



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा

DIN- 20230264SX000000A5E8

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|---|--|-----------------------------------|-------------|
| क | अपील / फाइल संख्या/ Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक/Date |
| | GAPPL/COM/1743/2022 | 958/SERVICE TAX/DEMAND/2021-22 | 27-03-2022 |

अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-071-2023

| | | | |
|------------------------------------|------------|--|------------|
| आदेश का दिनांक / Date of Order: | 23.02.2023 | जारी करने की तारीख / Date of issue: | 24.02.2023 |
|------------------------------------|------------|--|------------|

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम।
द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST /
GST, Rajkot / Jamnagar / Gandhidham:

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s. Ravindrabhai Manharbhai Gohil,, Shop No. Pramukhdarshan ,,Nr. Petrol Pump
Chiltra, Bhavnagar

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to: -

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-





www.cbec.gov.in की देख सकते हैं। / अपीलान्त may refer to the Departmental website www.cbec.gov.in, the appellate authority, the higher appellate authority, the

का संश्लेषित करने वाले नियमों की और भी व्यापक आकृति 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.

एक प्रतिलिखित आवेदन के साथ प्रस्तुत किया जाना चाहिए। / 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.

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:: अपील आदेश ::/:: ORDER-IN-APPEAL ::

M/s. Ravindrabhai Manharbhai Gohil, Bhavnagar (hereinafter referred to as "Appellant") has filed the present against Order-in-Original No. 958/SERVICE TAX/DEMAND/2021-22 dated 27.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST Division, Bhavnagar-1 (hereinafter referred to as 'adjudicating authority'):

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2014-15 of the Appellant. Letter dated 16.07.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15 to 2017-18 (upto June-2017). However, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice dated 17.08.2020 was issued to the Appellant demanding Service Tax including cess to the tune of Rs. 61,606/- under Section 73(1) of the Act by invoking extended period of 5 years alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order confirming Service Tax demand of Rs. 61,606/- under Section 73(1) along with interest under Section 75 of the Act and imposing penalty of Rs. 61,606/- under Section 78 and penalty of Rs. 5,000/- each under Section 77(1)(a) & 77(2) of the Act.

5. 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 waives through electronically system independently and they have not provided taxable service by using the symbol/ brand name of "Others". 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



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dated 01.03.2005.

(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).

6. The personal hearing in the matter was given to the Appellant on 21.12.2022, 09.01.2023, 23/24/25.01.2023 and 01/02/03.02.2023 but no one appeared for the same.

7. I have carefully gone through the case records, Show Cause Notice, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is whether the activity carried out by the Appellant is liable to Service Tax or not.

8. I find that the lower Adjudicating Authority in an ex-parte order found that in the ITR for the year 2014-15 of the Appellant, shared by the Income Tax Department, the Appellant had provided services of Rs. 4,98,429/- and Service Tax including cesses of Rs. 61,606/- was not paid by the Appellant.

9. The Show Cause Notice was issued based on the third party data provided by the Income Tax Department whereas, the Appellant has argued that their case is of sub-cable operator and have provided services under the brand name of M/s. Chandroray Cable owned by others. In additional submission dated 26.07.2022 filed by the Appellant and received on 29.07.2022, the Appellant has argued that impugned order has been passed on the basis of third party evidences. Thus, there is contradiction in the facts mentioned in the Show Cause Notice as well as impugned order and the grounds advanced by the Appellant in the appeal memorandum. Further the Appellant has not produced all the supporting documents in support of claim nor appeared for personal hearing before the Appellate authority.

10. I find that the Appellant had not submitted the relevant documents/ data to the Adjudicating Authority and also not attended the personal hearing before him. Likewise, the Appellant has not submitted sufficient documents and also not attended the personal hearing before this Appellate authority as well. I find that the facts stated in the appeal were not available to the Adjudicating Authority



Handwritten signature and date:
23/2/23

and he was constrained to pass ex-parte order. The Appellant had not availed the opportunity of natural justice extended to him by the Adjudicating Authority and has come in appeal with new facts. Therefore, I am of considered view that the case should be remanded back to the Adjudicating Authority, who shall call for all the relevant documents and decide the matter in *de novo* by passing speaking order. The Appellant is also directed to provide required information as and when called upon by the adjudicating authority. Needless to mention that Order in de novo proceeding shall be passed by adhering to the principles of natural justice.

11. I set aside the impugned order and dispose of the appeal by way of remand to the adjudicating authority as discussed above.

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

12. The appeal filed by Appellant is disposed off as above by way of remand.

सत्यापित / Attested

आर. जे.स. बोरीचा / R. S. BORICHA (शिव प्रताप सिंह) / (Shiv Pratap Singh),
अधीक्षक / Superintendent आयुक्त (अपील) / Commissioner (Appeals)
के. व. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot

By RPAD

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| To, M/s. Ravindrabhai Manharbhai Gohil, Shop No. F-1, Pramukhdarshan, Near: Petrol Pump, Chitra, Bhavnagar. | प्रति, मे. रविन्द्रभाई मनहरभाई गोहील, शॉप नंबर F-1, प्रमुखदर्शन, पेट्रोल पम्प के पास, चित्रा, भावनगर. |
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर 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 मण्डल, भावनगर-1 को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।



