



::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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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20230364SX0000999B7E

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/STP/3459/2022	455/AC/NIS/BVR-3/22-23	12:00:00 AM

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

BHV-EXCUS-000-APP-088-2023

आदेश का दिनांक / Date of Order:	15.03.2023	जारी करने की तारीख / Date of issue:	15.03.2023
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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. Bhalala RCC (Prop. Sureshbhai Ravajibhai Bhalala) Vill: Raypar, Taluka: Babra,, Amreli-365421,

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 (सिस्टेड) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ 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 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। स्थान 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 एवं उनके साथ जिल आदेश के विरुद्ध अपील की गयी हो, उसको 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। स्थान 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 is more than five 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/-





appellant may refer to the Departmental website www.cbec.gov.in for the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the

www.cbec.gov.in की देखें। /

उच्च अधीनस्थ अधिकारी को अपील करने से संबंधित आचार, विचार और संबंधित मामलों के लिए, अपीलकर्ता को उच्चतर

Attention and Service Appellate Tribunal (Procedure) Rules, 1982.

ध्यान और सेवा अपील न्यायाधिकरण (प्रक्रिया) विनियमों, 1982 से संबंधित अन्य संबंधित मामलों को

One copy of application or O.L.O. as the case may be, and the order of the adjudicating authority shall bear a

एक प्रतिलिपि आवेदन पत्र अथवा आदेश की प्रतिलिपि 6.50 रुपये की

court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

एक प्रतिलिपि आवेदन पत्र अथवा आदेश की प्रतिलिपि 6.50 रुपये की

each.

Central Govt. As the case may be, is filed to avoid scripps work if excising Rs. 1 lakh fee of Rs. 100/- for

प्रत्येक अपील में एक प्रतिलिपि आवेदन पत्र अथवा आदेश की प्रतिलिपि 6.50 रुपये की प्रतिलिपि 6.50 रुपये की

Lac or less and Rs. 1000/- where the amount involved is more than Rupees One

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1,000/- की प्रतिलिपि आवेदन पत्र अथवा आदेश की प्रतिलिपि 6.50 रुपये की प्रतिलिपि 6.50 रुपये की

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:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Sureshbhai Ravjibhai Bhalala, Raypar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 153/AC/NIS/BVR-3/22-23 dated 22.09.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division-3, Bhavnagar (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 & 2016-17 of the Appellant. Letter dated 01.03.2021 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 2015-16 & 2016-17. However, no reply was received from the Appellant.

3. In absence of data/information, a Show Cause Notice dated 12.04.2021 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 3,25,790/- 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 above Show Cause Notice was adjudicated, by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 3,25,790/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 3,25,790/- under Section 78 of the Act, imposed penalty of Rs. 4,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that as per mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012, their service is exempt since they have provided services of construction of since residential unit in respect of two customers.

6. The matter was posted for hearing on 23.02.2023. Shri Yash Ranpara, CA appeared for personal hearing and submitted that the appellant provided service related to construction of a single residential unit as per oral agreement. The same is not taxable service. Profit & Loss account, job work labour charge invoice etc. are enclosed. However, Adjudicating Authority has passed order ex-parte. He requested to set aside the Order-In-Original.

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



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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 invoices,, copy of balance sheet, profit & loss accounts etc. Against construction job-work income, the Appellant has also incurred expenses like labour work expense, material purchase expense etc. From the invoices and books of accounts, it is also evident that the Appellant has carried out construction work with material to their customers on oral agreement basis. 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 oral/ 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.

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

आर. अक्ष. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील, राजकोट

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

आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D. CGST Appeals, Rajkot

To,
M/s. Sureshbhai Ravjibhai Bhalala,
Village: Raypar, Taluka: Babra,
Dist.: Amreli-365421.

सेवा में,
मे. सुरेशभाई रवजीभाई भालाला, गाँव:
रायपर, तालुका: बाबरा, जिल्ला: अमरेली -
365421 ।





- 1) मुख्य आर्यकत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजरात क्षेत्र, अहमदाबाद को जानकाश्री हेतु।
- 2) आर्यकत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनार आर्यकतलाय, भावनार को आवश्यक कायवाही हेतु।
- 3) अपर आर्यकत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनार को आवश्यक कायवाही हेतु।
- 4) सहायक आर्यकत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल-3, भावनार को आवश्यक कायवाही हेतु।
- 5) गाई फाडल।

प्रतिनिधि :-

