



::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

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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230764SX000000CFCC

क	अपील / फाइल संख्या/ Appeal / File No	मूल आदेश सं / OIONo	दिनांक/ Date
	GAPPL/COM/STP/1334/2023	353/D/2022-23	30-01-2023

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

**RAJ-EXCUS-000-APP-166-2023**

आदेश का दिनांक / Date of Order:	<b>22.06.2023</b>	जारी करने की तारीख / Date of issue:	<b>11.07.2023</b>
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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 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. Impression AD, 2 Star Plaza, Opp. Laxmi Glass Shanala Road, , Morbi**

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, 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, 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) 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 fee 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 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 को देख सकते हैं। / उच्च अधीनस्थ प्रधिकारी की अधीनस्थ प्रधिकारी को सूचित किया गया है कि उच्च अधीनस्थ प्रधिकारी के लिए, अधीनस्थ विभागीय वेबसाइट

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.

की संशोधन/संशोधन करने वाले नियमों की भी ध्यान आकर्षित किया जाता है। / सीमा शुल्क, कर्तीय उच्चायुक्त एवं सेवाकर अधीनस्थ न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों

One copy of application or O.I.O. as the case may be, and the order of the Court Fee Act, 1975, as amended. / न्यायालय शुल्क टिकट लगा देना चाहिए।

आयुक्त अधीनस्थ न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का

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

in case, it covers various numbers of order - in Original, fee for each O.I.O. should be paid in the original manner, the fact that the one appeal to the Appellate Tribunal or the one

कि या जाता है। / यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is more than Rupees One Lakh or less and Rs. 1000/- where the amount involved is more than Rupees One

दो रुपये 1000/- का भुगतान किया जाए। / उच्च अधीनस्थ न्यायालय शुल्क अधिनियम, 1975 के अनुसूची-1 के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का

under Major Head of Account. / एसीआर आदेश के साथ निम्नलिखित निर्धारित शुल्क की प्रतियाँ की जानी चाहिए।

EB of CEA, 1944, under Major Head of Account. / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise

commenced and shall be accompanied by two copies each of the O and Order-In-Appeal. It should also be accompanied by a copy of IR-6-Challan evidencing payment of prescribed fee as prescribed under Section 35-

दो प्रत्येक की प्रतियाँ 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

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:: अपील आदेश ::

**:: ORDER-IN-APPEAL ::**

M/s. Impression Ad, 2-Star Plaza, Opp. Laxmi Glass Shanala Road, Morbi (Gujarat)-363641 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original No. 353/D/2022-23 dated 31.01.2023 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division Morbi-I (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 Income Tax Returns for financial year 2015-16 declared to have earned income by providing services classified under various service sectors like contractors, I.T. enabled services, Professionals, Software Development, Commission Agent etc. 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 like contract, commission or brokerage, renting of movable/ immovable property, Technical or Professional service etc. The jurisdictional Assistant Commissioner, vide letters dated 16.07.2020 and subsequent reminders to the Appellant called for the information/ documents to verify whether the appellant had discharged their Service Tax liabilities fully and properly as per the Finance Act, 1994 (hereinafter referred to as 'the Act'). 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 27.04.2021 invoking extended period of 5 years proposing to demand Service Tax of Rs. 2,60,847/-, 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 dated 30.01.2023 confirmed Service Tax demand of Rs. 2,60,847/- 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/- each under Section 77(2) and Section 77(1)(c) of the Act. The penalty of Rs. 2,60,847/- was also imposed upon the Appellant under Section 78 of the Act.

4. The Appellant has preferred the present appeal on grounds that the adjudicating authority has erred in quantifying the demand and has wrongly confirmed demand of Service Tax of Rs. 2,60,847/- on account of non-payment of Service Tax on advertisement income from subject period, erred in taking





gross income as taxable value in place of taking value of commission income for quantification of Service Tax demand, erred in confirming demand under Section 73(1) of the Act and erred in demand of interest u/s 75 of the Act, erred in demanding penalty u/s 77(2), 77(1)(c) and 78 of the Act.

5. Personal hearing in the matter was attended by Shri Bhaskar Joshi, Advocate, wherein he submitted that the appellant provided advertising services in respect of which service tax is payable on commission received from print media and not on the gross value received from the customer. The appellant has already filed S.T. 3 return and discharged his tax liability correctly. However, the adjudicating authority has wrongly confirmed demand as per gross value in Form 26AS. He, therefore, requested to set aside the Order-In-Original.

6. I have carefully considered facts of the case and submissions made by the appellant, keeping in view provisions of law and spirit of justice. For sake of brevity, without re-iterating the contentions in appeal memorandum and contents/ findings in impugned order, I proceed to focus on core issues.

7. Appellant's main contention is that adjudicating authority has erred in quantifying the demand on gross amount received as advertising charges from his clients, instead of actual Service Tax payable on commission received during subject period and has wrongly confirmed demand of Service Tax of Rs. 2,60,847/-. I find that the said calculation showing Service Tax amount quantification is discussed in para 10 of impugned order in a table, detail as below:

Period	Amount (Rs.)	Rate of S. Tax along with cesses	Service Tax payable (Rs.)
2015-16	1798947	14.50%	260847

8. While calculating Service Tax on advertising service provided by advertisement firm, value of commission is to be taken as taxable value. Appellant has shown the gross amount received from client as advertisement income in their financial documents. Going through the documents viz. ledger of advertisement Income, ledger of Service Tax, Invoices raised towards advertisement service provided it is found that demand of Service Tax in impugned order is made on Gross amount received from clients and not on commission income. Calculation of Service Tax payable on commission income received by the appellant is given hereunder:

Particulars of Income	Amount (Rs.)	Service Tax payable (Rs.) (@ 12.36% & 14% + interest if any)	Commission Income
	368864	49365	



*[Handwritten signature]*

Going through submitted documents viz. reconciliation statement, ST-3 (Service Tax returns) and copies of Service Tax paid challans, it is found that appellant has paid Service Tax on commission income. Calculation of Service Tax Net payable is given hereunder:

Total Service Tax payable calculated as above	Rs. 49,365/-
Less Service Tax already paid	Rs. 49,365/-
Net Service Tax payable	Nil

10. I find that appellant has paid Service Tax on Commission/ net income received by them for providing service of advertisement. There is no non-payment/ short payment on this count. Therefore, the demand of Rs. 2,60,847/- on the ground of non-payment of Service Tax is not sustainable.

11. I, therefore, set aside the entire of Service Tax demand. Since, the demand does not survive, interest under Section 75 and imposition of penalty under Section 77 and 78 are also required to be set aside and I order accordingly.

12. In view of the above, I set aside the impugned order and allow the appeal.

13. The appeal filed by Appellant is disposed off as above.

**सत्यापित / Attested**

*Shreejani*

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

*Shiv Pratap Singh*  
22-6-23

(शिव प्रताप सिंह)  
(Shiv Pratap Singh)  
आयुक्त (अपील)  
Commissioner (Appeals)

By R.P.A.D.

To, M/s. Impression Ad, 2-Star Plaa, Opp. Laxmi Glass Shanala Road, Morbi (Gujarat)-363641.	सेवा में, मे० सोहम एंटरप्राइज़, 315 महादेव हिल, वाघावाडी रोड, भावनगर (गुजरात) – 364001.
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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, 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, मोरबी-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

