



:: 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 / 2<sup>nd</sup> Floor, GST Bhavan.  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001

सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230764SX0000444CE1

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIONo.	दिनांक / Date
	GAPPL/COM/STP/985/2023	362/D/AC/2021-22	19-12-2022

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

**RAJ-EXCUS-000-APP-163-2023**

आदेश का दिनांक / Date of Order:	<b>22.06.2023</b>	जारी करने की तारीख / Date of issue:	<b>07.07.2023</b>
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श्रीशिवप्रतापसिंह, आयुक्त (अपील्स), राजकोटद्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त 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. Shree Vinayak Enterprise, Block No.-1 A, Alka Society, Mavdi Main Road, Rajkot**

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 मामलों में 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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) नियमवाली, 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, रुपा 5 लाख या उससे कम 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 महायुक्त रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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.5,000/-, 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 उमके 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, रुपा 5 लाख या उससे कम 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 महायुक्त रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 fee of Rs. 1,000/- 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 ::**

*Shree*  
M/s. Vinayak Enterprise, Block No. 1A, Alka Society, Mavdi Main Road, Rajkot, Gujarat-360005 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original (OIO) No. 362/D/AC/2021-22 dated 19.12.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division - I, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that Income Tax Department provided data/details of various Income Tax payers, who in their Form 26AS for financial year 2016-17 declared to have earned income by providing services classified under various service sectors. The Income Tax Department also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, 1961 in respect of various persons which depicted that such persons had earned income from providing services. The said data also contained the details of the Appellant who had not obtained Service Tax Registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The jurisdictional office called for the information/ documents viz. copies of IT returns, Form 26AS, Balance Sheet (incl Profit & Loss Account), VAT/ Sales Tax returns, Annual Bank Statement, contracts/ Agreements entered with the person to whom services provided etc. for the F.Y. 2016-17. No reply/ response was received from the Appellant and the Service Tax was determined on the basis of data/details provided by the Income Tax department and culminated into Show Cause Notice dated 13.10.2021 invoking extended period of 5 years proposing to demand Service Tax of Rs. 1,51,313/-, including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') with interest under Section 75 of the Act, and proposing to impose penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act.

3. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,51,313/- under Section 73(1) invoking extended period of 5 years along with interest under Section 75 of the Act. The adjudicating authority-imposed penalties of Rs. 10,000/- under Section 77(1)(a) and Section 77(2) of the Act. The penalty of Rs. 1,51,313/- was also imposed upon the Appellant under Section 78 of the Act.

4. The Appellant has preferred the present appeal on 08.08.2022 on various grounds mainly-as stated below:

*The adjudicating authority has wrongly confirmed demand of Service Tax of Rs. 1,51,313/- under Section 73(1) of the Act, erred in valuation of taxable Services, erred in not allowing the benefit of Notification No. 33/2012 dated 20.06.2012, erred in demand of interest u/s 75 of the Act, erred in demanding penalty u/s 77(1)(a), 77(2) and 78 of the Act.*

5. Personal hearing in the matter was held on 02.05.2023 which was attended by Shri Kaushik Vadher, Consultant, wherein he submitted that the appellant provided machining job work service to M.M. Engineering and a few others. The taxable value taken in the impugned order includes loan income of Rs. 9,000/-. The same, if excluded, remaining income is below Rs. 10 Lakhs and eligible for threshold exemption. Profit & Loss account, Balance Sheet, Bank statement, sample job work invoices, Income Tax return, etc., are enclosed. He requested to set aside the Order-In-Original.



*(Signature)*

6. Appellant, vide his submission has submitted that appellant is a partnership unit and are engaged in doing labour work as per the design of the customers on their own or the machines and are engaged in trading activities ancillary to the manufacturing. Appellant is a small job worker who carries out job work on products received from their customers such as machining grinding etc. Appellant, on sale of goods pays due tax, they are registered under the VAT (Value Added Tax) under State Government.

6.1 Appellant further submitted that from the total amount of Rs. 10,08,750/- held as taxable in impugned order, income earned from the job work was Rs. 9,99,750/- and amount Rs. 9,000/- which was received as loan in two parts Rs. 5,000/- on 22.03.2017 and Rs. 4,000/- on 23.03.2017, was wrongly considered as job work income for the Financial Year 2016-17. Above two entries is reflected in Bank statement of the appellant. In support of their claim appellant has submitted Profit & Loss account and copy of bank statement. Therefore, the same should be excluded from their income for F.Y. 2016-17. Remaining amount of income for the relevant F.Y. is 9,99,750/- which is below threshold limit and thus, it is not taxable and not leviable for Service Tax. The total income is Rs. 8,50,000/- in Financial Year 2016-17. Appellant, in support of their claim, has submitted documents viz. Income Tax Return for F.Y. 2015-16 & 2016-17, copy of 26AS for F.Y. 2015-16 & 2016-17, ledgers of Income for the relevant period in support of their claim. Appellant has requested to set aside the impugned order with consequential relief.

7. I have carefully examined the show cause notice, impugned order, appeal memorandum and written submission of the Appellant. The issue to be decided in the present appeal is whether amount of Rs. 10,08,750/- (F.Y. 2016-17) held as taxable value in impugned order is taxable or otherwise.

7.1. Going through Profit & Loss Account, ledger of job work income and copies of invoices of job work, I find that out of amount of Rs. 10,08,750/- held as taxable in impugned order, appellant has earned income of Rs. 9,99,750/- from providing service of job work. Appellant has incurred expenditure of job work expense, power & fuel expense, Vehicle expense, etc. While going through other supporting documents viz. Profit & Loss account, bank statement of appellant, ledger of person from whom loan was received, I observed that appellant has received loan of Rs. 9,000/- in two parts, i) Rs. 5,000/- on 22.03.2023 and ii) Rs. 4,000/- on 24.03.2023. I find that department has issued Show Cause Notice and confirmed the demand ex-parte on the basis of available documents for F.Y. 2016-17, wherein amount of Rs. 10,08,750/-, according to adjudicating authority was taxable. Therefore, I observed that error of loan amount of Rs. 9,000/-, considered as job work income should be deducted from the job work income considered as taxable by adjudicating authority.

7.2 Excluding Rs. 9,000/-, as discussed above, amount of income for the F.Y. 2016-17 as per Profit & Loss account, 26AS of the appellant, comes to Rs. 9,99,750/- which is below threshold limit of Rs. 10 Lakhs. As per provisions of Notification No. 33/2012-Service Tax dated 20.06.2012, aggregate value of taxable services below 10 lakhs rupees is exempted from the whole of the Service Tax during a financial year. Relevant portion of Notification No. 33/2012-ST dated 20.06.2012 is reproduced below:

**NOTIFICATION NO 33/2012-ST, Dated: June 20, 2012**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Explanation.- For the purposes of this notification,-

(A) .....

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

7.3 As per financial documents of appellant for F.Y. 2015-16, income excluding interest income is below threshold limit, Therefore, benefit of threshold limit as per Notification No. 33/2012-ST dated 20.06.2012 is available to the taxable amount for the successive Financial Year i.e. 2016-17(relevant period). Thus, job work income of Rs. 9,99,750/- is exempted from levy of Service Tax. Therefore, demand of Service Tax on accounting income is not sustainable.

8. I, therefore, set aside the confirmation of Service Tax demand. Since, the demand is set aside, recovery of interest under Section 75 and imposition of penalty under Section 77 and 78 are also required to be set aside and I order accordingly.

9. In view of the above discussion and findings, 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 the Appellant is disposed off as above.

सत्यापित / Attested

*Signature*

के. जी. सावलाणी / K. G. SAVLANI  
अधीक्षक / Superintendent  
के. व. एवं सेवा कर अपील, राजकोट  
CGST Appeals, Rajkot

*Signature*  
22-6-23  
(शिव प्रताप सिंह)  
(Shiv Pratap Singh)  
आयुक्त (अपील)  
Commissioner (Appeals)

By R.P.A.D.

To,  
M/s. Vinayak Enterprise,  
Block No.1A, Alka Society, Mavdi Main Road,  
Rajkot, Gujarat-360005.

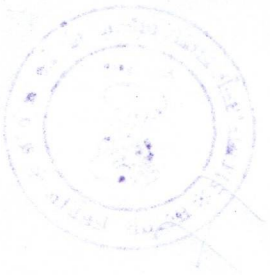
सेवा में,  
मे० विनायक एंटरप्राइस,  
ब्लॉक नं 1A, अल्का सोसाइटी, मवड़ी मेडन रोड,  
राजकोट, गुजरात-360005 ।

प्रतिलिपि :-

- 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, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल-I राजकोट को आवश्यक कार्यवाही हेतु।

गार्ड फ़ाइल।





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