



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20230364SW0000222A29

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1091/2022-APPEAL /9112-51
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-133/2022-23 and 28.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.03.2023
(ङ)	Arising out of Order-In-Original No. 181/AC/DEM/MEH/ST/Airtouch/2021-22 dated 31.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Air Touch Enterprise, 91/B, Anmol Sahara Township, Radhanpur Road, Mehsana - 384002

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

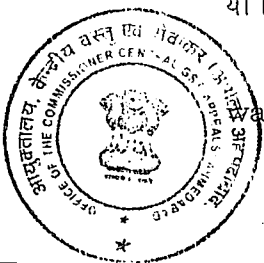
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course



of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

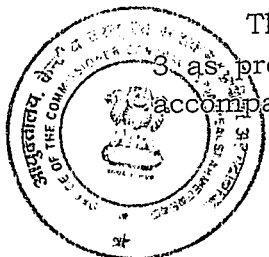
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 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/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

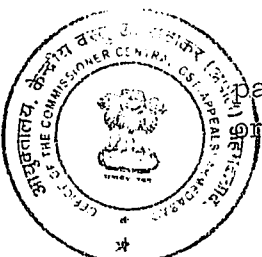
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

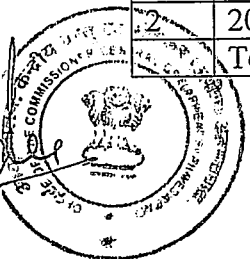
The present appeal has been filed by M/s. Air Touch Enterprise, 91/B, Anmol Sahara Township, Radhanpur Road, Mehsana - 384002 (hereinafter referred to as the appellant) against Order in Original No. 181/AC/DEM/MEH/ST/Airtouch/2021-22 dated 31.03.2022 [hereinafter referred to as the "impugned order"] passed by the Assistant Commissioner, CGST, Division: Mehsana, Commissionerate: Gandhinagar [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were registered with Service Tax department under Registration No. AAOFA8295MSD001 for providing taxable services. As per the information received vide DG Systems Report No.02 & 03, discrepancies were observed in the total income declared by the appellant in their Income Tax Returns (ITR-5) when compared with those in Service Tax Returns for the period F.Y. 2015-16 and F.Y. 2016-17. In order to verify whether the appellant had discharged their Service Tax liabilities properly during the said period F.Y. 2015-16 and F.Y. 2016-17 letter dated 08.05.2020 was issued to them. They failed to reply to the queries.

2.1. It was observed that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA, 1994), and their services were not covered under the 'Negative List' as per Section 66D of the FA, 1994. Further, their services were not exempted vide the Mega Exemption Notification No. 25/2012-S.T dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the period F.Y. 2015-16 and F.Y. 2016-17 were considered taxable. The service tax liability was calculated on the basis of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) or Total amount paid/credited under Section 194C, 194I, 194H, 194J of the Income Tax Act, 1961 of the relevant period, detailed as per table given below :

Table

Sr. No	Period	Differential Taxable Value as per Income Tax data (in Rs.)	Rate of Service Tax including Cess.	Service Tax liability to be demanded (in Rs.)
1	2015-16	1,23,05,156 /-	14.5%	17,84,248/-
2	2016-17	87,73,168 /-	15%	13,15,975/-
	Total	2,10,78,324/-		31,00,223/-



3. The appellant was issued a Show Cause Notice vide F.No. V.ST/11A-06/ATU/2020-21 dated 29.06.2020 (in short 'SCN') wherein it was proposed to:

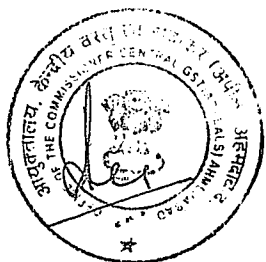
- Demand and recover service tax amounting to Rs.31,00,223/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act,1994;
- Impose penalty under Sections 77(2), 77C and 78 of the Finance Act, 1994

4. The SCN was adjudicated vide the impugned order wherein:

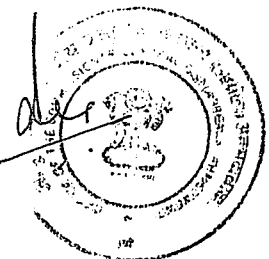
- demand for Rs. 31,00,223 /- was confirmed under Section 73(1) of the Finance Act,1994 alongwith interest under Section 75 of the Finance Act,1994.
- Penalty of Rs.200/- per day or Rs.10,000/-, whichever is higher was imposed under the provisions of Section 77C of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty amounting to Rs. 31,00,223 /- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty vide clause (ii).

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds:

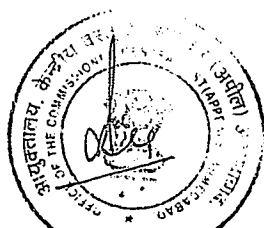
- The adjudicating authority has not discussed the submissions made by the appellants in reply to the SCN and randomly arrived at the conclusion of confirming the demand. They also contended that the impugned order is issued in violation of the principles of adjudication laid down vide Master Circular No. 1053/02/2017-CX dated 10.03.2017.
- The demand has been confirmed entirely on the basis of the ITR data without any inquiry and therefore is not legal and proper. In support they relied on the following decisions :
 - Decision of the Hon'ble CESTAT, Pr.Bench, New Delhi in the case of Commissioner of Central Excise, Ludhiana Vs Mayfair Resorts as reported at 2011 (21) STR 589 (Tri.Del).
 - Decision of the Hon'ble CESTAT, Pr.Bench, New Delhi in the case of Commissioner of Central Excise, Ludhiana Vs Zoloto Industries reported at 2013 (294) ELT 455 (T)



- Decision of the Hon'ble CESTAT, New Delhi in the case of Commissioner of Central Excise, Jalandhar Vs Harcharan Brothers reported at 2004 (168) ELT 454 (T)
- Decision of the Hon'ble CEGAT, New Delhi in the case of Commissioner of Central Excise, Chandigarh Vs M/s Laxmi Engineering Works reported at 2001 (134) ELT 811 (T)
- The financial records like balance sheet, profit and loss account are maintained for accounting purpose under various laws which provide accounting standards of a company. The figures of income tax returns are therefore determined as per guidelines given under those statutes. The figures of balance sheet, profit and loss account, therefore, would not be conclusive for determining the service tax liability under Finance Act 1994.
- Hon'ble Tribunal in case of *Kush Constructions-2019 (24) GSTL.606 (Tri-All)* held that differences in figures reflected in ST-3 returns and Form 26AS filed under Income Tax Act 1962 cannot be basis for raising service tax demand without examining the reasons for such differences and without examining whether amount as reflected in said income tax return was the consideration for providing any taxable service or the differences was due to any exemption or abatement.
- Hon'ble Tribunal in the case of *Go Bindas Entertainment Pvt. Ltd.-2019 (27) GSTL.397 (Tri-All)* held that income for the purpose of income tax includes any cash or consideration received by the business enterprise in the normal course of its business operation and from the other source. It means that revenue is the gross inflow of cash, receivables or other consideration arising from any source which would not necessarily be manufacturing activity undertaken by the assessee or service rendered. Therefore, department cannot make out a case of suppression in the ST-3 returns solely on the basis of the financial figures of the assessee. Similar views were expressed by the Hon'ble Tribunal in the cases of (i) *Vijay Packaging Systems Ltd-2010 (262) ELT.832 (Tri-Bang)*, (ii) *Triveni Casting Pvt. Ltd-2015 (321) ELT.336 (Tri-Del)*, (iii) *K.J. Diesels (P) Ltd-2000 (120) ELT.505 (Tri)*.



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- the SCN has not determined the nature and value of services in proper manner; and they relied on the decision of Hon'ble CESTAT Chennai in case of Coromandel Infotech reported in 2019 (66) GSTR 218 (Tri.-Chennai) =2019 (1) TMI 323 – CESTAT Chennai, wherein the Hon'ble Tribunal has observed that not arriving at the correct value and classification of service is incurable defect in the show cause notice which cannot be corrected at the subsequent stage.
 - Appellants had deployed employees in various Government Departments on the basis of tenders awarded to them and as per the conditions of the tenders, their salary were disbursed through the appellant. Hence, the appellant had acted on behalf of Government of Gujarat and the service provided is to be treated as service provided by Government of Gujarat. As per Section 66D, the services by Government or a local authority are falling under negative list of services.
 - Major portion of the service was provided by the appellant to health department of the Government of Gujarat. The service provided to Public Health Centres and Primary Health Centres of Government of Gujarat are related to health and sanitation work normally being carried out by the Government. With the help of the persons supplied by the appellant the Government carried out the health related services to general public. The work orders and relevant bills would reveal that they had provided manpower to Health Center, Jilla Malaria and Jilla Arogya Kendra. Since the Government Departments deals with the health and sanitation and therefore service provided to Government by way of carrying out any activity in relation to public health is exempted from service tax in terms of Sl. No.25 of Notification No.25/2012 dated 20.06.2012 (as amended).
 - They submitted a copy of letter under which contract was awarded to them in support of their contention of providing services to Health Department and therefore an amount of Rs.11509912/- should be deducted from the gross value of services provided while computing Service Tax liability. They furnished a work sheet for revised calculation of their service tax liability as per the table below :



Name of department	2015-16 (Rs.)	2016-17 (Rs.)	Total (Rs.)
Health(Aarogya)/Sinchai(Water supply) related services	86,68,167/-	24,36,946/-	1,11,05,113/-
Interest on Bank FDR(included in Income Tax 26AS)	2,08,442/-	1,96,357/-	4,04,799/-
Value of services on which Service Tax Paid	40,66,480/-	14,26,185/-	54,92,665/-
Total	1,29,43,089/-	40,59,488/-	1,70,02,577/-

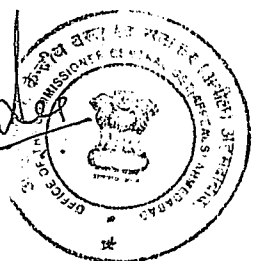
➤ The ingredients for invoking extended period of limitation are not properly discussed by the adjudicating authority in the impugned order and relied on the decision of the Hon'ble Apex Court in the cases of *Bajaj Auto Ltd-2010 (260) ELT.17 (SC)* and *Essar Oil Ltd-2004 (172) ELT.433 (SC)*.

➤ They also relied on the following decisions in support of their contentions against invocation of extended period in confirming the demand and imposition of penalty :

- *Collector of Central Excise, Hyderabad v. Chemphar Drugs and Liniments, Hyderabad, (1989) 2 SCC 127 = 1989 (40) E.L.T. 276 (S.C.)*
- *Cosmic Dye Chemical v. Collector of Central Excise, Bombay, (1995) 6 SCC 117 = 1995 (75) E.L.T. 721 (S.C.)*
- *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut, (2005) 7 SCC 749 = 2005 (188) E.L.T. 149 (S.C.)*
- *Pahwa Chemicals Pvt. Ltd - 2005 (189) ELT.257 (S.C)*
- *Continental Foundations Jt. Venture – 2007 (216) E.L.T.177 (S.C)*
- *Mysore Kirloskar Ltd – 2008 (226) E.LT.161 (S.C)*
- *H.M.M Limited – 1995 (76) E.L.T.497 (S.C)*
- *Raj Bhadur Narain Singh Sugar Mills – 1996 (88) ELT.24 (S.C)*
- *Malai I Net Communication - 2010 (18) S.T.R. 451 (Tri. - Del.)*
- *Jivanbhai D.Makwana - 2010 (20) S.T.R. 605 (Guj.)*

6. Personal Hearing in the case was held on 09.01.2023. Shri M.H.Raval, Consultant, appeared on behalf of the appellant for the hearing. He submitted a written submission during hearing and reiterated the submissions made in appeal memorandum as well as the additional written submission.

6.1 In their additional submission, the appellant have re-iterated the submissions made in appeal memorandum and submitted copies of citations and exemption notifications claimed by them.



7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing, as well as the additional written submissions made by the appellant. The issue before me for decision is whether the impugned order issued by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 31,00,223/- alongwith interest and penalties, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

8. It is observed from the case records that the appellants are registered with the department for providing various taxable services and they have filed their ST-3 Returns during the relevant period. It is also observed that they have, inter-alia, provided services to various Government departments under Government of Gujarat by way of deploying employees. The SCN was issued in the case entirely on the basis of data received from the Income Tax department without carrying out any verifications. Hence, the demand raised vide the SCN is in violation of the Instructions of the CBIC dated 27.10.2021 and is vague.

8.1 It is observed from the submissions of the appellant that they had made similar contentions before the adjudicating authority claiming exemptions on the grounds that they had provided services to various Government departments including health and irrigation department. However, they had failed to submit supporting documents in favour of their contentions. Hence, the adjudicating authority has confirmed the demand classifying the services under 'Manpower Recruitment/supply service'. The appellant has also not submitted any documents before this authority in support of their claims for exemption as well. Further, they have also not submitted any reconciliation statement against the demand confirmed on the basis of Income Tax data. It is incumbent on the appellant to first submit a reconciliation statement for both the financial years to arrive at correct assessment, backed by relevant data. The appellant has failed to do this. Hence, the contentions of the appellant for claim of exemption is legally untenable.

9. The appellant have also contended that their services would merit classification under Section 66E(a) of the Finance Act,1994. The relevant Section 66E (a) of the Finance Act, 1994 reads as under :

SECTION 66E. Declared services. — The following shall constitute declared services, namely :—
(a) renting of immovable property



No evidence has been submitted in appeal proceedings in support of this contention. Hence, it appears that the appellants are uncertain regarding the classification of their services and their contention in this regard is devoid of any merit.

9.1 The appellant has also claimed exemption from Service Tax on the services provided by them under Section 66D(a) of the Finance Act, 1994 on grounds that the services pertained to Government departments and public health departments. Section 66D of the Finance Act, 1994 reads as :

SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

Upon comparison of the nature of services provided by the appellant, with the above legal provisions, it is found that the services provided by the appellant were in the nature of 'Services provided to the Government or local authority' and not 'Services provided by Government or local authority'. Therefore, the services provided by the appellant are not covered within the ambit of Section 66D(a) of the Finance Act, 1994. Further, no documentary evidence alongwith value of services provided to government authority have been submitted by the appellant.

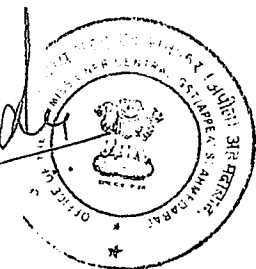
9.2 They have further claimed exemption under clause (a) to Sl.No.25 of Notification No.25/2012-ST dated 20.06.2012 (as amended) contending that they had provided 'Manpower Supply Services' to Health department of the local government. The legal provisions under the said notification are reproduced below:

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation;

or

(b) repair or maintenance of a vessel or an aircraft;



The appellants have submitted some documents in support of their contention but they pertain to the period prior to the period covered by the SCN. Hence, the contention of the appellants is not supported by documentary evidence.

9.3 The appellants have further claimed a deduction of an amount of Rs.1,15,09,912/- from the gross value of service provided while computing the service tax liability. However, they have not submitted any reconciliation statement between the income shown in their ITR and the corresponding details shown in their ST-3 Returns. As the demand is based on the reconciliation of the figures reflected in the Income Tax Returns vis-à-vis those submitted by the appellants in their Service Tax Returns, reconciliation statement becomes mandatory to arrive at correct assessment of the demand of Service Tax for the relevant period.

10. I further find that the appellants have claimed before this authority as well as before the adjudicating authority that they had shown an amount of Rs.4,04,799/- in their Form 26AS as 'Interest on Bank FDR' which is required to be deducted from their total income. They have also contended that during the relevant period they have paid Service Tax on the taxable value of Rs. 54,92,665/-, which are not categorically discussed in the impugned order. I find that the appellants have not submitted any reconciliation statement and documentary evidence corroborating the reconciliation before the adjudicating authority as well as in appeal proceedings. No fruitful purpose would be served on analyzing the contentions of the appellants, which are in part only in relation to the assessment of their liabilities for both the financial years. Hence, there is no other alternative but to remand the matter back to the adjudicating authority to pass a speaking order based on reconciliation submitted by the appellants. The appellants are also required to file a reconciliation statement backed by all necessary documents.

11. In view of the discussions made above, the impugned order is set aside and the matter is remanded back to the adjudicating authority for causing proper reconciliation on the basis of documents produced by the appellants and quantify the demand considering the documents and submissions of the appellants, following the principles of natural justice. The appellants are also directed to submit reconciliation statement alongwith their complete and factual submissions



supported by appropriate documents before the adjudicating authority within 15 days of this order. The appeal filed by the appellant is allowed by way of remand.

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

The appeal filed by the appellant stands disposed of in above terms.

Akhilesh Kumar
.. 28th February, 2023

(Akhilesh Kumar)

Commissioner (Appeals)

Date: 28th February, 2023

Attested:

(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.



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3. The Deputy Commissioner, Central GST Division - Palanpur,
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.