



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: 20230864SW000000E921

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2987/2023 / 5076 - 30
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-97/2023-24  
दिनांक Date : 28-08-2023 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. 82/WSO3/AC/CSM/2022-23 दिनांक: 30.12.2022 passed by Assistant Commissioner, CGST, Division III, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s. Udayanbhai Sevantil Shah,  
C/o. Suchem Laboratories,  
10/13, Phase-I, GIDC-Vatva,  
Ahmedabad-382445.

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 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 or 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 रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

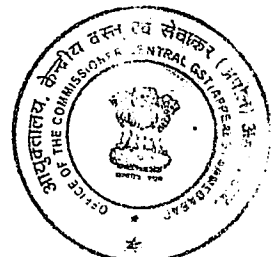
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 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 का न्यायालय 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.

10 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)-

- (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.

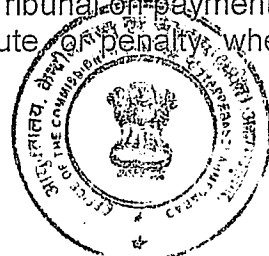
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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."



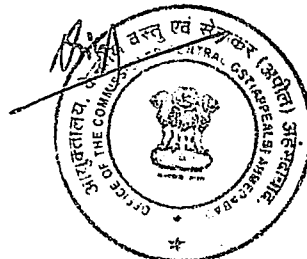
ORDER-IN-APPEAL

The present appeal has been filed by Dr. Udayanbhai Sevantilal Shah, C/o. Suchem Laboratories, 10/13, Phase-I, GIDC - Vatva, Ahmedabad – 382445 (hereinafter referred to as “the appellant”) against Order-in-Original No. 82/WS03/AC/CSM/2022-23 dated 30.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division III, 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. AEQPS9306B. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2016-17, it was noticed that the appellant had earned an income of Rs. 28,10,114/- 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 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.

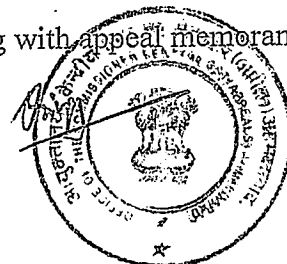
2.1 Subsequently, the appellant were issued Show Cause Notice No. AR-II/Div-III/S.T./UDAYANBHAI SEVANTILAL SHAH/2016-17 dated 12.10.2021 demanding Service Tax amounting to Rs. 4,21,517/- for the period FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77 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. 4,21,517/- 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 2016-17. Further (i) Penalty of Rs. 4,21,517/- 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; (iii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; and (iv) Penalty of Rs. 20,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 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 is MBBS, MS in (General Surgery) Doctor and engaged in providing health care services to patients.
- The appellant was providing health care services to the patients, which is exempted from service tax, accordingly; the appellant did not obtain Service Tax registration.
- The appellant submitted that the order is passed in Gross violation of natural justice in as much as the order is passed without providing reasonable opportunity of hearing to the appellant. Thus, the adjudicating authority passed ex-parte order. In the case of appellant, the same Assistant Commissioner within the same jurisdiction and having same case & facts for the said period passed the Order-in-Original No. 01/WS03/AC/CSM/2022-23 dated 14.06.2022, wherein he has dropped all proceedings initiated against the appellant without any levy of tax, interest and penalty.
- Without prejudice to the other submissions, the appellant submitted that the activity of health care does not attract Service Tax. However, the appellant submitted that the services provided by them are exempted from service tax by Notification No.25/2012-Service Tax dated- 20th June, 2012; in which it clearly states that Health care services by a clinical establishment, an authorized medical practitioner or Para-medics are exempted from Service Tax.
- In the present case, the appellant is MBBS, MS in (General Surgery) Doctor and engaged in providing health care services to patients as an authorized Medical Practitioner. They have submitted copy of Certificate of Medical Council.
- The appellant is eligible for the benefit of exemption from Service Tax because he is an authorized medical practitioner providing the health care services within the same meaning as per the definition specified in the Act. Hence no service tax can be levied on the appellant and requirement for taking the service tax registration is also not applicable as it is exempt from service tax.
- The appellant vide their various replies submitted the copy of the medical degree as well as the registration with the Medical Council. The acknowledged copy submitted with the department is submitted by the appellant along with appeal memorandum.



- On the basis of their aforesaid submission, they requested to set aside the impugned order.

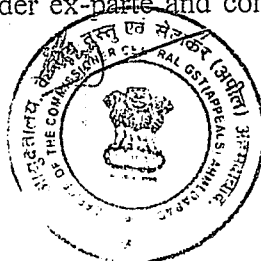
4. Personal hearing in the case was held on 21.08.2023. Shri Gunjan Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted that against the same show cause notice the same original authority has issued two orders, fir one dated 13.06.2022 in favour of the appellant and the second one dated 30.12.2022 against the appellant. He submitted that the appellant is a medical professional holding degree of Master of Surgery. His services are exempted under the Notification No. 25/2012-ST. He 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 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 2016-17.

6. It is observed that the main contentions of the appellant are that (i) the appellant was providing health care services to the patients which is exempted from service tax by virtue of Entry No. 2 of Notification No. 25/2012-ST; and (ii) the same Assistant Commissioner within the same jurisdiction and having same case & facts for the said period passed the Order-in-Original No. 01/WS03/AC/CSM/2022-23 dated 14.06.2022, wherein he has dropped all proceedings initiated against the appellant without any levy of tax, interest and penalty.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order passed ex-parte.

7. I find that the Assistant Commissioner, CGST, Division-III, Ahmedabad South, vide his Order-in-Original No. 01/WS03/AC/CSM/2022-23 dated 14.06.2022 dropped proceeding initiated against the appellant vide the Show Cause Notice No. AR-II/Div-III/S.T./UDAYANBHAI SEVANTILAL SHAH/2016-17 dated 12.10.2021 demanding Service Tax amounting to Rs. 4,21,517/- for the period FY 2016-17. I also find that the adjudicating authority has again vide the impugned order decided the vary same Show Cause Notice No. AR-II/Div-III/S.T./UDAYANBHAI SEVANTILAL SHAH/2016-17 dated 12.10.2021 again, but this time he has passed order ex-parte and confirming the demand of



Service Tax amounting to Rs. 4,21,517/- for the period FY 2016-17 along with interest and penalties. Thus, I find that the adjudicating authority has passed the impugned order without verifying the office records and such order issued by him not sustainable in any way.

8. In view of the above, without going in to further discussion, I am of considered opinion that the impugned order passed by the adjudicating authority confirming demand of service tax of Rs. 4,21,517/- for the period FY 2016-17, is not legally sustainable and is liable to be set aside. Since the demand of service tax is not sustainable, 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

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

Date : 28.08.2023



**By RPAD / SPEED POST**

To,  
Dr. Udayanbhai Sevantilal Shah,  
C/o. Suchem Laboratories,  
10/13, Phase-I, GIDC - Vatva,  
Ahmedabad - 382445

Appellant

The Assistant Commissioner,  
CGST, Division-III,  
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 III, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

~~5) Guard File~~

6) PA file

