

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निवेश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनबेट जमा की ली गई मूलत राशि
 - (iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
- 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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under, Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में वा. भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामलों में। / In case of any loss of goods, where the loss occurs 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
 - (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.
 - (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
 - (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ब्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा समायाचिधि पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
 - (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.
 - (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
 - (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्री कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.
 - (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
 - (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
 - (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: अपील आदेश ::/:: ORDER-IN-APPEAL ::

M/s. Gitaben Ashwinbhai Vegad, Bhavnagar (hereinafter referred to as "Appellant") has filed the present against single Order-in-Original No. 01, 02 & 03/2021-22 dated 29.03.2022 (hereinafter referred to as 'impugned order') passed by the Superintendent, CGST Range-1, Central GST Division-1, Bhavnagar (hereinafter referred to as 'adjudicating authority'):

2. The facts of the case, in brief, are that on the basis of departmental audit, proceedings were initiated against M/s. Chandroday Cable Network, Bhavnagar (hereinafter referred to as "M/s. Chandroday") for evasion of service tax under the category of "Cable Operators Services". Proceedings were also initiated against sub-cable operators of M/s. Chandroday, including the Appellant, for non-payment of service tax by wrongly claiming benefit of value-based exemption under Notification No. 06/2005-ST dated 01.03.2005, despite providing services under other's brand name. These proceedings resulted in issuance of Show Cause Notices dated 16.04.2015, 16.03.2016 and dated 13.10.2017 for the period from April-2013 to March-2014, April-2014 to March-2015 and April-2015 to June-2017 to the Appellant proposing demand of service tax of Rs. '3,67,505/- including Education Cess and S.H. Education Cess along with interest and imposition of penalty under Sections 76, 77(1)(a), 77(2) and 77(1)(c) of the Finance Act, 1994 (hereinafter referred to as "the Act").

3. The Adjudicating Authority vide the impugned order confirmed Service Tax demand of Rs. 7,10,190/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty not exceeding Rs. 7,10,190/- under Section 76 and penalty of Rs. 10,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the of the Act.

4. Being aggrieved, the Appellant preferred present appeal contending, *inter-alia*, as under:

- (i) The impugned order is not correct as it has been passed without making legal interpretation of provisions of the Act. They was providing services as "Cable Operator" in relation to transmission of waves through electronically system independently and they have not provided taxable service by using the symbol/ brand name of "Chandroday". Their taxable value had not exceeded the threshold limit of Rs. Ten Lakh in any of the financial year for the period under reference, they are entitled to avail benefit of Notification No. 06/2005-ST dated 01.03.2005.



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(ii) The department has failed to establish as to how the Appellant has provided the taxable service by using other's brand name. In a similar case of Shri Chiragbhai Andhariya, the Commissioner (Appeals), Rajkot vide OIA No. BHV-EXCUS-000-019-2021-22 dated 01.04.2022 has clearly held that the Appellant is liable to avail the benefit of Notification No. 6/2005-ST dated 01.03.2005.

(iii) The assessable value considered for issue of Show Cause Notices has been determined on assumption presumption ground. They rely on case law as reported at 2009 (14) STR 511 (Tri.-Del.) and 2018 (18) GSTL 152 (AAR-GST).

5. The personal hearing in the matter was given to the Appellant on 09.11.2022, 29.11.2022, 29.12.2022 and 23/24/25.01.2023 but no one appeared for the same.

6. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandums and oral as well as written submissions made by the Appellants. I find that the adjudicating authority has confirmed the demand primarily on the ground that the Appellant as sub-cable operators have provided services under the Brand name of "M/s. Chandroray" and hence value-based exemption under Notification No. 06/2005-ST dated 01.03.2005 as amended is not available to them.

7. I find that the then Commissioner (Appeals) vide Order-In-Appeal No. 61 to 64/2013(BVR)SKS/Commr.(A)/Ahd dated 03.05.2013, in an identical issue, has dismissed the appeal filed by the department observing as under:-

"The contentions of the department is that the respondents had used the brand name of their respective MSO in transmitting the signals. In this regard I find that the signals which the respondent had re-transmitted were of different distributors which were transmitted by the respective MSO to them. I am of the considered opinion that these signals do not bear any brand name and style of the MSO. At the most it can be said that the signals are in the name and style of distributors of that film or programme. Therefore, contention of the department that the services provided by the respondents were with the brand name of their respective MSO is not acceptable. Therefore, appeals filed by the department for denying the benefit of the exemption under notification no. 6/2005-ST dated 01.03.2005 as amended and for imposing penalty under Section 76,77 & and 78 of the Finance Act, 1994 does not succeed."

Thus, the Commissioner (Appeals), vide above Order-In-Appeal has categorically held that the respondent sub-cable operators, were eligible for value-based exemption under Notification No. 6/2005-ST dated 01.03.2005, as amended by



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Notification No. 33/2012-S.T. dated 20.06.2012. The appeal filed by the revenue against above Order-In-Appeal have been dismissed by the Hon'ble Tribunal vide Order No. A/11410-11506/2016 dated 02.11.2016 considering the low revenue involved therein.

7.1 I also find that the then Commissioner (Appeals) vide Order-In-Original No. BHV-EXCUS-APP-000-019-2021-22 dated 01.04.2022 has already decided the matter in favour of Shri Chirag Harendrabhai Andhariya for the period April-2014 to March-2015, by allowing the benefit of Notification No. 06/2015-S.T. dated 01.03.2005, as amended. Accordingly, following the findings recorded in Order-In-Appeal dated 03.05.2013 as well as Order-In-Appeal dated 01.04.2022, I hold that services provided by the Appellant cannot be considered as provided under other's brand name, and hence, the benefit of value based exemption under Notification No. 6/2005-ST dated 01.03.2005, as amended vide Notification No. 33/2012-Service Tax dated 20.06.2012, is available to the Appellant.

8. In view of above discussions and findings, I allow the benefit of threshold limit as prescribed under Notification No. 6/2005-Service Tax dated 01.03.2005, as amended vide Notification No. 33/2012-Service Tax dated 20.06.2012, to the Appellant subject to the conditions prescribed therein.

9. I direct the Adjudicating Authority to calculate and convey the Service Tax liability of Appellant after allowing benefit of the Notification as mentioned in Para 8 supra within 30 days of receipt of this order. I also direct the Adjudicating Authority to keep in mind the provisions of Para 2(viii) of the Notification No. 33/2012-Service Tax dated 20.06.2012 while calculating the Service Tax liability of the Appellants.

10. Further, I uphold the impugned order for levy of interest on Service Tax upon the Appellant, if she is liable to pay Service Tax as discussed in para 8 & 9 above. I uphold penalties under Section 76, Section 77(2), Section 77(1)(a) and Section 77(1)(c) of the Act on the Appellant, in case the taxable value is more than threshold limit.

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

11. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested



[Handwritten Signature]

आर. एस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot

[Handwritten Signature]
(शिव प्रताप सिंह) / (Shiv Pratap Singh),
आयुक्त (अपील) / Commissioner (Appeals)

By RPAD

To,
M/s. Gitaben Ashwinbhai Vegad,
Gourishankar Society, Plot No.
66, RTO Road, Jewel Circle,
Bhavnagar.

प्रति,
मे. गीताबेन अश्विनभाई वेगड, गौरीशंकर
सोसाइटी, प्लॉट संख्या 66, आर.टी.ओ. रोड,
जेवेल सर्कल, भावनगर.

प्रति:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/सयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) ~~प्रतिभाषक, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, Range-2, भावनगर-1 को आवश्यक कार्यवाही हेतु।~~
- 6) गार्ड फ़ाइल।

