



सत्यमेव जयते



కస్టమ్స్ మరియు సెంట్రల్ టాక్స్ కమిషనర్ కార్యాలయం (అప్పీల్స్-II)
7వ అంతస్తు, GST భవన్: LB స్టేడియం రోడ్, బషీర్బాగ్, హైదరాబాద్, పిన్-500004

केन्द्रीय सीमा शुल्क एवं केन्द्रीय कर आयुक्त का कार्यालय (अपील्स-II)

सातवा तल, जी.एस.टी.भवन, एल.बी.स्टेडियम रोड, बशीरबाग, हैदराबाद, पिन - ५००००४

OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX
APPEALS-II COMMISSIONERATE, HYDERABAD

7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, Telangana, PIN-500004.

Ph: 040-23234219/ e-Mail: cgst.hydappeals2@gov.in

Appeal No. 12/2024-(SC)ST

OIO No. 113/2023-24-SEC-ADJN-ADC(ST), dated 28.03.2024

DIN- 20250656DN0000001450

अपीलआदेशसं:ORDER-IN-APPEAL No.HYD-ST-SC-APP2-34-25-26

Dated 03rd June, 2025

Passed by: Shri Sadhu Narasimha Reddy, Commissioner of Customs & Central Tax
(Appeals-II)

1. आदेशजिन के नाम जारी किया गया है उस व्यक्ति के निजी उपयोग के लिए यह प्रतिमुफ्त में दी जाती है। This copy is granted free of cost for the private use of the person to whom it is issued.

2. (a) कोई भी निर्धारिती इस आदेश से असहमत हो तो वे वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत सीमा शुल्क, उत्पाद शुल्क व सेवा कर अपील अधिकरण, क्षेत्रीय बेंच, प्रथमतल, हैदराबाद मेट्रो जल आपूर्ति और सीवरेज बोर्ड इमारत (पीछेकेहिस्से, खैरताबाद, हैदराबाद, तेलंगाना - 500004 के समक्ष अपील दायर कर सकते हैं। Any assessee aggrieved by this order may file an appeal under Section 86 of the Finance Act, 1994 to the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench 1st Floor, HMWSSB Building (Rear Portion), Khairatabad, Hyderabad, TS -500004.

2. (b) केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 एफ के खंड (iii) के अनुसार, धारा 85 की उप-धारा (5) में संदर्भित आदेश या निर्णय के विरुद्ध अपील के लिए, अपीलकर्ता को निर्णय या जिस आदेश के विरुद्ध अपील की गई हो उसके अनुसरण के लिए कर का, ऐसे मामले में जहां कर या कर और दंड विवादित हो, या दंडका, जहां ऐसा दंड विवादित हो, दस प्रतिशत जमा कर ना होगा : सेवा कर के मामलों में, एफए, 1994 की धारा 83 के प्रभाव से अधिनियम की धारा 35 एफ लागू है। As per clause (iii) of Section 35F of the CEA, 1944, the appeal against the decision or order referred to in sub-section (5) of section 85, the appellant has to deposit ten per cent of the tax, in case where tax or tax and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Section 35F of the Act is applicable to service tax case by virtue of Section 83 of FA, 1994.

3. उपधारा (1) या उपधारा (2) या उपधारा (2ए) के अंतर्गत प्रत्येक अपील जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारिती द्वारा प्राप्त करने की तारीख से तीन/चार महीने के भीतर (मुख्य आयुक्तों या आयुक्तों की समिति) के समक्ष, जैसे भी मामला हो, दायर किया जाना चाहिए। Every appeal under sub-section(1) [or sub-section(2) or sub-section(2A)] of Section 86 of FA, 1994 shall be filed within three/four months of the date on which the order sought to be appealed against was received by the assessee/ the [Committee of the Commissioners], as the case may be.

4. पैरा 2 में उल्लिखित अपील एस टी 5/ एस टी 7 प्रोफॉर्मा में चार प्रतियों में जिस आदेश के विरुद्ध अपील किया जाना हो उस आदेश के निर्धारिती के पास पहुंचने की तारीख से तीन/चार महीने के भीतर किया जा सकता है। जिस आदेश के विरुद्ध अपील किया जाना चाहता हो और अपील करने के लिए लिखित मूल आदेश की उस आदेश की चार प्रतियाँ संलग्न होने चाहिए (जिसमें से एक प्रति प्रमाणित प्रति होने चाहिए) . The appeal, as referred to in Para 2 above, should be filed in S.T.5/S.T.-7 proforma in quadruplicate; within three/four months from the date on which the order sought to be appealed against was communicated to the party /Dept., preferring the appeal and should be accompanied by four copies each (of which one should be a certified copy), of the order appealed against and the Order-in-Original which gave rise to the appeal.

5. अपील के साथ ट्रिब्यूनल के दक्षिणी बेंच के सहायक रजिस्ट्रार के पक्ष में जहां ट्रिब्यूनल स्थित है वहाँ के किसी भी राष्ट्रीय कृत बैंक की शाखा से प्राप्त किए गए रेखांकित कि तमांग ड्राफ्ट संलग्न होने चाहिए और अधिनियम की धारा 86 के अंतर्गत विनिर्दिष्ट शुल्क के भुगतान का प्रमाण भी संलग्न होने चाहिए । देय शुल्क निम्न लिखित है।

The appeal should also be accompanied by a crossed bank draft drawn in favour of the Assistant Registrar of the Tribunal, drawn on a branch of any nominated public sector bank at the place where the Tribunal is situated, evidencing payment of fee prescribed in Section 86 of the Act. The fees payable are as under:-

(क) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख या उससे कम हो तो, रुपये एक हजार. (a) Where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees.

(ख) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड रुपये पाँच लाख से अधिक, लेकिन रुपये पचास लाख से कम, होतो, रुपये पाँच हजार. (b) Where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees.

(ग) जिस मामले से अपील संबन्धित हो उस मामले में मांगा गया सेवा कर और व्याज तथा किसी भी केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा लगाया गया दंड, रुपये पचास लाख से अधिक होतो, रुपये दस हजार. (c) Where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees.

5 (i) उसी की धारा 86 की उपधारा (4) के अंतर्गत बताए गए कुल आपत्तियों के ज्ञापन के संबंध में कोई शुल्क देय नहीं है। No fee is payable in respect of the Memorandum of Cross Objections referred to in Sub-Section (4) of Section 86 ibid.

6. अपीलीय ट्रिब्यूनल के समक्ष प्रस्तुत किए गए सभी आवेदन पत्र के साथ:
Every application made before the Appellate Tribunal:

(क) रोक की मंजूरी के लिए अपील या गलती को सुधारने के लिए अथवा किसी अन्य प्रयोजन के लिए आवेदन पत्र; या (a) In an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(ख) किसी अपीलया आदेश को पुनः स्थापित करने के लिए उसके साथ रुपए पाँचसौ का शुल्क होने चाहिए। (b) For restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

6 (i) इस उपधारा के अंतर्गत आयुक्त द्वारा दायर किए गए आवेदन के मामले में कोई शुल्क देय नहीं है। No fee is payable in case of an application filed by Commissioner this sub-section.

7. केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 और केन्द्रीय उत्पाद शुल्क नियमावली, 2002 तथा सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपीलीय ट्रिब्यूनल (प्रक्रिया) नियमावली, 1982 में शामिल इस से और अन्य संबन्धित मामलों को नियंत्रित करने वाले प्रावधानों की ओर ध्यान आकर्षित किया जाता है। Attention is invited to the provisions governing these and other related matters, contained in the Central Excise Act, 1944 and Central Excise Rules, 2002 and the Customs, Excise and Service Tax Appellate Tribunal Procedure) Rules, 1982.

Appellant	M/s Kadakia and Modi Housing, 5-4-187/3&4, II Floor, Soham Mansion, M.G.Road, Secunderabad
Respondent	The Additional Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad

These proceedings arise out of the appeal filed by the M/s Kadakia and Modi Housing, 5-4-187/3&4, II Floor, Soham Mansion, M.G.Road,

OIA No.HYD-ST-SC-AP2-034-25-26 dated 3RD June, 2025

Secunderabad, (here-in-after referred to as "the Appellant"), against the Order in Original No. 113/2023-24-Sec-Adjn-ADC(ST) dated 28-03-2024 (here-in-after referred to as "the Impugned Order"), passed by the Additional Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad Zone, Hyderabad (here-in-after referred to as "the adjudicating authority/the Respondent") against M/s Kadakia and Modi Housing, 5-4-187/3&4, II Floor, Soham Mansion, M.G.Road, Secunderabad (ST Reg No. AAHFK8714ASD001).

2. The impugned order had adjudicated two show cause notices namely OR No. 99/2016-Adjn(ST), HQPOR No. 10/2016-ST-AE-VIII dated 22.04.2016 covering the period from October'2010 to March'2015 and C.No. V/24/15/03/2018-Adjn dated 16.04.2018 covering the period from April'2015 to June'2017.

3. Before taking up the examination of the issue on hand it is important to examine the chronological sequence of events that led to filing of the subject appeal by the appellant.

4. SEQUENCE OF EVENTS:

4.1 The appellant was issued with a show cause notice in OR No. 99/2016-Adjn (ST), HQPOR No. 10/2016-ST-AE-VIII dated 22.04.2016 covering the period from October'2010 to March'2015(hereinafter referred to as the 'first SCN' for brevity) wherein certain demands towards non-payment of service tax were raised. The demands made in the first SCN were towards:

- (i) An amount of Rs. 14,35,330/- towards the service tax payable on the site formation services rendered by the appellant during the period October'2010 to March'2015
- (ii) An amount of Rs. 40,80,581/- towards the service tax payable on the works contract services rendered by the appellant during the period

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October'2010 to March'2015

(iii) An amount of Rs. 7,01,874/- towards the service tax payable on the other taxable services rendered by the appellant during the period October'2010 to March'2015

(iv) Appropriation of Rs. 19,00,736/- towards the service tax payable by the appellant as mentioned at (i) to (iii) above

(v) Interest as applicable on amounts mentioned at Sl. No. (i) to (iii) above under Section 75 of the Finance Act, 1994

(vi) Penalty under Section 78 of the Finance Act, 1994 on the amounts mentioned at Sl. No. (i) to (iii) above

(vi) Penalty under section 77(2) of the Finance Act, 1944 towards delayed registration

4.2 Following the due process of law, the adjudicating authority adjudicated the first SCN vide OIO No. 48/2016-(ST) dated 30.12.2016 (hereinafter referred to as the 'first impugned order' for brevity).

4.3 Aggrieved by the said OIO, the appellant had filed an Appeal before the Commissioner (Appeals) vide Appeal No. 118/2017(STC) ST.

4.4 The Commissioner (Appeals) had disposed the appeal vide OIA No. HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017 filed by the appellant wherein he had held as follows:

(i) Para 26.1 of the first impugned order is set aside and remanded to the lower authority for re-quantification of liability under WCS by extending composition scheme for the period up to 30.06.2012 and under Rule 2A of the Service Tax Valuation Rules w.e.f. 01.07.2012 by extending abatement; the liability shall be assessee on cum-tax values

(ii) Para 26(2) of the first impugned order is set aside

(iii) Para 26(3) of the first impugned order is set aside and remanded to the lower authority to specify the evidences required from the appellant in this

connection; ascertain the facts; arrive at a conclusion on the existence of liability; on re-quantification of elements (i) and (iii) in the manner directed herein, the amount paid shall automatically stand appropriated

(iv) Para 26(4) of the first impugned order is upheld for adjustment against the quantification in denovo proceedings

(v) Para 26(5) of the first impugned order is upheld in respect of the tax quantification arising in denovo proceedings

(vi) Para 26(6) of the first impugned order stands modified- the quantum of penalty therefore, shall be computed as aggregate of (a) 100% tax liability arising for the period prior to 08.04.2011, and (b) 50% of the tax liability for the period 08.04. 2011 to 31.03.2015 quantified in denovo proceedings in terms of first proviso to Section 78(1)

(vii) Para 26(7) of the first impugned order is set aside

4.5 The said OIA was reviewed by the Department and found that the same is not proper and legal and hence, the Department had preferred an appeal before the Hon'ble CESTAT, Hyderabad vide Appeal No. ST/30115/2018 with a prayer to (i) set aside the OIA No. HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017 and to confirm the demand proposed in the first impugned order along with interest and penalty. However, the said appeal was withdrawn by the Department on monetary limits and the same was allowed by the Hon'ble CESTAT vide Final Order No. A/30981-30986/2019 dated 25.10.2019.

4.6 In the meanwhile the appellant was issued another show cause notice vide C.No. V/24/15/2018-Adjn dated 16.04.2018 covering the period from April'2015 to June'2017 wherein the following demands were made:

(i) An amount of Rs. 14,48,436/- towards the service tax payable on the works contract services rendered by the appellant during the period April' 2015 to June'2017

OIA No.HYD-ST-SC-AP2-034-25-26 dated 3RD June, 2025

(ii) Interest should not be demanded on (i) above under Section 75 of the Finance Act, 1994

(ii) Penalty should not be imposed on them under Section 76 of the Finance Act 1994 for contravention of Rules and Provisions of Finance Act, 1994

(iv) Penalty should not be imposed on them under Section 77 of the Finance Act 1994

4.7 The Respondent had adjudicated both the first and show cause notices vide the first impugned order bearing OIO No. 113/2023-24-Sec-Adjn-ADC(ST) Dated 28.03.2024. The present appeal has been filed against the said OIO passed by the respondent.

FINDINGS:

5. On perusal of the OIO No. 113/2023-24-Sec-ADJN-ADC(ST) dated 28.03.2024 I observe that the following pertinent issues emerge:

- (i) the OIA No. HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017 passed by the Commissioner (Appeals) was appealed against by the department
- (ii) however, owing to monetary limits the said appeal was withdrawn
- (iii) the respondent, while passing the impugned order had not carried out any of the remand directions issued by the Appellate Authority in OIA No. OIA No. HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017
- (iv) the respondent had merely carried out the same arguments of the first impugned order and arrived at the identical conclusion of the first impugned order
- (v) the respondent, while passing the impugned order had adjudicated the second show cause notice also along with the first show cause notice

(vi) the respondent had not made any mention or discussion of the submissions made by the appellant while adjudicating the second show cause notice

6. In light of the fact that the Department had withdrawn the appeal filed against the OIA passed by the Commissioner (Appeals) vide OIA No. HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017IA the only plausible inference that can be drawn is that the said OIA is very much valid and the department ought to have complied with the remand directions issued by the Commissioner (Appeals) in the said OIA.

6.1 I also observe that the Respondent had not discussed the submissions made by the appellant at all in the impugned order thereby rendering it to be not a reasonable order. The respondent should have at least discussed the submissions of the appellant before arriving at his conclusions in respect of the second show cause notice.

6.2 In light of the above findings I pass the following order:

ORDER

I remand the impugned order to the adjudicating authority with a direction to (i) comply with the remand directions issued by the Commissioner (Appeals) in OIA No. HYD-SVTAX-000-AP2-0210-17-18-ST Dated 14.09.2017 and (ii) hear the appellant afresh and discuss about the submissions made by the appellant in respect of show cause notice issued vide C.No. V/24/15/03/2018-Adjn dated 16.04.2018 covering the period from April' 2015 to June'2017.



To

OIA No.HYD-ST-SC-AP2-034-25-26 dated 3RD June, 2025

✓ M/s Kadakia and Modi Housing, 5-4-187/3&4, II Floor, Soham Mansion,
M.G.Road, Secunderabad (Appellant)

- 1) The Additional Commissioner of Central tax, Secunderabad CGST
Commissionerate, Hyderabad Zone, Hyderabad. (Respondent)

Copy Submitted to

The Principal Chief Commissioner of Customs and Central Tax, Hyderabad
GST Zone, Hyderabad.

- a) The Commissioner of Central Tax, Secunderabad GST
Commissionerate, Hyderabad GST Zone, Hyderabad.

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