



::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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN- 20230364SX000072247E

| क | अपील / फाइल संख्या/ Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक/Date |
|---|--|-----------------------------|-------------|
| | GAPPL/COM/STP/732/2022 | 24/2021-22 | 12.10.2022 |

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

BHV-EXCUS-000-APP-083-2023

| आदेश का दिनांक / Date of Order: | जारी करने की तारीख / Date of issue: | दिनांक/Date |
|------------------------------------|--|-------------|
| 14.03.2023 | 15.03.2023 | |

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 वृजित: /

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. Bhailal Nagardas Motka Umiya Park, 80 Feet Road,, Wadhwan, Surendranagar, 363001

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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर० के० 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 (विस्टेट) 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, Bhau Mali 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 माँग, ब्याज की माँग 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 नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 माँग, ब्याज की माँग 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/-.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Bhailal Nagardas Motka, Wadhwan (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 24/2021-22 dated 12.10.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Surendranagar (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 2015-16 of the Appellant. A letter dated 16.02.2021 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2015-16. However, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice dated 21.03.2021 was issued to the Appellant demanding Service Tax and cess to the tune of Rs. 1,90,675/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') 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 adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,90,675/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 1,90,675/- under Section 78 of the Act and also imposed penalty of Rs. 2,000/- each under Section 77(1)(a) and 77(2) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on grounds that they have provided services of construction of single residential unit as a part of residential complex and exempted vide Sr. No. 14(b) of mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012 and submitted copy of contract. The penalty imposed under Section 78 is not correct since they have not suppressed anything from department. This is a fit case to invoke Section 80 of the Act and they relied on decision in the case of M/s. Multi Trake Net Work Vs. CST Delhi. Since they were never liable to Service Tax, imposition of penalty under Section 77(1) and 77(2) is not warranted at all.

6. The matter was posted for hearing on 13.03.2023. CA Rushi Upadhyay appeared for personal hearing and submitted that the appellant has provided service for construction of single residential unit, which is exempt from Service Tax. The agreement, ITR, Form 26AS, Balance sheet, profit & loss Account, bank statement etc. are enclosed. He requested to set aside the Order-In-Original and to allow the appeal.



(Signature)

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department and the Adjudicating Authority has confirmed the demand of Service Tax vide impugned order. It has been held by the Adjudicating Authority that the services provided by the Appellant is a taxable service in absence of information/ documents, which were neither submitted by the Appellant nor they had filed any defense submission and not appeared for personal hearing also. The Appellant on the other hand in the grounds of appeal as well as during the course of personal hearing, stated that their service is exempted by virtue of Entry No. 14(b) of the exemption Notification No. 25/2012-Service Tax dated 20.06.2012.

8. The Appellant has produced documents in support of his claim of exemption under Notification No. 25/2012-Service Tax dated 20.06.2012 viz. copy of contract entered into by the Appellant with the customer Kailashben Ramanlal Joshi for construction of a residential unit on sub-plot No. 3/2/2 at revenue survey No. 2032, copy of computation of total income submitted with ITR for the year 2015-16 wherein nature of business is mentioned as "Builder Others-404", copy of profit & loss for the year 2015-16 wherein construction income of Rs. 13,15,000/- has been mentioned on which the Service Tax demand has been made by the Department. In Form 26AS for the year 2015-16, no income has been reflected. Against construction job-work income, the Appellant has also incurred expenses like labour expense, material purchase expense etc. All these documentary evidences are sufficient to demonstrate that the appellant is a provider of service in respect of construction of single residential unit carried out on the basis of written agreement/ understanding. Therefore, I am of the considered view that the said activity carried out by the Appellant for construction of single residential unit to their two customers is well within the ambit of exemption by virtue of entry No. 14(b) of the Notification No. 25/2012-Service Tax dated 20.06.2012. Therefore, I find that the Appellant is not liable to service tax. Since there is no liability towards Service Tax, question of interest and penalties does not arise.

9. In view of findings and discussions, I set aside the impugned order and allow the appeal.

Amr



10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
10. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

[Signature]

आर. एस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent

[Signature]
14.3.23

(शिव प्रताप सिंह) / (Shiv Pratap Singh),

आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D. एवं सेवा कर अपील, राजकोट

To, CGST Appeals, Rajkot
M/s. Bhailal Nagardas Motka,
Umiya Park, 80- feet Road,
Wadhwan, Surendranagar-363001.

सेवा में,
मे. भाईलाल नागरदास मोटका, उमीया पार्क,
80 फुट रोड, वढवाण, सुरेन्द्रनगर-363001 ।

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, सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।



