



सत्यमेव जयते

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

By SPEED POST

DIN:- 20240564SW000000B371

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4809/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-07/2024-25 and 26.04.2024
(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. 12/AC/Vijay Padhariya/Div-II/A'bad South/JDM/2023-24 dated 19.06.2023 passed by The Assistant Commissioner, CGST, DIV-II, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. VIJAY DHANJIBHAI PADHARIYA, 36, Mangal Murti Society, Laheri Patel Farm, Vatva, Ahmedabad-382440

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:

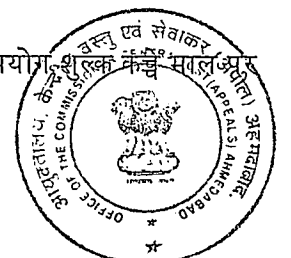
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 :-

(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 के लिए 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 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 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 अपील 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।

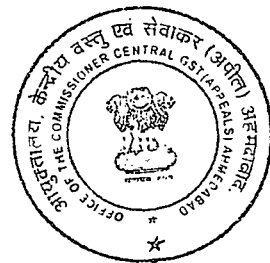
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

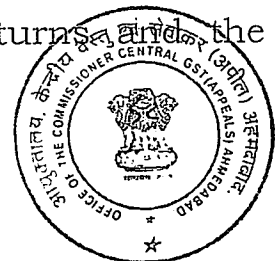
The present appeal has been filed by M/s. Vijay Dhanjibhai Padhriya, 36, Mangal Murti Society, Laheri Patel Farm, Vatva, Ahmedabad – 382440 (hereinafter referred to as the “*appellant*”) against Order-in-Original No. 12/AC/Vijay Padhariya/Div-II/A’bad South/JDM/2023-24 dated 19.06.2023 (hereinafter referred to as “*the impugned order*”) passed by the Assistant Commissioner Division-II, 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 "Work Contract Service" with Service Tax Registration No. AONPP5745ESD001.

As per the information received by the Income Tax Department the value of services declared by the appellant in their Income Tax Return and TDS data for the financial year 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 net amount paid to the appellant by various parties exceeded the value of services declared in the ST-3 returns, indicating suppression of taxable value and evasion of service tax. Accordingly, the differential service tax amount was calculated and the appellant was made liable for service tax to be paid.

Subsequently, the appellant were requested to produce relevant documents for the period from 2016-17 to 2017-18 (up to June 2017) for verification and reconciliation.

The appellant complied with the request and submitted documents including reconciliation of sales, reconciliation of TDS, Form 26AS for F.Y. 2015-16, 2016-17 and 2017-18, and copies of ST-3 returns for 2016-17 and the first half year of F.Y. 2017-18. Upon scrutiny of the submitted documents, discrepancies were identified between the value of taxable service declared in the ST-3 returns and the



amount paid to the appellant by various parties as per Form 26AS.
Details are as follows:-

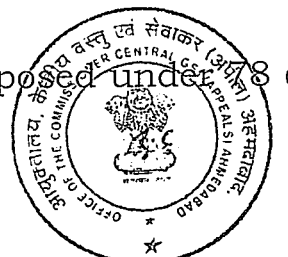
Year	Taxable receipts on the basis of Balance Sheet/ITR/26AS	Taxable value declared in ST-3 returns	Difference in Taxable value	Service Tax payable
2016-17	51,02,018	38,27,841	12,74,177	1,91,127
2017-18	17,49,459	0	17,49,459	2,62,419
Total	68,51,477	38,27,841	30,23,636	4,53,546

2.1 Subsequently, the appellant were issued Show Cause Notice bearing File No. WS0203/TPD16-17/SCN-Vijay Dhanjibhai Padhariya/2020-21 dated 01.04.2022 wherein:

- a) Demand and recover an amount of Rs. 4,53,546/- during the F.Y. 2016-17 and 2017-18 (upto June 2017) 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. 4,53,546/- 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(1) of the Act..
- c) Penalty amounting to Rs. 4,53,546/- was imposed under section 78 of



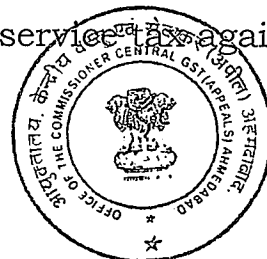
the Act.

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:-

- Impugned order has been passed by not following the documentary evidence produced.
- The appellant has submitted reconciliation statement for the justification of difference in value with documentary evidences and proper reconciliation statement.
- Issuing SCN and confirming demand based on ITR and 26AS is liable to be dropped.
- The appellant cited the case of M/s Amrish Rameshchandra Shah vs. UOI and ors. (TS-77-HC-2021 Bom ST) wherein Bombay High Court has set aside and quashed the SCN dated 31/12/2020 issued merely based on the information received from the IT department.
- The appellant has also taken reference in the case of Sharma Fabricator and Erectors Pvt. ltd. [2017 (5) G.S.T.L. 96 (Tri-All.).
- Charge of suppression and invoking Extended period not applicable.

4. Personal hearing in the case was held on 18.03.2024. Shri Keyur Kamdar, Chartered Accountant appeared for Personal Hearing on behalf of the appellant. He reiterated the contents of the written submission 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

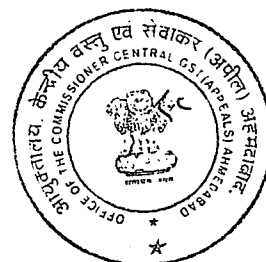


the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period Financial Year 2016-17 and 2017-18 (upto June 2017).

6. I find that the appellant, registered under 'Works Contract Service' has paid service tax on the gross value of Rs. 38,27,841/- as per the ST-3 return for the F.Y. 2016-17. However, they filed Nil ST-3 return for 2017-18 (April to September 2017). The adjudicating authority confirmed the demand of service tax for the amount of Rs. 1,91,127/- during the F.Y. 2016-17 and Rs. 2,62,419/- during the F.Y. 2017-18 (upto June 2017) based on the differential taxable value comparing the income shown in their Form 26AS certificate vis-à-vis income shown in ST-3 returns. The appellant argue that they are not liable to pay service tax. In justification of their claim the appellant provided year wise reconciliation statement between the income as shown in P & L Account and the income reflected in Form 26AS certificate, the details are as under:

F.Y. 2016-17

Particulars	Amount
Amount as per 26AS	51,02,018/-
Less: (i) Amount of Service tax on which TDS deducted by the service recipient (Rs. 44,02,018 (-) Rs. 38,27,840/-	5,74,178/-
(ii) TDS deducted on provisional basis for which services are provided and invoice issued in 2017-18	7,00,000/-
Value of service shown in P & L Account as well as in ITR	38,27,840/-
Taxable value on which service tax paid and reflected in ST-3 returns	38,27,840/-
Difference	NIL



F.Y. 2017-18

Particulars	Amount
Amount reflected in old Form 26AS	17,49,459/-
Less: Two wrong entries reflected in Form 26AS which are rectified by the service recipient later on (Rs. 6,20,244/- (+) Rs. 3,62,555/-)	9,82,799
Amount reflected in updated Form 26AS	7,66,660/-
Value of services shown in P & L Account as well as ITR	7,66,660/-
Value on which GST paid and shown in GSTR-9 (Date of invoice 26/11/2017)	7,66,660/-
Taxable value on which service tax payable	NIL

7. On the basis of the above reconciliation of income the appellant explained that their 26AS for the F.Y. 2016-17 carries wrong data in as much as their customers deducted TDS on gross amount including service tax. I have analyzed 26AS certificate for the F.Y. 2016-17 submitted by the appellant and noticed that their customer named as Haribhai Pankejbhai Nair has deducted tax under Section 194C of the Income Tax Act, 1961. I also find that there are four entries of deduction of TDS, one of them pertains to deduction of tax amounting to Rs. 44,020/- over Rs. 44,02,018/-. The appellant argues that Rs. 44,02,018/- carries service tax also. In support of their claim they have provided three invoice sr. no. 01 to 03 all dated on 09.06.2015 issued to H-Cube Industries, G.I.D.C. Vatva, Ahmedabad. I have analyzed all these invoices and found that the appellant had provided services to H-cube Industries and issued invoices for the total amount of Rs. 44,02,018/- which included service tax Rs. 5,74,176/-.

7.1 Regarding reconciliation of income of Rs. 7,00,000/- the appellant contested that TDS of Rs. 7,000/- were deducted on advance payment of Rs. 7,00,000/- by the service recipient H-Cube Industries, for which invoice were issued in 2017-18. The appellant



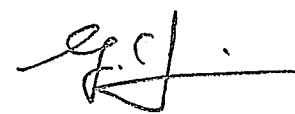
informed the appellate authority that they have raised invoice value from Rs. 7,00,000/- to Rs. 9,04,658/- (Rs. 7,66,660/- + Rs. 1,37,998/- as GST) in F.Y. 2017-18 and hence they argued that they are not liable to pay service tax on Rs. 7,00,000/-.

7.2 In respect of the impugned value in F.Y. 2017-18 (up to June 2017) the appellant argued through their submitted reconciliation of income that Rs. 6,20,244/- and Rs. 3,62,555/- were wrongly shown by their customer Haribhai Pankejbhai Nair, which were subsequently removed from 26AS. In support of the claim they have provided old 26AS certificate and updated 26AS certificate. Out of impugned value during the F.Y. 2017-18, the appellant have contested that they have paid GST on Rs. 7,66,660/-. The appellant have submitted copy of GSTR-9 and invoice dated 26.11.2017, financial records like P & L Account and Balance sheet and respective ledger, trail balance, ITR copy for A.Y. 2018-19 (F.Y. 2017-18) demonstrating income from sale of service Rs. 7,66,650/-.

8. In view of the above discussion, the impugned order is set aside and appeal is allowed.

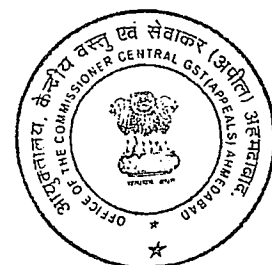
9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

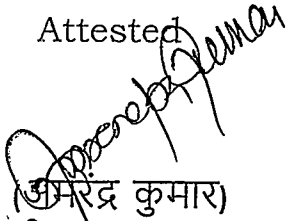


ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 26.04.2024



Attested



(उमरेद्र कुमार)

अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

BY RPAD/ SPEED POST

To

M/s. Vijay Dhanjibhai Padhriya,
36, Mangal Murti Society,
Laheri Patel Farm, Vatva,
Ahmedabad - 382440

Copy to :

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

