



::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: commrappl3-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230764SX0000301466

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIONo.	दिनांक/ Date
	GAPPL/COM/STP/1159/2023	155/DC/RD/2022-23	09-12-2022

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

RAJ-EXCUS-000-APP-168-2023

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), 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. Shyam Fabrication Works, Kailash Nagar, Near Power House ,Dhoraji-360410

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- 360016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-360016 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 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 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 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 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. Mansukhbhai Vrajlalbhai Savaliya, Proprietor: Shyam Fabrication Works, Near Kanji Bechar, Kailash Nagar, Dhoraji, District- Rajkot Gujarat-360410 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original (OIO) No. 155/DC/RD/2022-23 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST, Division-II 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 2014-15 declared to have earned income by providing services declared to have earned income by providing services 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. It appeared that appellant has obtained Service Tax registration but not filed proper/ correct periodical return/s as required under the Finance Act 1944 (now referred as the Act). The jurisdictional office, vide letters dated 29.10.2019 and subsequent reminders to the Appellant called for the information/ documents. 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 and culminated into Show Cause Notice dated 28.12.2020 invoking extended period of 5 years proposing to demand Service Tax of Rs. 1,91,151/-, 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(2), 77(1)(c) and Section 78 of the Act.

3. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 94,591/- 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)(c) and Section 77(2) of the Act. The penalty of Rs. 1,41,136/- was also imposed upon the Appellant under Section 78 of the Act. Calculation of taxable value and demanded Service Tax amount by the adjudication authority is given hereunder:

Table - 'A'

Sr. No.	Particular	Amount(Rs.)
1	Value of Taxable Services as per SCN	20,98,103
2	Vehicle (Bolero) rent income	3,32,803
3	Threshold Exemption	10,00,000
4	Value of Taxable Service liable to Service Tax (A-B-C)	7,65,300
5	Service Tax @12.36%	94,591

The Appellant has preferred the present appeal on 17.04.2022 on various



[Signature]

Service Tax as per Table 'A' shown at para 3 above. I find that calculation to reach net taxable value and Service Tax payable needs to be re-considered, considering available provisions of relevant Rules and Notification.

8.1 Regarding amount of Rs.3,32,803/- i.e. income received by appellant by providing vehicle on rent; as per Sr. No. 7 of Notification No. 30/2012-ST dated 20.06.2012, 100 % Service Tax shall be payable by service recipient. Relevant portion of the said Rule is reproduced hereunder:

Notification 30/2012 Service Tax dated 20.6.2012 (Incorporating the amendments till 30.06.2017)

GSR.....(E).-

"(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following table, namely: -"

Table

Sl. No.	Description of a service [Substituted by the Notification No. 10/2014-ST, dated 11-7-2014 w.e.f. 11-7-2014.]	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider [Substituted by the Notification No. 7/2015-ST, dated 1-3-2015 w.e.f. 1-3-2015.]
(1)	(2)	(3)	(4)
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business	Nil [50%] [Substituted for "60%" by Notification No.10/2014-ST, dated 11-7-2014 w.e.f.1-10-2014.]	100 % [50%] [Substituted for "40%" by Notification No.10/2014-ST, dated 11-7-2014 w.e.f.1-10-2014.]

8.1.1 Going through the relevant records viz invoice it is found that appellant has provided vehicle on rent on abated value to person/ firm who is not engaged in similar line of business. Therefore, as per Sr. No. 7 of the Table in Notification No. 30/2012-ST, service receiver is liable to pay 100% of the Service Tax on it and appellant being service provider, is not liable to pay any Service Tax.

8.2 Regarding amount of Rs.17,65,300/- (taxable as per SCN Rs.20,98,103 - 3,32,803 i.e. income received for renting a cab= 17,65,300), abatement is to deducted from Rs. 17,65,300/- to reach net taxable value as per Rule 2A of Service Tax (Determination of value) Rules, 2016, relevant portion of rule is given hereunder:

2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the



(Signature)



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sustainable.

8.5 Appellant has also submitted financial documents of F.Y. 2013-14 wherein, the income is below threshold limit of Rs. 10 Lakh. 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. 2014-15 (relevant period). Thus, net value of service provided by the appellant for the period 2014-15 is exempted from levy of Service Tax. Therefore, demand of Service Tax on this income is not

"(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."

Explanation.- For the purposes of this notification,-

section 66B of the said Finance Act:
 lakh rupees in any financial year from the whole of the service tax leviable thereon under 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:
 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:

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

8.4 Redetermined value of work contract service provided by the appellant, as per Table 'B', is Rs. 7,06,120/- 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 hereunder:

Period	Particulars
2014-15	Taxable- As per Show Cause Notice
	2098103
	Less-Income received from renting a vehicle (as 100% S. Tax is to be paid by service receiver, as per Not. No. 30/2012) Para-8.1
	332803
	Income for providing work contract service (after deducting Rs. 332803)
	1765300
	Re-determined value [as per Valuation Rules (40% of amount charged)] Para-8.2
	706120

Table - 'B'

8.3 In view of above discussions detail calculation of tax liability on amount of Rs. 20,98,103/-, considered as taxable in SCN for the relevant period, is as under:

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

(!!) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(i).....

following manner, namely:-

8.6 Accordingly, as per the worksheet shown above & on the basis of relevant financial records/ documents viz. 26AS, profit & loss account, etc., the taxable value for the relevant period is determined as 'Nil' and when taxable value is 'Nil' service tax liability is also 'Nil'.

9. In view of above discussions, I hold that the Appellant is not liable to pay service tax. I, therefore, set aside the service tax demand on this count. 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.

10. In view of the above discussion and findings, I set aside the impugned order and allow the appeal.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

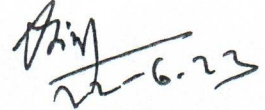
11. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested



बी. एस. राणा / B. S. RANA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील्स, राजकोट
CGST Appeals, Rajkot

By R.P.A.D.



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

To,
M/s. Mansukhbhai Vrajlalbhai Savaliya,
Proprietor: Shyam Fabrication Works,
Near Kanji Bechar, Kailash Nagar,
Dhoraji, District- Rajkot Gujarat-360410.

सेवा में,
मे० मनसुखभाई व्रजलालभाई सावलिया,
प्रो: श्याम फैब्रिकेशन वर्क्स, कानजी बेचर के पास, कैलाश
नगर, धोराजी, जिल्ला - राजकोट गुजरात-360410।

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/सयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट, को आवश्यक कार्यवाही हेतु।
- 4) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल-II राजकोट को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

