



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:- 20230464SW0000010809

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1153/2022-APPEAL/289 - 93
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-160/2022-23 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	06.04.2023
(ङ)	Arising out of Order-In-Original No. PLN-AC-STX-37/2021-22 dated 31.03.2022 passed by the Assistant Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Multi Channel Network, 1st Floor, Arihant Complex, Lions Hall Road, Deesa, Gujarat-385535

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, 4<sup>th</sup> 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 भीतर मूल-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 संलग्न रकम 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.

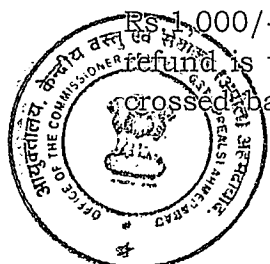
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलिय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अपीलिय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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-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 अपीलो 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 राशिय;
- (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

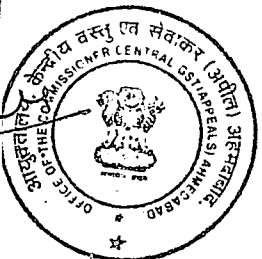
The present appeal has been filed by M/s. Multi Channel Network, 1<sup>st</sup> Floor, Arihant Complex, Lions Hall Road, Deesa, Dist. : Banaskantha, Gujarat (hereinafter referred to as the appellant) against Order in Original No. PLN-AC-STX-37/2021-22 dated 31.03.2022 [hereinafter referred to as the “*impugned order*”] passed by the Assistant Commissioner, CGST, Division: Palanpur, Commissionerate: Gandhinagar [hereinafter referred to as the “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing various services and holding Service Tax Registration Nos. AAFFM4675AST001, AAFFM4675AST002, AAFFM4675AST003 and AAFFM4675AST004. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their ITR-5 (Income Tax Returns) and Form-26AS for the F.Y. 2016-17. The appellants did not file any Service Tax Returns (ST-3) during the period. In order to explain the discrepancies, letters/emails dated 14.05.2019, 01.11.2019, 13.12.2019 and 10.01.2020 were issued to the appellant. 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.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 :

Financial Year (F.Y.)	Total Income declared in ITR-5. (in Rs.)	Income on which Service Tax paid (in Rs.)	Difference of Value (in Rs.) (Col.2 – Col.3)	Service Tax payable alongwith Cess (in Rs.)
1	2	3	4	5
2016-17	1,02,69,073/-	00/-	1,02,69,073/-	15,40,360.95/-



4.1 The appellants were issued Show Cause Notice under F.No. IV/16-01/PLN/Prev/TP/SCN/2020-21 dated 12.06.2020 (in short SCN) wherein it was proposed to demand and recover service tax amounting to Rs.15,40,361/- 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 76, 77(2), 77(3)(c) and 78 of the Finance Act, 1994;

5. The SCN was adjudicated vide the impugned order wherein

- ▣ the demand for Rs. 15,40,361/- 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(3)(c) of the Finance Act, 1994;
- ▣ Penalty amounting to Rs. 15,40,361 /- was imposed under provisions of Section 78 of the Finance Act, 1994 with option for reduced penalty under clause (ii).

6. Aggrieved with the impugned order, the appellants have filed this appeal on following grounds:

- The appellants were engaged in the business of distribution of cable and broadband connections of GTPL to sub-distributors and customers. GTPL, through its flagship company GTPL Hathway Private Ltd., provided Cable and Broadband distribution service to the appellants, who in turn provide such services to the sub-distributors and customers by adding their margin.
- During the period F.Y. 2016-17, they had received a total income of Rs. 1,02,69,072.90/- under 04 categories as detailed in the table below :

Category	Amount of Income (In Rs.)
Advertisement Income	5,94,350/-
Broadband Incentive	2,80,112.70/-
Digital Cable Service Charge Incentive	12,77,010/-
Digital Cable Service Charge Income	81,17,600.20/-
Total Income	1,02,69,072.90/-

- The 'Incentive' amounts received by the appellants from GTPL were not received physically but adjusted against the total outstanding amount ought to be paid by them to GTPL. Therefore, incentives cannot be construed as

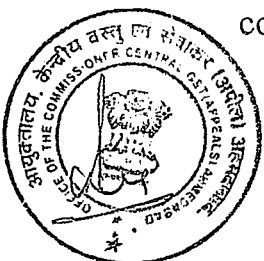


'consideration' and they are required to be exempted from the purview of Service Tax. In support they relied on the following decisions :

- Rohan Motors Limited Vs CCE, Dehra dun reported as 2021 (45) GSTL 315 (Tri.Del.).
  - Kafila Hospitality & Travels Pvt.Ltd. Vs CST Delhi, reported as 2021 (47) GSTL 140 (Tri.LB).
  - CCE Vs Fascinate Advertising & Marketing, reported as 2013 (31) STR 77 (Tri.Del)
  - Oswal Cable Products Vs CCE reported as 2015 (38) STR 437 (Tri.Del.).
- Service Tax on the 'Advertisement Service' has been paid by them on 18.03.2017 and 06.09.2017, i.e prior to the issuance of SCN.
- Service Tax on 'Digital Cable Service Income' was paid by the appellant on 18.03.2017 and 06.09.2017, i.e prior to the issuance of SCN.
- M/s GTPL has already discharged the service tax liability arising out of the Gross amount received from them, therefore, the demand stands nullified.
- They further relied the following decisions :
- CCE Vs Chotey lal Radhey Shyam reported as 2018 (8) 225 (All).
  - Vijay Sharma & Co. Vs CEX, Chandigarh reported as 2010 (20) STR 309 (Tri.LB)
  - Kush Construction Vs CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.All)]
  - Quest Engineers & Consultant Pvt.Ltd Vs Commisioner, CGST & C.Ex., Allahabad [2022 (58) GSTL 345 (Tr.All)]
  - Hindalco Industries Ltd Vs CCEx., Allahabad [2003 (161) EL 346 (Tri.Del.)]
- In view of the principles of Section 67 of the Finance Act, 1994 the appellants are eligible for benefit of cum duty value in respect of the service tax demand confirmed for 'Advertisement Services', as they have not charged any service tax on the said services .
- As none of the ingredients of the extended period of limitation was fulfilled in the present case, hence, extended period of limitation cannot be invoked.



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- As the demand is unsustainable and when the appellant has availed cenvat credit appropriately interest and penalty cannot be imposed.
- In support of all the contentions they further relied on the following citations :
- Oudh Sugar Mills Limited Vs UOI [1978 (2) ELT 172 (SC)]
  - Commissioner Vs Meghmani Dyes & Intermediate Ltd. reported as 2013 (288) ELT 514 (Guj.)
  - Simplex Infrastructures Ltd. Vs Commissioner of Service Tax, Kolkata, 2016-TIOL-779-HC-KOL-ST.
  - Delhi International Airport Ltd. Vs Commissioner of CGST – 2019 (24) GSTL 403 (T).
  - Binjrajka Steel Tubes Ltd. Vs Commissioner of C.Ex, 2016 (342) ELT 302 (T)
  - Anand Nishikawa Co.Ltd Vs CCE, Meerut [2005 (188) ELT 149 (SC)]
  - C.C.Ex. Vs Sicgil Industrial Gases Ltd., 2009 (245) ELT 693.
  - Alembic Ltd. Vs C.C.Ex., Vadodara, 2007 (218) ELT 607 (T).
  - CCL Products (India) Ltd. Vs CST (A), Guntur, 2012 (27) STR 342 (T).
  - Pahwa Chemicals Pvt.Ltd Vs CCE, Delhi [2005 (189) ELT 257 (SC)]
  - Tamilnadu Housing Board Vs CCE [1994 (74) ELT 9 (SC)]
  - Pushpam Pharmaceuticals Co.Vs CCE, [ 1995 (78) ELT 401 (SC)]
  - Continental Foundation Jt.Venture Vs CCE, Chandigarh-I [2007 (216) ELT 177 (SC)]
  - Hindustan Steel Ltd Vs State of Orissa reported as 1978 (2) ELT 159 (SC).
- Alongwith their submission they have submitted copies of Tax Audit Report for the F.Y. 2016-17, Balance Sheet as on 31.03.2017, various tabulated sheets containing details of inward service tax during the period F.Y. 2016-17 and calculation of Service Tax on them, copies of debit notes, bills/invoices issued, correspondence with the Western Railway authorities, copy of reply to show cause notice submitted to Mehsana Division.



7. Personal Hearing in the case was held on 10.02.2023. Mr. Amit Laddha Advocate, appeared for hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and submitted copies of various case laws in support of their contentions.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the 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. 15,40,361/- 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 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 is registered with the service tax department under 'Service Sector (Others)' and holding 04 Registration numbers. However, no further verification has been caused so as to ascertain the nature of services provided by the appellant during the relevant period and whether any exemptions/abatement were claimed and availed by them. Hence, the SCN was issued in 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. It is also observed that the appellants are 'Partnership Firm' and engaged in providing 'Cable Television Service' and 'Broadband Service' to the customers. They are dealers/Sub-dealers of GTPL (operating under their flagship company-  
 GTPL Hathway Limited, Ahmedabad) and providing 'Cable Television Service'

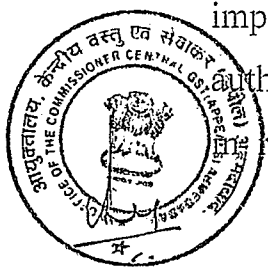




and 'Broadband Service' on behalf of GTPL. They have admitted before the adjudicating authority that they have not filed their ST-3 returns for the relevant period. However, upon realization of the fact of non-payment of Service Tax, they had discharged their Service Tax liability amounting to Rs. 1,89,487 before issuance of the SCN, this is not disputed by the adjudicating authority. Further, alongwith the appeal memorandum, they have submitted a copy of ST-3 return in respect of STC No. AAFFM4675AST001 for the period October-March, 2016-17. In the said return, they have classified their services under 'Advertising Agency Service' and did not claim any exemption/abatement. Also against the Columns Gross Taxable Value, Net Taxable Value and Service Tax payable it is mentioned as '0' (ZERO). Hence, the appellant have failed to declare the value of taxable services provided in ST-3 Returns. Therefore, the appellant have failed to discharge their obligation in terms of Section 70 of the Finance Act, 1994. It is also observed that the appellant have obtained FOUR (4) different registration numbers under Service Tax using the same PAN. In terms of the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, they are required to file Service Tax Returns (ST-3) in respect of each registration number separately within the stipulated period.

10.1 I find that the appellant have submitted a detailed calculation before the adjudicating authority. They had computed their service tax liability for the relevant period at Rs. 12,96,313/- on a taxable value of Rs. 87,11,950/-, which included Rs. 81,17,600/- towards Digital Cable Service Charge Income and Rs. 5,94,350/- towards Advertising Income. Further, they claimed to have availed and utilised Cenvat Credit (termed as 'Input Tax Credit') amounting to Rs. 10,86,734/-, which the adjudicating authority has disallowed on grounds that the appellant had not filed ST-3 Returns for the period and not followed the mechanism to avail and utilize cenvat credit. Further, the appellant have contended that their Incentive Income amounting to Rs. 16,95,563/- was non-taxable under service.

10.2 It is observed that the appellant claimed to have availed and utilized Cenvat credit amounting to Rs. 10,86,734/-, however they have not produced any documents in support of their contentions. It is also not forthcoming from the impugned order whether such documents were presented before the adjudicating authority or otherwise. Further, the fact of payment of Service Tax by the appellant in respect of the payments made by them to M/s GTPL is not disputed. The

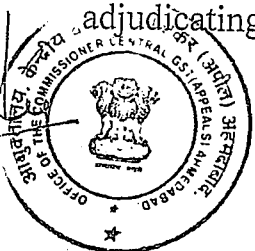


appellant have not filed their ST-3 Returns during the relevant period and the adjudicating authority has denied the availment / utilization of cenvat credit only on said grounds. However, the adjudicating authority has not discussed the issue of availment and utilization of Cenvat credit in terms of the legal provisions in terms of Cenvat Credit Rules, 2004. Therefore, I find that the issue of availment and utilization of Cenvat credit by the appellant during the relevant period is required to be re-examined by the adjudicating authority in light of the prevailing legal positions and any relevant documents produced by the appellant in this regard.

11. It is further observed that during the period F.Y. 2016-17, the appellant have received 'Incentive Income' amounting to Rs. 2,80,112.70/- as 'Broadband Incentive' and Rs. 12,77,010/- as 'Digital Cable Service Charge Incentive', which comes to Rs.15,57,122.7/- . The appellant have contended that the above income cannot be construed as 'Consideration' and, therefore, Service Tax cannot be levied on the amount in terms of Section 67 of the Finance Act, 1994. It is also observed that the appellants have not produced any document evidencing their claim of receipt of (so called) 'Incentive Income' from GTPL. In this regard, I find that without any supporting documents in the form of Invoice/Credit Note etc., the claim of receipt of Incentive Income is not justified. Further, appellant have admitted that the above amount (Incentive Income) was not received by them as a separate amount, but was adjusted against their payments due to M/s GTPL. Hence, it is presumed that the amount of Rs.15,57,122.7/- was adjusted against the amount of 'Consideration' which was to be paid to M/s GTPL. In other words, the amount adjusted against a 'Consideration' should be construed as a 'Consideration' and nothing else. In a similar case, the Hon'ble CESTAT, Mumbai in the case of Phoenix International Freight Services (P) Ltd. Vs CST., Mumbai – II, reported as 2017 (47) S.T.R. 129 (Tri. - Mumbai) had ruled as under :

...  
6.4 ... For the above reason, we uphold the tax liability on this issue under business auxiliary service. In short, both the appeals service tax liability under the issue of airline incentive income is held as taxable within the limitation period under business auxiliary service and the said tax liability is upheld along with interest.  
...

Applying the ratio of the above decision to the instant case, I find that the appellants claim of considering the 'Incentive Income' amounting to Rs.15,57,122.7/- as non-taxable is not legally tenable. It is also observed that the adjudicating authority has recorded in the impugned order that the amount of Rs.



2,80,113/- has been declared by the appellant under 'Broadband Commission Income' in their Tax Audit Report and, therefore, 'Commission Income' is not exempted from service tax. Further, the amount of Rs. 12,77,010/- has been shown under Broadband Commission Income. I do not find any reasonable ground in the contention of the appellant to interfere with the findings of the adjudicating authority in this regard.

12. Regarding the contention of the appellant that proper findings were not given by the adjudicating authority in the impugned order to confirm the fact of 'Service' provided by them before confirming the demand of Service Tax, I find that the appellants have admitted in their submission that they are engaged in the business of distribution of cable and broadband services of GTPL to sub-distributors and customers. From the above, it is apparent that the appellant are providing the services of cable television and broadband network on behalf of M/s GTPL. Further, they have also admitted before the adjudicating authority that after receiving services worth Rs.90/- from M/s GTPL they add a margin of Rs.10/- on the same and provide services to the customers and collects Service Tax @ 15% from the customers and have paid service tax amounting to 1.5 % (15-13.5) to the government. Further, they have also calculated their service tax liability for the entire period at Rs. 12,96,313/-. Hence, the appellant's above contention is devoid of merits and is liable to be rejected.

13. The appellants' contention that the demand was confirmed wrongly invoking extended period of limitation, I find that the appellants were registered with the department and did not file their ST-3 returns during the relevant period as well as did not discharge their service tax liabilities in time. These are undisputed. Further, it is also undisputed that the appellants have not submitted any reply to the queries raised by the department. Therefore, in the absence of statutory records (ST-3) as well as any reply from the appellants, the department is unaware about the quantum and exact nature of services rendered by the appellant during the relevant period. This amounts to suppression and ingredients of proviso clause are applicable to the facts of the case. Therefore the invocation of the extended period of limitation in the facts and circumstances of the case is proper and the appellants claim is not acceptable.

The appellants have also claimed that they are eligible for benefit of cum-

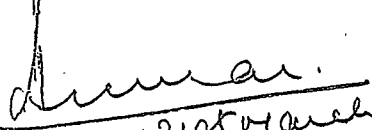


duty in valuation of the 'Advertisement Services', I find that the appellants have not submitted any documents in support of their argument and this aspect has been taken up by the appellant for the first time before this authority. As this claim requires examination of documents and their applicability in terms of Section 67 of the Finance Act, 1994, coupled with the fact that this was raised for the first time during appeal, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to give his findings in this regard.


15. In view of the discussions made above and the judicial pronouncement of the Tribunal, I am of the considered view that the matter pertaining to availment and utilization of Cenvat Credit amounting to Rs. 10,86,734/- and the aspect of cum-duty benefit in respect of advertisement income amounting to Rs. 5,94,350/- needs re-examination by the adjudicating authority. For this limited purpose, the matter is remanded to the adjudicating authority for deciding the matter afresh considering the submissions of the appellant and pass a speaking order on merits after following the principles of natural justice.

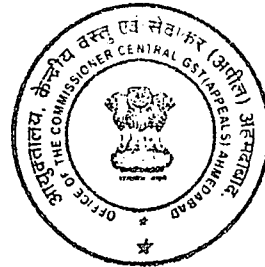
16. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand to the extent mentioned in Para 15 above.

17. 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.

  
31st March, 2023  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Date: 31<sup>st</sup> March, 2023

Attested

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



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