



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: 20230864SW000000B23D

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1237/2023 / 5046 - 5050
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-89/2023-24  
दिनांक Date : 25-08-2023 जारी करने की तारीख Date of Issue 28.08.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of OIO No. 152/WSO8/AC/KSZ/2022-23 दिनांक: 15.12.2022 passed by Assistant Commissioner, CGST, Division VIII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s. Kushalbhai Jivrajbhai Suthar,  
F-302, Shrinandnagar, Nema Road,  
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 :

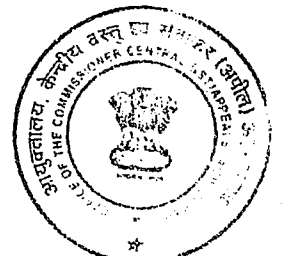
**Revision application to Government of India:**

(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 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 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 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 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 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.

- 17 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:

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) 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

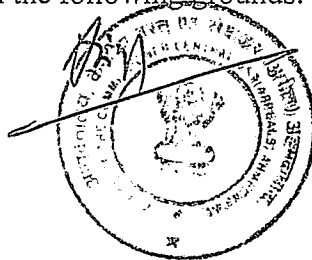
The present appeal has been filed by M/s. Kushalbhai Jivrajbhai Suthar, F-302, Shrinandnagar, Nema Road, Vejalpur, Ahmedabad – 380051 (hereinafter referred to as “the appellant”) against Order-in-Original No. 152/WS08/AC/KSZ/2022-23 dated 15.12.2022 (hereinafter referred to as “the impugned order”) passed 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. APDPS8332K. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 20,32,137/- during the FY 2015-16, 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 had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

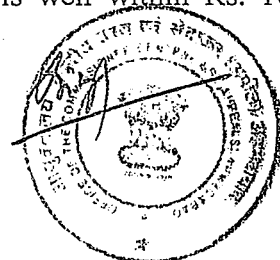
2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/WS0802/O&A/TPD(15-16)/APDPS8332K/2020-21/5490 dated 22.12.2020 demanding Service Tax amounting to Rs. 2,94,659/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed 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, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,94,659/- 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 FY 2015-16. Further (i) Penalty of Rs. 2,94,659/- 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.

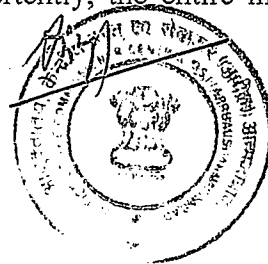
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:



- The appellant engaged in trading activity of purchasing and selling furniture and doing business in the trade name of "Creative Furniture". The appellant duly registered with Gujarat State VAT Authority vide TIN: 24074101350 as well as with Central Sales Tax Authority vide No: 24574101350 and filed VAT returns and discharged VAT liability according to the provisions of Gujarat VAT Act, 2005 from time to time.
- As per section 66D(e) of Finance Act, 1994 (Negative list of services) Trading of goods is not subject to Service tax at all. The invoices are raised for the value of goods sold. Hence, there is no question of demanding service tax on such value of goods as the demand is not sustainable considering clear provisions of charging section that mandates that the levy of service tax is on service and not on goods.
- The value of turnover as per Profit & Loss Account & ITR has been reported in Annual VAT return and VAT Liability has been paid thereon. There does not remain any doubt that VAT has been paid on full value of turnover and demanding service tax again on the same would clearly lead to double taxation. The Whole amount of turnover from business of sale of furniture is declared in Income Tax Return (ITR) form by mistake as sale of service.
- The appellant submitted below mentioned documents along with appeal memorandum:
  - i. Copy of ITR Form for the FY 2014-15 & FY 2015-16  
Copy of Profit & Loss Account and Balance sheet for the FY 2015-16
  - ii. Copy of Annual VAT return for the FY 2015-16 and Challans for discharging VAT liability for said period
  - iii. Copy of VAT Registration Certificate and CST Registration Certificate
  - iv. Sample copies of sales invoices
  - v. Sample copies of purchase invoices
- The appellant further submitted that they were eligible for small service providers threshold exemption as per Notification No. 33/2012-ST. for the F.Y. 2015-16 because in the preceding F.Y. 2014-15, appellant has not provided a single rupee service. Hence, in the current year services provided by the appellant was not liable to pay service tax on the amount of Rs. 2,45,093/- which is well within Rs. 10,00,000/- exemption limit.



- The SCN and the impugned order has been issued merely on the based of ITR and 26AS, without establishing that the entire amount received by the appellant being consideration for services provided and without examining whether of any exemption or abatement available to the appellant or not. Further, it is not legal to presume that the entire amount was on account of consideration for providing services without any evidences. In this regard, they relied on the following case laws:
    - a) M/s. Amrish Rameshchandra Shah V/s. Union of India and others - TS-77-HC  
2021 Bom ST
    - b) Sharma Fabricators & Erectors Pvt. Ltd. - 2017 (5) G.S.T.L. 96 (Tri. - All.)
    - c) Kush Constructions v. CGST NACIN - 2019 (24) GSTL 606 (Tri. - All.)
    - d) Alpa Management Consultants P. Ltd. v. CST - 2007 (6) ST.R. 181 (Tri. - Bang.)
    - e) Tempest Advertising (P) Ltd. v. CCE - 2007 (5) S.T.R. 312 (Tri. Bang.)
    - f) Free Look Outdoor Advertising v. CCE - 2007 (6) S.T.R. 153 (Tri.-Bang.)
    - g) Kirloskar Oil. Engines Ltd. v. CCE - 2004 (178) E.L.T. 998 (Tribunal)
    - h) Hindalco Industries v. CCE - 2003 (161) E.L.T. 346 (T).
  - The SCN has been issued and demand has been confirmed by invoking the extended period under Section 73(1) of the Finance Act, 1994. However, from the above facts it can be very well established that the appellant was not liable to pay service tax. Hence, charging suppression and invoking extended period and levying service tax is not valid.
  - Entire demand is raised invoking extended period of limitation. However, there is not an iota of evidence how appellant has suppressed any fact. In fact, entire notice is issued merely based on assumption and presumptions which have no legs to stand.
  - Since there is no service tax liability, the demand of interest on Service Tax under Section 75 of the Finance Act, 1944 and imposing penalties under Section 77 of the Finance Act, 1944 not correct.
  - On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be set aside.
4. Personal hearing in the case was held on 18.08.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the appellant sold furniture and rendered labour service for carpentry jobs. However, inadvertently, the entire income was





The negative list shall comprise of the following services, namely :-

(a) .....

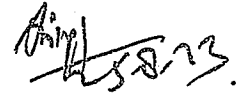
(e) trading of goods;"

8. As regard the remaining service income of Rs. 2,45,093/- for the FY 2015-16, I find that the appellant is eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 as for the FY 2015-16, as their total taxable value of service during the Financial Year 2014-15 was NIL i.e. below Rs. 10,00,000/- as per their Profit & Loss Account and Income Tax Return for the FY 2014-15. In view of the above, I hold that the appellant is not liable to Service Tax for the income received by them during the FY 2015-16. Since the demand of service tax is not-sustainable on merits, there does not arise any question of charging interest or imposing penalty in the case.

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

10. 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)

Attested

Date : 25.08.2023



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



**By RPAD / SPEED POST**

To,  
M/s. Kushalbhai Jivrajbhai Suthar,  
F-302, Shrinandnagar,  
Nema Road, Vejalpur,  
Ahmedabad – 380051

Appellant

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

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



