



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:- 20240564SW000001976E**

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4646/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-06/2024-25 and 24.04.2024
(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	03.05.2024
(ङ)	Arising out of Order-In-Original No. 255/WS08/AC/KSZ/2022-23 dated 24.02.2023 passed by The Assistant Commissioner, CGST, DIV-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Shah & Jhalawadia, (Chartered Accountants), 1001, 10th Floor, Landmark, Besides Titanium City Centre Mall, Anandnagar Road, Satellite, Ahmedabad

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:**

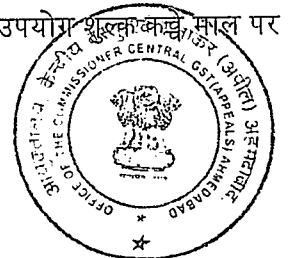
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 शुल्क के माल पर 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 रूपये या उससे कम होतो 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 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।

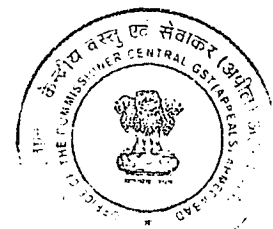
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Shah & Jhalawadia, C-1001 & 1002, Titanium City Centre, Anand Nagar Road, Satellite, Ahmedabad (hereinafter referred to as the "appellant") against Order-in-Original No. 255/WS08/AC/KSZ/2022-23 dated 24.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner Division-VIII, Central GST, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is registered as a service provider for taxable service "Chartered Accountant Services" with Service Tax Registration No. ACVFS1999KSD001.

As per the information received by the Income Tax Department the sale of services declared by the appellant in their Income Tax Return and TDS data for the Financial Years 2015-16 & 2016-17 was found to be in excess of the value declared in their ST-3 returns for the same period. It was observed that the appellant has mis-declared the gross value of Sale of Services in the ST-3 returns and short paid/not paid the applicable service tax.

Subsequently, the appellant were requested to produce relevant documents like Balance Sheet, ITRs, 26AS for the period 2015-16 and 2016-17 for verification; however the appellant failed to produce the required documents.

The service tax was calculated on the basis of higher value (value difference in ITR and STR) or (value difference in TDS and STR) as provided by the Income Tax department for the F.Y. 2015-16 and 2016-17. By considering the said amount as taxable income, the service tax liability was calculated. Details are as follows:-



Sr. No.	Details	Amount (in Rs.)
1.	Higher value(value difference in ITR and STR) or value diff in TDS and STR) <b>(F.Y. 2015-16)</b>	5,20,313
2.	Total Service tax @ 14.5%	75,445
3.	Higher value(value difference in ITR and STR) or value diff in TDS and STR) <b>(F.Y. 2016-17)</b>	2,02,484
4.	Total Service tax @ 14.5%	30,372
5.	Total Service Tax	1,05,817

2.1 Subsequently, the appellant were issued Show Cause Notice bearing File No. CGST/WS0803/O&A/TPD(15-16)/ACVFS1999K/2020-21 dated 21.12.2020 wherein:

a) Demand and recover an amount of Rs. 1,05,817/- during the F.Y. 2015-16 and 2016-17 under proviso to Sub Section (1) of Section 73 of the Act read with Rule 6 of Service Tax Rule, 1994 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 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. 1,05,817/- 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 for failure to assess himself the tax due on the service provided by him and furnish a return in the format of ST-3 return within the specified time.

c) Penalty amounting to Rs. 1,05,817/- was imposed under 78 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:-

- Violation of principles of natural justice in issuing the impugned order without providing an opportunity to be heard.
- Non-receipt of show cause notice and hearing letters, resulting in the loss of the right to respond.
- Lack of evidence to establish that the income was towards providing a taxable service.
- Against the demand for service tax for the impugned period already covered during a previous service tax audit.
- Request for threshold exemption before demanding service tax.
- Incorrect computation of taxable income and demand for service tax.
- Lack of reasonable grounds to believe in malafide intention to evade payment of service tax for invoking the extended period.
- Expiry of the period for serving notice as per Section 73 of the Finance Act, 1994.

4. Personal hearing in the case was held on 09.04.2024. Shri Bhavesh T. Jhalawadia, Chartered Accountant appeared on behalf of the appellant. He reiterated the contents of the written submission made by them and requested to allow their 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 and 2016-17.

6. It is observed from the case records that the appellant has obtained service tax registration (ST-2) on 20.11.2015 and have filed their half yearly Service Tax Returns (ST-3) during the period F.Y. 2015-16 (October to March 2016) and both halves period of the year pertaining to 2016-17. However, the SCN in the case was issued only on the basis of data received from the Income Tax department. Hence, it is apparent that, no further verification has been caused by the jurisdictional office before issuing the SCN and impugned order had also been issued ex-parte.

7. I find that the appellant has also produced documents which confirm that the 'Service Tax Audit' of their records were conducted for the period May 2015 to June 2017 and Final Audit Report No. 333/2018-19 (ST) dated 29.07.2018 was issued by the Assistant Commissioner, Central Tax Audit, Circle-IV, Ahmedabad, wherein it is recorded that:

1	Name of the Unit	M/s. Shah & Jhalawadia, C-1001 & 1002, Titanium City Centre, Anand Nagar Road, Satellite, Ahmedabad
2.	Category	Small scale
3.	STC No.	ACVFS1999KSD001
4.	Commissionerate/Division /Range in which located	Ahmedabad-South/Vejalpur/III
5.	Service provided	Chartered Accountant Service
6.	Service received	--
7.	Period of last Audit	First Audit
8.	Period for which Audit undertaken	May'15 to June'17
9.	Audit objections, if any	Revenue Para 01 (non-payment of interest on late payment of service tax) and Rev. Para 02 (wrong avilment of Cenvat Credit on ineligible input service. <b>Both Rev. para settled as service tax with all dues paid by the appellant.</b>



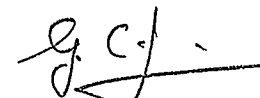
8. In view of the above facts, it is established that the department was fully aware of the services rendered by the appellant during the relevant period i.e. F.Y. 2015-16 and 2016-17 as well as of the Service Tax paid and ST-3 returns filed. Further, upon verification of the ST-3 returns vis-à-vis financial records of the appellant, a Final Audit Report No. 333/2018-19 (ST) dated 29.07.2018 was issued. The assessment for the impugned period i.e. 2015-16 and 2016-17 was finalized by the aforementioned FAR. Further, the objections raised by audit was nowhere similar to the discrepancies raised vide the SCN and confirmed vide the impugned order. It is also observed that the audit report was issued much before the issuance of SCN. Hence, I find that the SCN as well as the impugned order has been issued indiscriminately without causing any verification and is therefore legally unsustainable and liable to be set aside.

9. In view of the discussions carried out in the foregoing I am of the considered view that the demand of Service Tax amounting to Rs.1,05,817/- confirmed vide the impugned order is unsustainable legally as well as on merits and liable to be set aside. As the demand of service tax fails to sustain, question of interest and penalty does not arise. Accordingly, the demand for service tax, confirmed vide the impugned order along with interest and penalty are set aside and the appeal filed by the appellant is allowed.

10. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

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

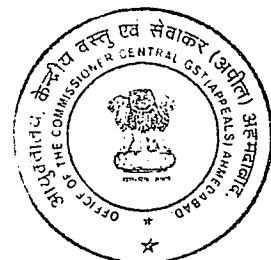
The appeal filed by the Appellant stands disposed of in above terms.



ज्ञानचंद जैन

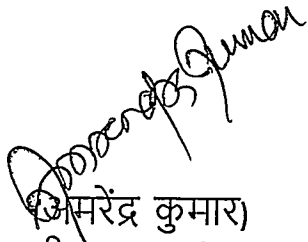
आयुक्त (अपील्स)

Date : 24.04.2024





Attested



अमरेंद्र कुमार  
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

**BY RPAD/ SPEED POST**

To

M/s. Shah & Jhalawadia,  
C-1001 & 1002, Titanium City Centre,  
Anand Nagar Road, Satellite, Ahmedabad

**Copy to :**

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

