letter dated 20.06.2005, which was submitted to the department on 12.07.2005. However, it is seen that this aspect has not been taken note of in the impugned order. Further, the appellant have in their submission before the adjudicating authority as well as in the appeal memorandum contended that out of the total income amounting to Rs. 10,73,366/-, an amount of Rs. 3,00,000/- pertained to Works Contract Service in respect of which they are eligible to abatement @30%. Therefore, their total income during F.Y. 2015-16 is Rs. 9,83,366/-, which is below the threshold limit of Rs. 10 lakhs and, therefore, they are not liable to pay service tax. The adjudicating authority has, however, rejected the claim of the appellant of having provided Works Contract Service amounting to Rs. 3,00,000/- on the grounds that the appellant failed to submit any evidence to substantiate that they had provided Works Contract Service.

9.1 It is observed that the adjudicating authority has, at Para 19 of the impugned order, tabulated the break up of the income of the appellant for F.Y. 2015-16. It is seen that the income detailed at Serial No. 12 and 15 of the said income break up is shown as receipt from Hanumant Kharamate for a total amount of Rs. 3,00,000/- (Rs. 1,50,000/- + Rs. 1,50,000/-). The appellant have vide their letter dated 09.02.2023 submitted a copy of a document dated 03.11.2015 which is addressed to Shri Hanumant

Kharamate, Changodar, Ahmedabad and it is stated that invoice for total work with material and labour for IPS Work, Parapet Work and necessary Civil Works amounting to Rs. 3,00,000/- is submitted.

9.2 The appellant have also submitted copies of some bills indicating purchase of Cement. Further, from the P&L Account for F.Y. 2015-16 submitted by the appellant, it is seen that Material Expenses amounting to Rs.1,59,751/- are shown under the head of Indirect Expenses. Considering the documents submitted by the appellant and also considering the fact that the department has not brought on record any evidence, I am of the considered view that that appellant have reasonably established their claim to have provided Works Contract Service amounting to Rs. 3,00,000/-. In respect of the Works Contract Service, the appellant are entitled to abatement @30%. Therefore, the taxable value of the Works Contract Service would be Rs. 2,10,000/-, which when added to the Supervision Income amounting to Rs. 7,73,366/- results in the total taxable value amounting to Rs.9,83,366/-, which is below the threshold limit of Rs. 10 lakhs.

10. The adjudicating authority has denied the benefit of threshold exemption to the appellant on the grounds that their income for F.Y. 2014-15 was Rs. 10,63,004/- and that they had failed to submit any proof regarding taxability/non-taxability of their income for F.Y. 2014-15. In this regard, it is observed that the appellant have vide their letter dated 25.02.2023 stated that they are submitting copies of the labour and material payment for Works Contract Invoices for F.Y. 2014-15. I have perused the documents submitted by the appellant and find the invoices submitted by them pertain to labour charges only and no invoice in respect of the materials purchase and supplied have been submitted by them. Considering the fact that the appellant is a un-registered service provider and having a very low turnover which is marginally above the threshold exemption limit, I am of the considered view that the appellant be given another opportunity to produce the documents and evidences in support of their claim of providing Works Contract Services during F.Y. 2014-15. Accordingly, it

would be in the fitness of things, if the matter is remanded back to the adjudicating authority.

11. Accordingly, I remand the matter back to the adjudicating authority for denovo adjudication. The appellant are directed to submit all relevant details and documents, in support of their claim of providing Works Contract Service during F.Y. 2014-15, before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the claim for threshold exemption after deciding the contention of the appellant to having provided Works Contract Services during F.Y. 2014-15. Needless to state, the principles of natural justice should be adhered to by the adjudicating authority in the remand proceedings.

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

13. अपीलकर्ता 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.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 21.04.2023.

Attested:

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

BY RPAD / SPEED POST

To

M/s. Umang Ashokbhai Shah,
101, Samrat Complex,
Near Choice Gali, Swastik Char Rasta,
Ahmedabad – 380 009

Appellant

The Assistant Commissioner,
CGST, H.Q,
Commissionerate : Ahmedabad South.

Respondent

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.