



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



By SPEED POST

DIN:- 20230464SW000000A7E6

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1002/2022-APPEAL / 9111-18
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-156/2022-23 and 30.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.04.2023
(ङ)	Arising out of Order-In-Original No. 24/AC/DEM/MEH/ST/Shiv Shakti/2021-22 dated 17.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shree Shiv Shakti Investment, D-5, Meghrath Building, Station Road, Mehsana, Gujarat-384001

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 प्रक्रिया 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 2nd floor, 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।

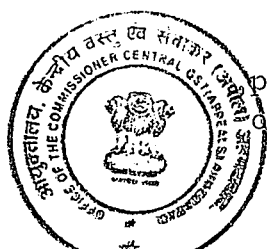
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."



अपीलियआदेश / ORDER-IN-APPEAL

This appeal has been filed by M/s. Shree Shiv Shakti Investment, D-5, Meghrath Building, Station Road, Mehsana - 384001 (hereinafter referred to as the appellant) against Order in Original No. 24/AC/DEM/MEH/ST/Shiv Shakti/2021-22 dated 17.03.2022 [hereinafter referred to as the "impugned order"] passed by the Assistant Commissioner, CGST, Division: Mehsana, Commissionerate: Gandhinagar [hereinafter referred to as the "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were registered with Service Tax Registration No. AJSPK4924CST001 for providing taxable services. As per the information received through the Preventive Section, HQ Gandhinagar vide DG Systems Report No. 02 & 03, discrepancies were observed in the total income declared in the Income Tax Return and Service Tax Returns for the period F.Y. 2015-16 and F.Y. 2016-17 of the appellant. In order to verify the discrepancies in these figures and to ascertain whether they have properly discharged their service tax liabilities during the period, letter/email dated 08.05.2020 was issued to the appellant asking them to provide details for the period F.Y. 2015-16 and F.Y. 2016-17. The appellants did not submit any reply.

3. 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 66 D of the FA, 1994. Further, their services were not found to be 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 relevant period were considered taxable.

4. The Service Tax liability of the appellant for the F.Y. 2015-16 and F.Y. 2016-17 was calculated on the basis of difference between 'Value of Services declared in ITR' and 'Value of Services Provided as per ST-3 Returns' as per details given in table below :

Sr.No	Period (F.Y.)	Differential Taxable Value as per Income Tax data (In Rs.)	Rate of Service Tax including Cess	Service Tax liability (in Rs.)
1	2	3	4	5
1	2015-16	37,93,724/-	14.5%	5,50,090/-
2	2016-17	65,79,634/-	15%	9,86,945/-
	Total	1,03,73,358/-		15,37,035/-



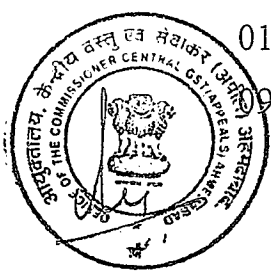
4.1 The appellant were issued Show Cause Notice under F.No. V.ST/11A-22/Shree Shiv Shakti/ 2020-21 dated 29.06.2020 (in short SCN) wherein it was proposed to demand and recover service tax amounting to Rs. 15,37,035/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 77 and 78 of the Finance Act, 1994;

5. The SCN was adjudicated vide the impugned order wherein

- ▣ the demand of Rs. 15,37,035/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75;
- ▣ Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- ▣ Penalty of Rs. 10,000/- was imposed under Section 77(1)(C) of the Finance Act, 1994
- ▣ Penalty amounting to Rs. 15,37,035/- was imposed under Section 78 of the Finance Act, 1994 with an option for reduced penalty under clause (ii).

6. Aggrieved by the impugned order, the appellant have filed this appeal on following grounds:

- The demand is raised entirely on the basis of data received from Income Tax department and the adjudicating authority has confirmed the demand with interest and penalty assuming that, since the appellants have not filed/ declared correct taxable value in their service tax returns, they had committed willful suppression of facts. Moreover, the demand was confirmed after considering the written submission of the appellant and after hearing them during Personal Hearing.
- The adjudicating authority has denied the exemption claimed vide Entry No. 29 of Mega Notification No. 25/2012-ST dated 20.06.2012 on the grounds that the appellants have not produced any certificate in support of their contention that they are a sub-broker of M/s Edelweiss Comtrade Limited and M/s Edelweiss Broking Limited.
- They have enclosed their registration certificate with SEBI which specify that they are registered as sub-brokers of Anagram Securities Limited and their services as sub-broker were exempted vide Notification No. 31/2009-ST dated 01.09.2009. Further amendment vide Notification No. 44/2011-ST dated 09.09.2011 has extended the above exemption to 'Authorised Person' also.



Department has not considered these facts and confirmed the demand based on data received from Income Tax which is not justified. They relied on the following decisions in the regard :

- Regional Manager Tobacco Board Vs Commr. of C.Ex.Mysore [2013 (31) STR 673 (Tri. Bang)]
 - Anvil Capital Management (P) Ltd Vs Commissioner of S.T., Mumbai [2010 (20) STR 789]
 - Commr.of Service Tax, Ahmedabad Vs Purni Ads Pvt.Ltd [2010 (19) STR 242 (Tri.Ahmd)]
 - Sify Technologies Ltd Vs Commissioner of Service Tax, Chennai [2009 (16) STR 63 (Tri.Chennai)]
 - Chhagulal & Sons Vs Commissioner of S.T., Ahmedabad [2013 (30) STR 62 (Tri.Ahmd.)]
- The SCN covers the period 01.04.2015 to 31.03.2017 and was issued on 29.06.2020 invoking the extended period of limitation which is incorrect as the appellant has filed their IT returns regularly and there is no suppression, willful misstatement on part of the appellant.
- As there is no suppression of facts, hence penalty under Section 78 of the Finance Act,1994 cannot be imposed. In support they relied on the judgement in the case of Steel Cast Ltd. reported as 2011 (21) STR 500 (Guj.).
- Penalty under Section 77 of the Finance Act,1994 is not imposable as there is no short payment of service tax. In support they relied on the decision of the Hon'ble Supreme Court in the case of M/s Hindustan Steel Ltd. Vs The state of Orissa reported in AIR 1970 (SC) 253 and also in the case of Kellner Pharmaceuticals Ltd. Vs CCE, reported in 1985 (20) ELT 80. They also relied the case of Pushpam Pharmaceuticals Company Vs CCE 1995 (78) ELT 401 (SC) and CCE Vs Chemphar Drugs and Liniments 1989 (40) ELT 276 (SC).
- As the instant case involves interpretation of statutory provisions, therefore no penalty can be imposed. They placed reliance on the following citations :



- Bharat Wagon & Engg. Co.Ltd Vs Commissioner of C.Ex, Patna , (146) ELT 118 (Tri. Kolkata)
- Goenka Woollen Mills Ltd. Vs Commsiioner of C.Ex., Shillong, 2001 (135) ELT 876 (Trii. Kolkata)
- BHilwara Spinners Ltd. Vs Commissioner of Central Excise, Jaipur, 2001 (129) ELT 458 (Tri. Del).

➤ They submitted copies of Certificate of Incorporation from ROC for name change of M/s Anagram Securities Ltd., Letter of approval showing registration of appellant as authorized person, Request of the appellant for change of status to AP; application for voluntary surrender of sub-broker registration to SEBI and National Stock Enchnage, Mumbai; compliance letter to SCN to the adjudicating authority ; Notification No.12/2012-ST dated 17.03.2012; certificate of registration as sub-broker of SEBI.

7. Personal Hearing in the case was held on 10.02.2023. Mr. Vipul Khandhar Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum and submitted a written submission during hearing. He further stated that M/s Anagram Securities Limited has been changed to M/s Edelweiss Comtrade.

7.1 An additional submission was submitted by the appellant on 10.02.2023, vide which they submitted as under :

➤ During the period they were working as sub-broker and are in receipt of income from M/s Edelweiss Comtrade Ltd. and Edelweiss Broking Limited. They were registered as sub-broker with the Securities and Exchange Board of India (SEBI). Copy of their registration certificate (submitted alongwith) clearly show that they were registered as sub-broker of M/s Anagram Securities Limited. As a sub-broker their services were exempted under Notification No.31/2009-ST dated 01.09.2009. This notification was amended vide Notification No.44/2011-ST dated 09.09.2011 vide which the exemption was extended to 'Authorised Persons' in addition to 'Sub-brokers'.

➤ The services provided by them as Sub-brokers is exempted from Service Tax in terms of Sr. No. 29(a) of Notification No. 25/2012 dated 20.06.2012.

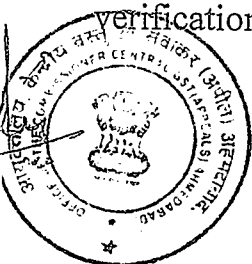


- The demand raised by the department based on data received from Income tax department is not justified.
- Entire demand is time barred and penalty imposed under Section 78 of Finance Act, 1994 without discussing the ingredients of willful misstatement and suppression of facts is not legal and proper.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing, additional submissions made by the appellant and materials available on records. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 15,37,035/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

9. It is observed that the appellant was registered with the service tax department and the SCN was issued without classifying the services. The SCN was issued entirely on the basis of data received from the Income Tax department. The appellants have submitted their reply to the SCN and also appeared for personal hearing. During the relevant period, the appellants had filed their ST-3 Returns and were providing services as 'Sub-broker' and/or 'Authorised Person' to a Stock Broker as well as Authorised Person to a member of a commodity exchange, these facts are undisputed. It is also undisputed that they were registered with SEBI as a share sub-broker to the stock broker M/s Anagram Securities Limited and as per their Form 26AS they have received amounts under Sections 194J and 194H of the Income Tax Act, 1961 from M/s Edelweiss Comtrade Limited and M/s Edelweiss Broking Limited during the relevant period. However, the adjudicating authority has rejected the contentions of the appellant and confirmed the demand raised vide the SCN on the grounds that they had not produced any certificate to the effect that they were acting as sub-brokers for aforementioned firms.

10. It is further observed that the SCN in the case has been issued only on the basis of data received from the Income Tax department. As per the SCN issued, the appellant was registered with the service tax department. However, no further verification has been caused to ascertain the nature of services provided by the



appellant during the relevant period and whether any exemptions/abatement were claimed by them. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is reiterated as :

...

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and mechanically without application of mind, and is vague.

10.1 It is undisputed that the appellants were registered with SEBI as a share sub-broker to the stock broker M/s Anagram Securities Limited. The 'Fresh Certificates of incorporation consequent upon change of name' dated 08.02.2011 and 20.01.2011 issued by the ROC, Ahmedabad clearly establish the fact that M/s Anagram Stock Broking Limited has changed its name to M/s Edelweiss Stock Broking Limited and M/s Anagram Comtrade Limited has changed its name to M/s Edelweiss Comtrade Limited. On account of the change of names of the stock broker firms the appellants have become sub-broker/authorized person for M/s Edelweiss Stock Broking Limited and M/s Edelweiss Comtrade Limited.

10.2 It is also observed that the appellants have claimed exemption under Sr.No. 29 of Notification No. 25/2012-ST dated 20.06.2012. The relevant portion of the said notification is reproduced below :

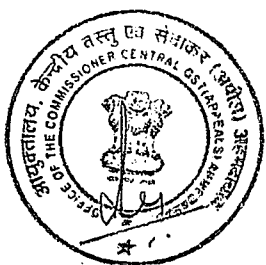
Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 25/2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R.....(E).- 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 Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

...

29. Services by the following persons in respective capacities -



- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

On examination of the provisions of the above exemption notification with the services rendered by the appellant as sub-broker or an authorised person during the period F.Y.2015-16 and F.Y. 2016-17, I find that the services provided by the appellants during the relevant period are squarely covered vide the above exemption. Therefore, the appellants are eligible for exemption under Sr. No. 29 of Notification No. 25/2012-ST dated 20.06.2012 during the period F.Y.2015-16 and F.Y. 2016-17 and the services rendered by them during the period are not liable for service tax. However, the adjudicating authority have failed to address the same vide the impugned order and confirmed the demand mechanically in the impugned order. Hence, the impugned order is vague and legally unsustainable.

10.3 In an identical matter, the Hon'ble CESTAT, WZB, Ahmedabad in the case of Shreshth Leasing & Finance Ltd. Vs Commr. of C.Ex. & S.T., Surat-I has ruled as under :

5.18 We also noticed that in the present case service provided by the Appellant to M/s. Equirus Capital Pvt. Ltd. & M/s. Edelweiss Commodities Services Ltd. was in nature of stock exchange and commodity exchange sub-broker. However, department was incorrectly classified the same service under the category of 'Management or business consultancy'. We noticed that the service provided by a sub-broker to a stock broker was exempted vide Notification No. 25/2012-S.T., dated 20-6-2012. Relevant entry of said notification is reproduced below :

- 29. Service by the following persons in respective capacities -*
- A. Sub-broker or an authorized person to a stock broker;*
 - B. Authorized person to a member of a commodity exchange.*

In view of the above, I find that during the period F.Y. 2015-16 and F.Y. 2016-17, the appellants were eligible for exemption under Sr. No. 29 of Notification No. 25/2012-ST dated 20.06.2012. The impugned order confirming the demand has been issued without examining the facts of the case with the statutory exemptions extended by law. Hence, the impugned order is legally untenable and liable to be



11. I further find that the appellants have filed their ST-3 returns during the relevant period and claimed exemption under Sr. No. 29 of Notification No. 25/2012-ST dated 20.06.2012. These facts are admitted by the department. Overlooking the above facts, the demand was confirmed by the adjudicating authority invoking the extended period of limitation. I also find force in the contentions of the appellant that the adjudicating authority has failed to discharge his obligation to discuss the ingredients of invocation of extended period of limitation in the impugned order. Considering the above I find that the impugned order is a non-speaking order and is legally unsustainable.

11.1 My above views are supported by the following judicial pronouncements :

- *The CESTAT Ahmedabad in the case of Patel Labour Contractor P Ltd Vs C.S.T.- Service Tax – Ahmedabad in Service Tax Appeal No. 10098 of 2013 on 19.04.2021 reported ruled that :*

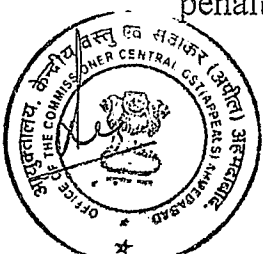
...
4.2 *As per the facts in the present case the period of dispute i.e. 2005-06 to 2009-10 and show cause notice was issued on 19.05.2011. It is also observed that the appellant has filed their ST-3 return covering the period October 2009 to March 2009 on 27.04.2010. As per the aforesaid facts the entire demand is beyond the normal period and falling under the extended period of limitation. As per the above discussion and findings which is supported by the various judgments on limitation. The entire demand is time barred.*

- *The CESTAT Chennai in the case of Vodafone Cellular Limited Vs The Commissioner of GST & Central Excise, Coimbatore in Service Tax Appeal No. 42404 of 2013 on : 01.10.2021 decided that :*

...
12. *Coming to the issue of limitation, we find that in addition to the fact that the appellants are regular assesseees who have been filing ST-3 Returns, the appellants have been issued show cause notices dated 22.09.2009 and 08.10.2010. This being the case, it is not possible to invoke extended period by alleging suppression of fact with an intent to evade payment of duty in respect of show cause notices dated 14.10.2010 and 13.10.2011 ...*

13. *In view of the above, it is not possible for this Bench to hold that the department is free to invoke extended period in the subsequent show cause notices. ...*

12. In view of the discussions made above and the judicial pronouncements of the Tribunal, I am of the considered view that the demand of Service Tax amounting to Rs. 15,37,037/- confirmed in the impugned order under Section 73(1) of the Finance Act, 1994 invoking the extended period of limitation, is legally unsustainable both on merits as well as on limitation. Therefore it is liable to be set aside. As the demand fails to sustain, there is no question of interest and penalty.



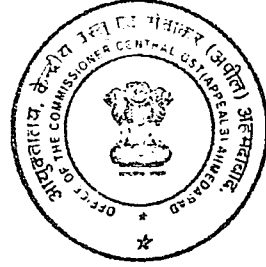
13. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

14. 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.

Akhil
30th March, 2023
(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 30th March, 2023

Attested

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



BY RPAD / SPEED POST

To,

M/s. Shree Shiv Shakti Investment,
D-5, Meghrath Building,
Station Road,
Mehsana – 384001

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division – Mehsana,
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for
uploading the OIA)
5. Guard File.
6. P.A. File.