



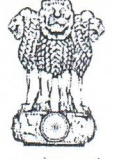
::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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: commrapl3-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230764SX0000943247

क	अपील / फाइल संख्या/ Appeal / File No	मूल आदेश / OIONo.	दिनांक/ Date
	GAPPL/COM/STP/1273/2023	539/D/AC/2021-22	20-02-2023

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

RAJ-EXCUS-000-APP-167-2023

आदेश का दिनांक / Date of Order:	22.06.2023	जारी करने की तारीख / Date of issue:	11.07.2023
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श्रीशिवप्रतापसिंह, आयुक्त (अपील्स), राजकोटद्वारा 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. Shanti Realities, 401, Sheetal Apartment, Gopal Nagar Main Road, Rajkot-360004

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, 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए 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/- रूपए 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 demanded/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 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 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए 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/- रूपए 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 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. Shanti Realities, 401-Sheetal Apartment, Gopal Nagar Main Road, Rajkot (Gujarat)-360002 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original No. 539/D/AC/2021-22 dated 20.02.2023 (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 Income Tax Returns for financial year 2016-17 & 2017-18 (upto June-2017) 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 like contract, commission or brokerage, renting of movable/immovable property, Technical or Professional service etc. The jurisdictional office has 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 18.10.2021 invoking extended period of 5 years proposing to demand Service Tax of Rs. 2,47,432/-, 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)(c), 77(2) and Section 78 of the Act.

3. The adjudicating authority vide the impugned order dated 20.02.2023 confirmed Service Tax demand of Rs. 2,47,432/- 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. 2,47,432/- 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. 2,47,432/- on account of short payment of Service Tax on work contract income from subject period, 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. Appellant has submitted that they had missed to show one challan paid towards taxable value but duly paid Service Tax liability due towards it. Appellant has



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submitted that income reflected in financial documents is including service tax portion less security deposit. Appellant has submitted that difference of taxable value observed by the department is due to this reason. In support of their claim appellant has provided reconciliation statement and documents in support of their claim.

5.1 Further, appellant has claimed that for the F.Y. 2017-18 (upto June-2017) as per impugned order taxable income is 3,29,909/- and Service Tax payable on it is Rs. 49,487/- . However, the appellant has declared taxable value in their ST-3 return as Rs. 44,48,502/- and paid Service Tax of Rs. 2,66,910/-.

6. Personal hearing in the matter was attended by Shri Bhaskar Joshi, Advocate, wherein he submitted that the appellant has inadvertently missed one bill in the ST-3 return. However, he had discharged tax liability on this through challan subsequently. The adjudicating authority has confirmed demand on gross value without applying abatement for Work Contract service. After applying, total tax liability works out to Rs. 3,73,690/- and the same is duly discharged. Therefore, he requested to set aside the Order-In-Original.

7. 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.

7.1 Appellant's main contention is that adjudicating authority has erred in quantifying the demand on gross amount received as work contract income from his clients, instead on actual work contract value. Service Tax payable on income received during subject period and has wrongly confirmed demand of Service Tax amount 2,47,432/- . I find that the said calculation showing Service Tax amount quantification is discussed in para 4 of impugned order in a table, detail as below:

Sr. No.	Particulars	2016-17	2017-18 (upto June-2017)
1.	Value of taxable service as per financial documents of appellant	6477299	~
2.	Value of taxable service as per ST-3 returns	5157666	~
3.	Differential amount of taxable value (between financial documents and ST-3 returns)	1319633	329909
4.	Service Tax payable (with cess)	197945	49487
Total Service Tax payable for 2016-17 & 2017-18 (upto June 2017) (197945+49487=247432)			247432

7.2 Going through the submitted documents viz. reconciliation statement, copies of paid challan and profit & Loss account of appellant it is found that work contract income reflecting in financial documents of appellant is net taxable income +(plus) Service Tax portion -(minus) security deposit amount. To arrive at actual Service



Tax payable amount, net taxable amount should be quantified. Appellant has shown the gross amount received from client as work contract income in their financial documents. Going through the documents viz. ledger of work contract Income, Form 26AS, etc., it is found that demand of Service Tax in impugned order is made on Gross amount of work contract service provided i.e. taxable income + Service Tax – Security deposit amount. Calculation of Service Tax payable on net taxable income received by the appellant is given hereunder:

Particulars of Income	Gross Total (Rs.)	Taxable Value	Service Tax (Rs.)	Security Deposit
Work Contract Income for F.Y. 2016-17	6477299	6228171	373690	124564

7.3 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 for F.Y. 2016-17 is given hereunder:

Total Service Tax payable calculated as above	Rs. 3,73,690/-
Service Tax already paid	Rs. 3,73,690/-
Net Service Tax payable	Nil

7.4 For F.Y. 2017-18 (upto June-2017), appellant has declared the taxable amount of Rs. 44,48,502/- and paid the Service Tax amount of Rs. 2,66,910/-, i.e. more than demanded amount of Rs. 49,487/- in impugned order for relevant period. Therefore, there is no tax payable for F.Y. 2017-18 (upto June-2017).

7.5 I find that appellant has paid Service Tax on Net Work Contract Income received by appellant for providing service. There is no non-payment/ short payment on this count. Therefore, the demand of Rs. 2,47,432/- for F.Y. 2016-17 & F.Y. 2017-18 (upto June-2017) on the ground of short-payment of Service Tax is not sustainable.

8. 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.

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 Appellant is disposed off as above.

सत्यापित / Attested

Seal

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

सेवा में, शान्ति रियलिटीस, 401-शीटल अपार्टमेंट, गोपाल नगर मेडन रोड, राजकोट (गुजरात) - 360002.	M/s. Shanti Realities, 401-Sheetal Apartment, Gopal Nagar Main Road, Rajkot (Gujarat)-360002.
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प्रतिनिधि :-

- 1) मुख्यालय, वसुंधरा एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वसुंधरा एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) अपर/सुपुर्वा आयुक्त, वसुंधरा एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वसुंधरा एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, माडल -1 राजकोट को आवश्यक कार्यवाही हेतु।
- 5) गाई कानल।

