



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240564SW000031313C

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1902/2024
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-19/2024-25 and 30.04.2024
(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. 473/AC/Div-I/HKB/2022-23 dated 21.03.2023 passed by The Assistant Commissioner, CGST, Division-I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Dinesh Kuvrabhai Bharwad, <b>(New Address)</b> 68, Girnari Nagar, Halvad, Morbi - 363330

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:**

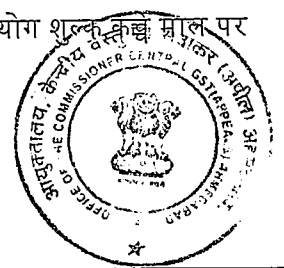
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 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.

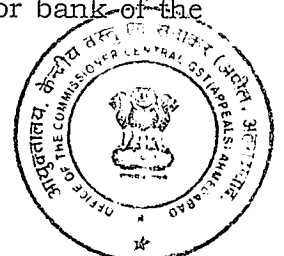
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Dinesh Kuvrabhai Bharwad, 68, Girnari Nagar, Halvad, Morbi-363330 (new address) (hereinafter referred to as '*the appellant*') against Order in Original No. 473/AC/Div-I/HKB/2022-23 dated 21.03.2023 [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. ANNPB8494R. 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	12,60,250	14.50%	1,89,037/-

3. The appellant was issued Show Cause Notice bearing F. No. V/15-198/Div-I/DINESH KUVRABHAI BHARWAD/21-22 dated 17.04.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs. 1,89,037/- 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. 1,89,037/- 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. 1,89,037/- 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 is engaged in the activity of job-work service to excisable unit.

➤ Issuance of SCN without investigation and in violation of law.

➤ The appellant relied on the judgment of Hon'ble High Court of Bombay in the case of M/s Amrish Rameshchandra Shah vs. UIO and ors. [TS-77-HC-2021 Bom ST]

➤ Charge of suppression and invoking extended period not applicable.

➤ Confirming demand without considering benefit of threshold limit as per the Notification No. 33/2012-ST dated 20.06.2012.

➤ The appellant has provided service to excisable unit so duty of discharge the service tax liability are excisable unit. The appellant is exempted.



➤ As the appellant is not liable to discharge service tax there is no liability of penalty, interest and no liability to obtain service tax registration.

6. Personal Hearing in the case was held on 19.04.2024. Shri Dhaval Movaliya, Advocate, appeared for PH on behalf of the appellant. He reiterated the contents of the written submission and further requested for one week time to submit additional documents.

6.1 The appellant submitted copy of Income Tax Return for F.Y. 2014-15 and 2015-16 and copy of declaration certificate issued from Astron Paper and Board Limited, certifying that the appellant is engaged in the activity of job-work on goods supplying by them.

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. 1,89,037/- 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 have claimed that they are engaged in the activity of job-work on the raw material provided by the manufacturer Astron Paper and Board Mill Limited. They argued that manufacturer Astron Paper and Board Mill Limited was liable to discharge duty and they are exempted from paying service tax. The appellant have provided documents like declaration certificate issued from Astron Paper and Board Limited, certifying that the appellant is engaged in the activity of job-work on goods supplying by them. The appellant have also provided 26AS certificate in order to prove that they have received income in F.Y. 2015-16 from Astron Paper and Board Limited.



9. I have examined the above said documents and find that the appellant is engaged in the activity of jobwork related to the processing of semi finished goods/raw materials supplied by manufacturer Astron Paper and Board Limited, which holds central excise registration No. AAJCA0517EEM001. I find that the appellant contends that they are not liable to pay service tax as the duty to discharge service tax liability lies with the excisable unit. In light of this, I concur with the appellant's argument and affirm that their claim for exemption from paying service tax on job work activity aligns with the sr. no. 30(c) of Notification No. 25/2012-ST dated 20.06.2012 as amended. Relevant portion of the said notification is reproduced below :

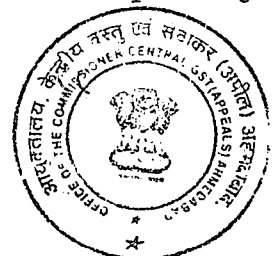
**Notification No. 25/2012 - Service Tax**

*\*\*\*\*\* the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following Taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely*

*30. Carrying out an intermediate production process as job work in relation to –*

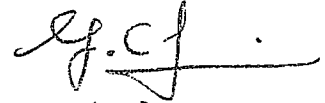
*(c) any goods on which appropriate duty is payable by the principal manufacturer; or*

9.1 Considering the above legal provisions with the facts of the case, it is evident that appellant's activity falls within the scope of sr. no. 30(c) of the Notification No. 25/2012-ST dated 20.06.2012. Therefore, it is concluded that the appellant's activity qualifies for exemption under the said provision of Notification No. 25/2012-ST dated 20.06.2012 and their service is not liable for payment of Service Tax. Therefore, the demand of Service Tax amounting to Rs.1,89,037/- 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.



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.

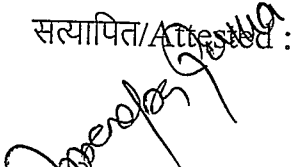


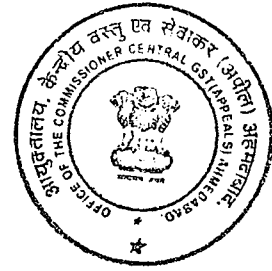
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 20 April, 2024

सत्यापित/Attested:

  
अनुराग कुमार  
अधीक्षक (अपील्स)  
सी जी एस टी, अहमदाबाद



**By REGD/SPEED POST A/D**

To,  
M/s Dinesh Kuvrabhai Bharwad,  
68, Girnari Nagar, Halvad,  
Morbi-363330 (New address)

Copy to :

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