



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

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/985/2022-APPEAL / 319 - 23
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-157/2022-23 and 31.03.2023
(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. 59/AC/DEM/MEH/ST/K.K. Patel/2021-22 dated 11.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s K K Patel Associates, Shop No. 8, 1st Floor, Nilkanth Plaza, Near Aarambh Flats, T.B. Road, Mehsana, Gujarat-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-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.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।

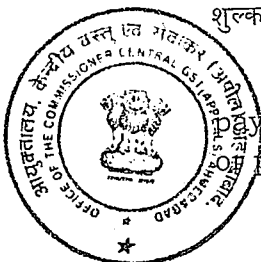
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलियआदेश / ORDER-IN-APPEAL

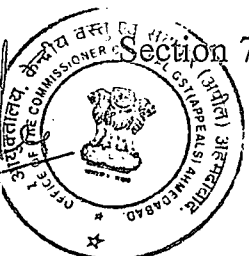
This appeal has been filed by M/s. K.K. Patel Associates, Shop No. 8, 1st Floor, Nilkanth Plaza, Near Aarambh Flats, T.B.Road, Mehsana – 384002 (hereinafter referred to as the appellant) against Order in Original No: 59/AC/DEM/MEH/ST/K.K. Patel/2021-22 dated 11.03.2022 [hereinafter referred to as the “*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 under Service Tax Registration No. AKTPS8787PSD001 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 of the appellant when compared with the Service Tax Returns for the period F.Y. 2015-16 and F.Y. 2016-17. The jurisdictional officer issued letter/email dated 08.05.2020 to the appellant asking them to provide details for the period F.Y. 2015-16 and F.Y. 2016-17. The appellants submitted their reply vide letter dated 18.06.2020. Upon verification of the appellants reply, it was observed that they were not eligible for any exemption/abatment.

3. The jurisdictional officers of service tax 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). The Service Tax liability of the appellant for the 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	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	F.Y. 2016-17	13,60,021/-	15%	2,04,003/-
	Total	13,60,021/-		2,04,003/-

4. The appellant were issued Show Cause Notice under F.No. V.ST/11A-261/K K Patel/ 2020-21 dated 07.09.2020 (in short SCN) wherein it was proposed to demand and recover service tax amounting to Rs. 2,04,003/- 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 Sections 77(2), 77C and 78 of the Finance Act, 1994;

5. The SCN was adjudicated vide the impugned order wherein
- ▣ the demand for Rs. 2,04,003/- 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. 2,04,003/- 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 impugned order and the proceedings initiated against the appellants were without jurisdiction, unconstitutional and erroneous as the department has failed to comply with the provisions in existence after implementation of the CGST Act, 2017. With effect from 16.09.2016, the levy of taxes on service was done away with. With the omission of Chapter – V of the Finance Act, 1994 vide Section 173 of the CGST Act,2017, Section 6 of the General Clauses Act,1897 would also not be applicable in view of the judgement of the Hon'ble Supreme Court of India in the case of Rayala Corporation Vs Directorate of Enforcement, 1969.
- The impugned order is non-speaking order and issued in gross violation of natural justice as the demand was confirmed without considering the submissions of the appellant. They provided copies of all Invoices issued during the period F.Y. 2015-16 and from the same it was clear that during the period their total Turnover was below Rs.10,00,000/-. However, the adjudicating authority did not consider the turnover for the F.Y. 2015-16 and denied exemption in terms of Notification No. 33/2012-ST dated 20.06.2012 during the period F.Y. 2016-17.

They relied on the following decisions in support of their above contention :

- Decision of the Hon'ble Apex Court in the case of Cyril Losardo (Dead) Vs Juliana Maria Losardo reported as 2004 (7) SCC 431.



- Decision of the hon'ble Supreme Court of India in the case of Asstt.Commissioner, Commercial tax Department Vs Shukla & Brothers reported as 2010 (254) ELT 6 (SC).
- The adjudicating authority has failed to understand the conditions of Notification No. 33/2012-ST dated 20.06.2012 with the facts and circumstances of the instant case. They were a Proprietorship firm and provided Independent Consulting Engineer Services during the period F.Y. 2016-17. As per clause 2(i) of the Notification, although they had mistakenly opted not to avail the benefit of 'Small Service Providers', but as per the conditions of the clause they could not withdraw the option during the remaining part of the F.Y. even after realization of their mistake. The appellant has complied with all the requisite conditions for availing the benefit of Small Scale Industries exemption and therefore, benefit of the notification should be extended to them. Moreover granting the benefit of the above Notification was statutory and should have been extended to the appellant even if not mentioned categorically in their documents.
- The appellants have categorically informed the adjudicating authority regarding the fact that the Turnover reported in their Income Tax Return was inclusive of Service Tax and for calculating the Taxable Value in terms of Section 67 of the Finance Act, 1994, the Service Tax amounting to Rs. 2,63,680/- paid during the F.Y. 2015-16 and Rs. 3,13,765/- paid during the F.Y. 2016-17 were required to be deducted. However, the adjudicating authority did not allow the said benefit for arriving at the taxable value. Their contention were further supported by the fact that in their Profit and Loss Account for the F.Y. 2016-17, the amount of Service Tax was shown as 'Expense', which proves that the Gross Amount is inclusive of Service Tax in terms of Section 145A of the Income Tax Act, 1961. Section 67(2) of the Finance Act, 1994 also reiterates the above provisions vide which cum-tax benefit was required to be extended while calculating the taxable value, which was not considered by the adjudicating authority. In support they relied on the following decisions :
- Commissioner Vs Advantage Media Consultants, 2009 (14) STR J49 (SC).



- Rajmahal Hotel Vs Commissioner of Central Excise, 2006 (4) STR 370 (Tri.Del.)
- Andhra Pradesh Yourism Dev.Corpn. Limited Vs Commissioner of Central Excise, 2012 (28) STR 595 (Tri. Bang)
- Bright Security Services Vs Commissioner of central Excise, 2012 (26) STR 342 (Tri.Bang.)

➤ As the ingredients of suppression of facts or an intent to evade payment of service tax are not available in the instant case, the demand cannot be confirmed invoking the extended period limitation in terms of Section 73(1) of the Finance Act,1994. In support of their contention they relied on the following judgements :

- ◦ Commissioner of Central Excise Vs Bajaj Auto Limited reported as 2010 (260) ELT 17 (S.C.)
- M/s Pragati Green Meadows and Resorts Ltd. Vs Ms M.Pranetha & 2 Others – 2020 (2) TMI 859.
- CST New Delhi Vs Kamal Lalwani – 2017 (49) STR 552 (Tri.Del.)
- CCE Vs Chemphar Drugs & Limiments 1989 (40) ELT 276 (SC)

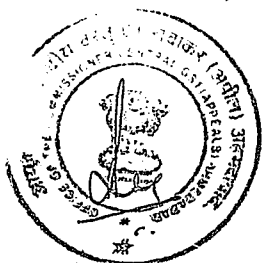
➤ As the service tax is not payable, interest and penalty could not be levied. In support they relied on the following decisions:

- ◦ Tamil Nadu Housing Board Vs Collector of central Excise, Madras [1994 (74) ELT 9 (SC)]
- DCW Ltd. Vs Asstt. Collector of Central Excise [1996 (88) ELT 31 (Mad.)]

➤ Without any specific charges levelled by the adjudicating authority against the appellant, penalty under Section 77(2) of the Finance Act,1994 cannot be imposed.

➤ As the SCN did not propose any penalty under section 77(1) (c) of the Finance Act, 1994, the same cannot be imposed in the impugned order.

➤ They submitted copies of Profit & Loss Account for the F.Y. 2015-16 and F.Y. 2016-17; Reply to SCN submitted before the adjudicating authority;



ST-3 Returns for the period April-September, 2016-17 and October –Mar, 2016-17.

7. Personal Hearing in the case was held on 15.03.2023. Mr. Parth B. Mehta Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing 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. 2,04,003/- 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. 2016-17.

9. It is observed that during the relevant period F.Y. 2016-17 the appellants have filed their ST-3 returns within stipulated period and classified their services under 'Consulting Engineer Services' without any claim of abatement or exemption. In their ST-3 returns, they have declared total Taxable Value as Rs. 19,69,291/- and paid Service Tax amounting to Rs. 2,95,394/-. It is also observed that they had submitted a detailed calculation for the period F.Y. 2015-16 and F.Y. 2016-17 before the adjudicating authority. As per the said calculation, they have availed the benefit of exemption available to Small Scale Service Provider in terms of Notification No. 33/2012-ST dated 20.06.2012. They have considered their Income as cum duty value and the taxable value was arrived at after deducting the amount of service tax @ 15%. Further, they admitted to have short paid Service Tax amounting to Rs. 8,429/-. However, the adjudicating authority has not considered the same and also failed to discuss the reasons for not considering them in the impugned order. Hence, the impugned order is a non-speaking order and is legally unsustainable.

10. It is also observed that the appellants have claimed exemption in terms of Notification No. 33/2012-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. 33/2012 - 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 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 1 st 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 1 st 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:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

- (i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;
- (ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;
- (iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;
- (iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;
- (v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;
- (vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;
- (vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and
- (viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding ten lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 of the said Finance Act for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.



Explanation.- For the purposes of this notification,-

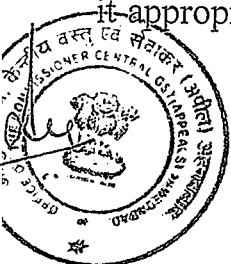
(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(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."

As per clause 2(viii) of the above notification, it is observed that the aggregate value of clearance for the previous Financial Year should be not more than Rs. 10 lakhs. The notification does not prohibit availment of the exemption benefit in case the claimant has paid duty during the previous financial year. Hence, examining the above clause with the facts and circumstances of the instant case, I find that the appellant is eligible to avail the benefit of Small Scale Service Provider in terms of the above notification for the period F.Y. 2016-17. However, the adjudicating authority has failed to address the above claim of the appellant and confirmed the demand without any justifiable reasons. Hence, the impugned order is passed against the principles of justice and is legally unsustainable.

11. The appellants have contended that the adjudicating authority have failed to discharge his obligation to discuss the ingredients of invocation of extended period of limitation in the impugned order. I find that the quantum of demand has to be ascertained after extending the benefit of value based exemption under Notification No. 33/2012-ST dated 20.06.2012. Hence, the aspect of limitation and other grounds raised in this appeal needs to be examined by the adjudicating authority again.

12. In view of the discussions made above, I am of the considered view that the demand of Service Tax amounting to Rs. 2,04,003/- confirmed under Section 73(1) of the Finance Act, 1994 vide the impugned order by invoking the extended period of limitation is legally unsustainable and therefore is liable to be set aside. However, it is also found that the adjudicating authority has failed to address the claim of exemption by the appellants and he has also not discussed the calculation for service tax submitted by the appellant. Therefore, in the fitness of things, I find it appropriate to remand the matter back to the adjudicating authority for deciding



afresh after considering the submissions made by the appellant after following the principles of natural justice.

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

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.

Akhilesh Kumar
.. 31st March, 2023..
(AKHILESH KUMAR)
Commissioner (Appeals)

Date: 31st March, 2023

Attested

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



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6. P.A. File.

