



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:- 20240564SW0000444F57

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1781/2024
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-15/2024-25 and 29.04.2024
(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. 231/AC/Div-I/MPU/2023-24 dated 04.09.2023 passed by The Assistant Commissioner, CGST, DIV-I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Sushilaben Shivilal Jayswal, Bungalow No. 21, Meghdhara Society, Opp. Ramani Chal, Rakhial, Ahmedabad - 380021

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 प्रकिया 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 हों।

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.

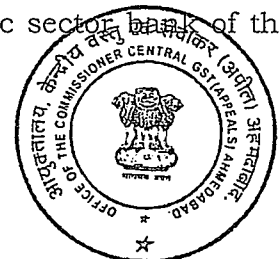
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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."



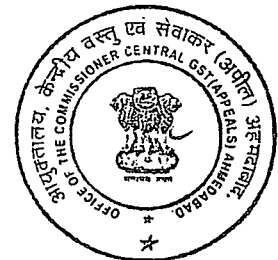
अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Sushilaben Shivilal Jayswal, Bunglow No. 21, Meghdhara Society, Opp. Ramani Chal, Rakhial, Ahmedabad - 380021 (hereinafter referred to as '*the appellant*') against Order in Original No. 231/AC/Div-I/MPU/2023-24 dated 04.09.2023 [hereinafter referred to as '*impugned order*'] passed by the Assistant Commissioner, CGST & CEx, Division-I, Ahmedabad South Commissionerate [hereinafter referred to as '*adjudicating authority*'].

2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax and were holding PAN No. ADTPJ2100Q. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2015-16, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, the appellant were calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers considering the services provided by the appellant as taxable determined the Service Tax liability for the F.Y. 2015-16 on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	60,54,713	14.50%	8,77,933/-

3. The appellant was issued Show Cause Notice No. V/15-457/Div-I/Sushilaben Shivilal Jayswal/21-22 dated 17.04.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs. 8,77,933/- under proviso to Section 73 of Finance Act, 1994 along with applicable interest and penalties.



4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- ❖ Service Tax demand of Rs. 8,77,933/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- ❖ Penalty of Rs.10,000/- was imposed under Section 77(1) of the Finance Act, 1994.
- ❖ Penalty of Rs. 8,77,933/- was imposed under Section 78 of the Finance Act,1994.

5. Aggrieved with the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant operated a business called "Navdurga Vegetable Company." Her business involved acting as a Vegetable General Commission Agent. This business activity had been ongoing for a considerable period, including during the fiscal year 2015-16.
- Despite receiving multiple notices from the authorities, the appellant's accountant, who was authorized to represent her, failed to respond. This was only discovered after the receipt of a notice dated June 27, 2023. Furthermore, the appellant herself did not respond due to a fracture and subsequent operation.
- The department issued an *ex-parte* order, confirming a tax liability without giving the appellant a fair opportunity to present her case.
- The appellant's income, as declared in her Income Tax Return for the financial year 2015-16, was solely received from her business activities as a Vegetable General Commission Agent. The total income amounted to Rs. 60,54,713/-.
- The appellant contests that services provided by her as a commission agent for sale or purchase of agricultural produce



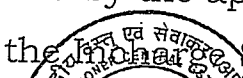
are exempt under sub clause (vii) of clause (d) of Section 66D of the Finance Act, 1994.

- The appellant argues that since her business activities were exempted from service tax as per the relevant provisions, she was not liable to obtain Service Tax Registration nor was she required to file Service Tax Returns (ST-3).
- The appellant highlights a previous instance where proceedings for the financial year 2014-15 were dropped by the same Adjudicating Authority.

6. Personal Hearing in the case was held on 19.04.2024. Shri Vasim G. Shaikh, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He informed that the client is a general commission agent in vegetable market (APMC) which is covered under negative list. Hence, the client is not liable to pay service tax.

7. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing and the facts available on records. The issue before me for decision in the present appeal is whether the demand for Service Tax amounting to Rs. 8,77,933/- confirmed alongwith interest and penalties vide the impugned order in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

8. It is observed that the appellant was doing business of commission agents of vegetables with the Agricultural Produce Marketing Committee, Ahmedabad. It is also observed that the SCN in the case was issued merely on the basis of data received from the Income Tax department without causing any verification and impugned order had been issued ex-parte.

9. Upon verification of the documents submitted by the appellant, I find that they produce the certificate issued by the  Secretary



of Agricultural Produce Marketing Committee, Ahmedabad wherein it is mentioned that the appellant is a proprietorship firm and is registered as a vegetable general commission agent since 2012-13. The appellant also submitted ITR, Profit and Loss A/c for F.Y. 2015-16. Their submissions confirm that the appellant is engaged in the Services relating to agriculture or agricultural produce by way of the services provided by a commission agent for sale or purchase of agricultural produce.

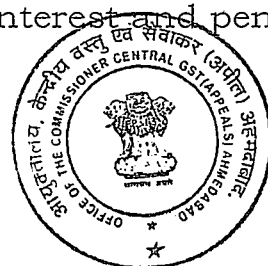
9.1 As contended by the appellant, I also find that in terms of provision of Section 66D(d)(vii) of the Finance Act, 1994 and their services are exempted from Service Tax. Relevant portion of the said notification is reproduced below :

*(d) Services relating to agriculture or agricultural produce by way -*

*(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;*

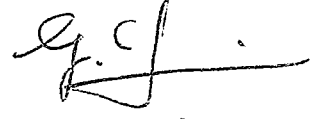
9.2 Considering the above legal provisions with the facts of the case, I find that the 'services provided by the appellant as a commission agent for sale or purchase of agricultural produce' during the period F.Y. 2015-16 stands covered under the provision of Section 66D(d)(vii) of the Finance Act, 1994, and the their service is not liable for payment of Service Tax.

10. In view of above discussions, I am of the considered view that the income collected from services amounting to Rs.60,54,713/- provided by the appellant as commission agent during the relevant period is not to be considered as a taxable value under Service Tax. Therefore, the demand of Service Tax amounting to Rs.8,77,933/- confirmed vide the impugned order fails to sustain on merits. As the demand of service tax fails to sustain, question of interest and penalty does not arise.



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

12. 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.

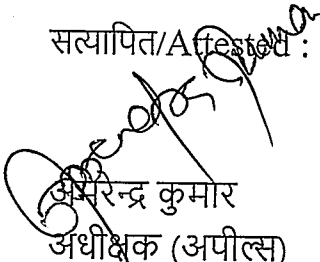


ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 9<sup>th</sup> April, 2024

सत्यापित/Attested:



अनिल कुमार

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,  
M/s Sushilaben Shivilal Jayswal, Bungalow No. 21,  
Meghdhara Society, Opp. Ramani Chal,  
Rakhial, Ahmedabad - 380021.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad North.
3. The Assistant Commissioner, CGST & CEX, Division - III, Ahmedabad South Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.