



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240464SW000000D468

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4290/2023 / 4613 - 17
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-01/2024-25 and 15.04.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	24.04.2024
(ङ)	Arising out of Order-In-Original No. 300/DC/SUMS CORPORATION/ABAD SOUTH/2022-23 dated 22.02.2023 passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Sums Corpsolutions LLP, <b>(New Address)</b> J-404, Garden Residency-1, South Bopal, B/H Shyamvilla Bunglows, Ahmedabad - 380058

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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।

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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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.

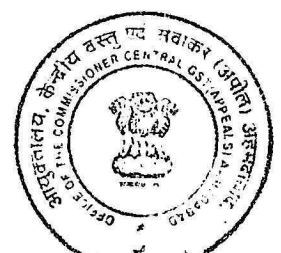
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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. Sums Corpsolutions LLP, 4<sup>th</sup> Floor, 403 Aditya Arcade, Near Choice Restaurant, Nr. Swastik Char Rasta, Navrangpura, Ahmedabad - 380009 (hereinafter referred to as the “*appellant*”) against Order-in-Original No. 300/DC/SUMS CORPOSOLUTION ABAD SOUTH/2022-23 dated 24.02.2023 (hereinafter referred to as “*the impugned order*”) passed by the Deputy Commissioner (Technical), Central GST, Ahmedabad South (hereinafter referred to as “*the adjudicating authority*”).

2. Briefly stated, the facts of the case are that the appellant having service tax registration no. ACWFS9451RSD001 was found under discrepancies between the values declared in their Service Tax Returns and the data obtained from their Income Tax Returns and TDS records. It appears that the appellant may have reported a lower value in their Service Tax Returns than what was indicated in their Income Tax Returns and TDS data. Despite requests for evidence and multiple invitations to attend personal hearings, the appellant has not responded.

2.1 Subsequently, the appellant were issued Show Cause Notice bearing File No. V/WS06/O&A/SCN-486/2020-21 dated 26.12.2020 wherein:

- a) Demand and recover an amount of Rs. 1,88,111/- under proviso to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as ‘*the Act*’).
- b) Impose penalty under the provisions of Section 77(1)(c), 77(2) and 78 of the Act.

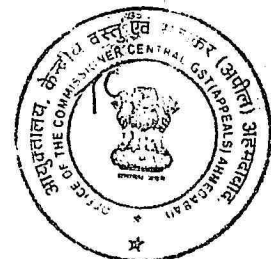
2.2 The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein:



- a) The demand of service tax amounting to Rs. 1,88,111/- was confirmed under section 73(1) of the Act by invoking extended period along with interest under section 75 of the Act.
- b) Penalty amounting to Rs. 10,000/- was imposed under section 77(2) of the Act as they failed to obtain service tax registration.
- c) Penalty amounting to Rs. 1,88,111/- was imposed under 78 of the Act.
- d) Penalty was imposed under 77(1)(c) of the Act.

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 has claimed threshold exemption up to Rs. 10 lakh.
- Income as per Form 26AS is in excess of actual income of the appellant.
- The appellant submitted a reconciliation of the income in Audited Financial Statements and income reflected in Form 26AS.
- Service tax cannot be demanded merely on Income Tax Returns or Form 26AS.
- The appellant cited various case laws (I) J.I. Jesudasan vs. CCE 2015(38) S.T.R. 1099 (Tri. Chennai) (II) Alpha management Consultant P. ltd. vs. CST 2006 (6) STR 181(Tri. Bang.) (III) Tempest Advertising (P) Ltd. v. CCE 2007 (5) STR 312(Tri-Bang.) (IV) Turrent Industrial Security vs. CCE 2008 (9) STR 564(Tri. Kolkata)



- Extended period of limitation cannot be invoked in the absence of fulfillment of the conditions under sub-section (1) to Section 73.
- Reliance is placed on Saboo Coating Ltd. v. Commr. of C.Ex., Chandigarh [2014(36)STR447(Tri. Del)] and Prolite Engineering Co v. UOI [1995(75) ELT257 (Guj)] wherein it has been held that non-disclosure of facts not required by law cannot be attributable to suppression.
- Where demand is not sustainable, interest and penalties cannot be levied.

4. Personal hearing in the case was held on 18.03.2024. Ms. Forum and Ms. Amrin appeared for PH. They reiterated the contents of the written submission and requested to allow the appeal.

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 Financial Year 2015-16.

6. I find that the appellant, registered under Business auxiliary service, Commercial training or coaching and Manpower recruitment/supply agency service has paid service tax on the gross value of Rs. 31,71,716/-. The appellant asserted that they had taken the benefit of threshold limit in the light of Notification No. 33/2012-ST dated 20.06.2012. They claimed a threshold exemption of Rs. 9,90,000/- and obtained registration in the month of October 2015 and subsequently discharged service tax. For ease of reference Notification No. 33/2012-ST dated 20th June, 2012 are produced, which read as under:



Notification No. 33/2012 - Service Tax

\*\*\*\*\*the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakhs rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

(i).....

(ii)-----

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakhs rupees in the preceding financial year.

6.1 I have read the aforesaid provision of Notification 33/2012-ST and noted that in order to qualify the exemption from service tax on the taxable value upto threshold limit under the said notification, the aggregate income of the appellant from one or more premises must not exceed Rs. 10 lakhs in the preceding financial year. The appellant failed to submit any financial records to substantiate the claim. However, I find that the impugned order was issued **ex-parte** and the appellant were not heard during personal hearing given by the adjudicating authority, they are given opportunity to provide the necessary documents before the adjudicating authority, based on which their claim in terms of not paying service on the taxable value of Rs. 9,90,000/- under the Notification No. 33/2012-ST dated 20.06.2012 can be fulfill.

7. Now, out of the impugned value of Rs. 12,54,076/-, it appears that for the remaining value of Rs. 2,64,076/-, the appellant assert no tax liability. They argued that the income as per 26AS is in excess of actual income and to support this claim, they provided a reconciliation between the income as shown in Audited Financial statement (AFS) and the income reflected in Form 26AS certificate, the details are as under:



Name of party	Amount in AFS	Amount in 26AS	Difference
Adani Gas Ltd.	340000	340000	0
Cygnat Infotech Pvt. Ltd.	2200000	2200000	0
Cygnat Enterprise Pvt. Ltd.	80000	80000	0
E-Infochips Limited	124053	111914	12139
Karam Industries	1273018	1565878	-292860
Einfochips Limited Unit A	80000	80000	0
Symbiosis Society	41921	48000	-6079
KBC Sales and Service	22723	0	22723
Total difference			-2,64,076/-

7.2 On the basis of the above reconciliation of income the appellant explained that one of the appellant's parties i.e. E-Infochips Limited had discrepancy of Rs. 12,139/-, attributable to unreimbursed expenses without TDS deduction but with service tax paid. To substantiate the claim the appellant submitted two debit notes amounting to Rs. 7,831/- and Rs. 4,308/-. Similarly, regarding another party of the appellant named Symbiosis Society, Rs. 6,079/- difference were raised because the tax was deducted on the gross value of Rs. 48,000/-, which is inclusive of service tax and cess while the appellant had received income Rs. 41,921/-. For KBC Sales and Services, no TDS was deductible under Section 194J as the total income didn't surpass Rs. 30,000/-. The appellant provided similar explanation for discrepancies in income related to other parties listed in the above reconciliation table.

7.3 It is important to note that that the Show Cause Notice (SCN) was adjudicated ex-parte without conducting a personal hearing, and the reconciliation of income was not presented before the adjudicating authority but was submitted for the first time at appeal stage. This matter needs through verification and hence it is being remanded back to the adjudicating authority for fresh adjudication.





8. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant are directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

9. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

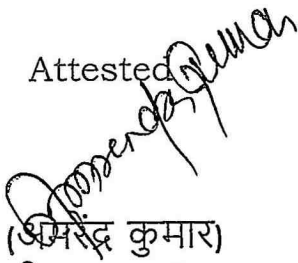
The appeal filed by the Appellant stands disposed of in above terms.



ज्ञानचंद जेन  
आयुक्त (अपील्स)

Date : 15.04.2024

Attested



(अनंद कुमार)  
अधीक्षक (अपील्स)  
सी. जी. एस. टी, अहमदाबाद



**BY RPAD/ SPEED POST**

To

M/s. Vipul Fulgiri Goswami,  
M/s. Sums Corpsolutions LLP,  
4<sup>th</sup> Floor, 403 Aditya Arcade  
Near Choice Restaurant,  
Nr. Swastik Char Rasta,  
Navrangpura,  
Ahmedabad – 380009

**Copy to :**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division VI, Ahmedabad South
4. The Superintendent (Appeals) Ahmedabad (for uploading the OIA).
- ✓ 5. Guard File.
6. P.A. File.

