आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By Regd. Post

DIN No.: 20221264SW0000222DE3

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/653/2022-APPEAL / 5667-71
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-068/2022-23 and 30.11.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.12.2022
(ङ)	Arising out of Order-In-Original No. 07/AC/DEMAND/2021-22 dated 28.12.2021 passed by the Assistant Commissioner, CGST & CE, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Dishaan Holidays Pvt. Ltd., 60,61,62, Apana Bazar, Vimal Super Market, Near Bhammariya Nala, Mehsana, Ahmedabad-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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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. Registar 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 ओदश 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 हैं।

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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलंआदेश 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 in 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 मेंए 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

This Order arises out of an appeal filed by M/s. Dishan Holidays Private Limited, 60, 61, 62 Apana Bazar, Vimal Super Market, Near Bhammariya Nala, Mehsana - 384002 [hereinafter referred to as the appellant] against OIO No. 07/AC/Demand/2021-22 dated 28.12.2021 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST & Central Excise, Division: Mehsana, Commissionerate: Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case is that the appellant are holding Service Tax Registration No. AAECD5382KSD001 and are engaged in providing taxable services as Air Travel Agent, Tour Operator, Rent-a-Cab, Business Auxiliary Services and Rail Travel Agent. During the course of audit of the records of the appellant conducted by the Officers of Central Tax Audit Commissionerate, Ahmedabad, the following Revenue Paras for the period April-2016 to June-2017 were raised :

Revenue Para No.	Description	Details of Service	Amount Short/Non Paid (Rs.)
1	2	3	4
Para-1	Non-payment/short payment of service tax on various services	Air Travel Agent	4,195
		Tour operator Service	69,150
		Business Auxiliary Service & Other Taxable Service	28,996
		Rent-a-cab Service	1,093
		Rail Travel Agent Service	4,823
		Bus Ticket Agent Service	62
		Total Amount	1,08,319/-
Para-2	Non-payment of service tax on Commission Income	Commission Income	1,64,556/-
Para-3	Service Tax on Rent Paid to Director	Taxable under RCM	26,100/-
Para-4	Reversal of wrongly availed Cenvat Credit	Cenvat credit availed on Service Tax deducted by other Travel Agents	Rs.10,329/-

2.1 The appellant was issued a Query Memo dated 02.03.2020 wherein they were requested to discharge their service tax liabilities as per the above table. The appellant accepted the queries and paid up Rs.1,00,000/-, but they neither filed a written reply to the Query Memo nor did they discharge their remaining Service Tax liabilities.

3. They were issued Show Cause Notice No. 294/2019-20 from F. No. VI/1(b)-103/Dishaan Holidays Pvt Ltd/IA/18-19/AP-59 dated 08.06.2020 wherein it was proposed:

- to recover service tax amounting to Rs. 1,08,319/- under proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994;
- to recover service tax amounting to Rs. 1,64,556/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994
- to recover service tax amounting to Rs. 26,100/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994
- imposition of penalty under Section 78 (1) of the Finance Act, 1994 for the abovementioned violations ;
- to appropriate the amount of Rs. 1,00,000/- paid by the appellant.
- to disallow and recover Cenvat credit amounting to Rs. 10,329/- under the proviso to Section 73 (1) of the Finance Act, 1994, read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 alongwith interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004
- imposition of penalty under Section 78 (1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004 on the cenvat credit proposed to be recovered.

4. The SCN was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalties equivalent to the service tax confirmed were also imposed under Section 78 of the Finance Act, 1994. The Cenvat credit amount was disallowed with orders to recover the same as well as equivalent penalty for the Cenvat credit issue was also imposed. The amount paid by the appellant was appropriated.

5. Being aggrieved by the impugned order, the appellant has filed the instant appeal on following grounds:

(i) The demand of Service Tax amounting to Rs.1,08,319/- was raised only upon reconciliation and factual details were overlooked by Audit. They have also submitted a fresh recalculation in support of their claim vide which, the demand amount stands nullified. In support, they relied on the following decisions:

- *decision of the CESTAT Bangalore in the case of Regional Manager, Tobacco Board Vs. Commr. of Cen. Ex., Mysore- reported as 2013(31) S.T.R 673.*

- *decision of the CESTAT, Mumbai in the case of Anvil Capital Management Pvt.Ltd Vs. Commr. of S. Tax, Mumbai - reported as 2010(20) S.T.R 789*
- *decision of the CESTAT, Ahmedabad in the case of Commr. of S. Tax, Ahmedabad Vs. Purni Ads Pvt. Ltd reported as 2010(19) S.T.R 242.*
- *decision of the CESTAT, Chennai in the case of Sify Technologies Ltd Vs. Commissioner of Service Tax, Chennai reported as 2009(16) S.T.R 63.*
- *decision of the CESTAT, Ahmedabad in the case of Bhogilal Chhagulal & Sons Vs Commissioner of Service Tax, Ahmedabad reported as 2013(30) S.T.R 62.*

(ii) Regarding the recovery of Cenvat credit, they contended that the same has happened due to adoption of accounting procedure and the said amount of Rs.10,329/- has arisen over a period of three years and upon actual verification, the same would be nullified.

(iii) Regarding the rent paid to the Directors for renting of immovable property service, they contended that the services rendered by their directors do not actually get covered under the definition of 'Service' and also the said amount is reflected in their Income Tax return and TDS is deducted for the same. Therefore, the said demand becomes infructuous.

(iv) Regarding Service Tax on Commission income, they contended that since they have opted for gross service tax payable, there was no need to pay service tax on incentive income. In support they relied on the following citations:

- 2018 (14) GSTL 248, CESTAT, Allahabad in the case of Akbar Travels India Pvt. Ltd. Vs Commr. of Cen. Ex., Lucknow.
- 2018 (9) GSTL 123, C ESTAT Chennai in the case of Rasi Travels and Cargo Pvt. Ltd., Vs Commissioner of Cen. Ex., Trichy.
- 2016 (45) STR 306 , CESTAT, New Delhi in the case of Japan Airline International Co. Ltd Vs Commr. of ServiceTax , New Delhi.

(v) The demand is time barred as there is no suppression, willful mis-statement on their part.

(vi) As there is no suppression or willful misstatement, therefore, penalty cannot be imposed under Section 78 of the FA,1994. Also the SCN has not justified the invocation of extended period of limitation hence the same cannot be imposed in the OIO.

(vii) As per above para since there was no suppression on part of the appellant therefore Penalty under Section 78 of the Finance Act, 1994 cannot be imposed. They relied on the decision of Hon'ble Gujarat High Court in the case of Steel Cast Ltd. 2011 (21) STR 500 (Guj.).

(viii) As the issue involved in the case pertains to interpretation of statutory provisions hence as a settled principle of law, no penalty can be levied. In this context they relied on the following citations:

Bharat Wagon & Engg.Co.Ltd Vs Commissioner of Central Excise, Patna, (146) ELT 118 (Tri.-Kolkata)

Goenka Woollen Mills Ltd. Vs Commr.of cen.Ex., Shillong, 2001(135) ELT 873 (Tri.Kolkata)

Bhilwara Spinners Ltd. Vs Commr. of cen.Excise, Jaipur, 2001 (129) ELT 458 (Tri. Delhi).

6. Personal hearing in the case was held on 09.09.2022. Shri Vipul B. Khandhar, Chartered Accountant, appeared for hearing as authorized representative of the appellant. He reiterated the submissions made in their appeal memorandum. He further submitted an additional written submission during the hearing for consideration.

6.1. Vide the additional written submission, the appellant has submitted copies of the decisions of the Commissioner (Appeals), Ahmedabad passed vide OIA No. AHM-EXCUS-001-APP-71-72/2020-21 dated 11.02.2021 in the appeal of M/s Span Apparels Pvt. Ltd. Ahmedabad, copies/print out of electronic Balance Sheet as on 31.03.2017, reconciliation statements for the F.Y. 2016-17, copies of sample Invoices/ bills of the credit side and debit side.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional written submissions and materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand against the appellant alongwith interest and penalty is legal and proper. The demand pertains to the period April, 2016 to June, 2017.

8. It is observed that the first issue raised in the SCN deals with service tax demand on the basis of reconciliation of Income shown in the financial statements of the appellants with their ST-3 returns in respect of various services e.g. Air Travel Agent, Tour operator, Rent-a-Cab, Business Auxiliary Services and Rail-Travel Agent Services.

The demand was confirmed by the adjudicating authority on the basis of the fact that the appellant have declared less taxable value in their ST-3 returns. It was observed that while calculating the taxable value, the appellant has claimed deductions on heads like 'Bus Charges paid', 'Railway Charges Paid' and Misc. Charges Paid'. This claim of the appellant has been rejected by the adjudicating authority being inadmissible, as no documentary evidence was submitted in support of their claim.

8.1 It is observed from the appeal memorandum that the appellant has given a reconciliation and claimed deductions under heads 'Railway Charges Paid' and 'Miscellaneous Charges paid'. No further clarification has been provided for claiming such deduction. No documents have also been submitted in support of the deductions claimed. The SCN as well as the impugned order have given detailed working of the computation of Service Tax for each financial year, which the appellant has failed to assail. Further, the appellant has failed to substantiate the deductions claimed by them in the appeal memorandum.

8.2 Hence, I am of the considered view that the exclusions claimed by the appellant in the appeal are not admissible to them. Further, the ratio of the judicial pronouncements cited by the appellant in support of their contention are distinguished as the SCN as well as the impugned order has given detailed reconciliation and it is the appellant, who are unable to give the explanations for deductions claimed by them. Therefore, I find that the demand confirmed by the adjudicating authority is proper and legal and requires no interference. The contention of the appellant are liable for rejection.

9. As regards the issue of wrong availment of Cenvat Credit of service tax amounting to Rs. 10,329/-, it is observed from the SCN as well as the impugned order that the same was denied on the grounds that the same were availed on the basis of invoices issued by the IATA agents in respect of the commission paid to the appellant for providing Business Auxiliary Service by way of bulk booking of tickets. The appellant has contended that the same has happened due to adoption of accounting procedure while taking credit on the basis of payment made and while in ST-3 Returns, the entries were made on purchase/services availed basis. The said amount of Rs.10,329/- has arisen over a period of three years and upon actual verification, the same would be nullified. I find that the appellant has not disputed the allegations regarding merits of the eligibility of the invoices in question for availment of Cenvat. They are merely arguing on reconciliation and accounting practices, which I find to be vague. The contentions of the appellant are rejected accordingly.

10. As regards the demand of Rs. 26,100/- confirmed in the impugned order on the *"Rent paid to the Director for the renting of immovable property service, under RCM"*, I find that on identical facts, the Commissioner (Appeals), Ahmedabad in the Order-in-Appeal No. AHM-EXCUS-003-APP-0257-17-18 dated 05.04.2018, passed in the case of M/s. Jay Pumps Pvt. Ltd., had held as under:

> *5. " ...the undisputed fact in the present case is that both the Directors were being paid Rent by the appellant company for hiring of immovable property. However, it does not mean that the Directors have rendered service to the appellant company in their capacity as Directors. The rent received by both the persons was in their personal capacity and not in their capacity as Directors of the appellant company. Therefore, Service Tax was payable by the individual persons and there was no scope of recovering Service Tax from the appellant on Reverse Charge Mechanism. The charge made by the department that the impugned activity attracted Service Tax under the Reverse Charge Mechanism in terms of Rule 2(d)(EE) of the Service Tax Rules,1994 and Notification No.30/2012-ST as amended is based on the incorrect surmise that the Directors were providing the said services in their capacity as Directors. Therefore, the demand for Service Tax and interest as confirmed in the impugned order is not sustainable and is liable to be set aside. Moreover, this is a case of interpretation and just because the audit came to the wrong conclusion that the appellant was liable to Service Tax under Reverse Charge Mechanism, it does not mean that there was suppression of facts on part of the appellant. The ingredients such as suppression of facts, mis-statement, mis-declaration, fraud etc. with intent to evade payment of Service Tax are not substantiated with evidence in order to invoke extended period and to impose penalty under Section 78 of the Finance Act,1994. ... ".*

Similar view has been taken by the Commissioner (Appeals); Ahmedabad in subsequent decisions under OIA No. GAPPL/COM/STP/267,271/2020 dated 11.02.2021 in the case of M/s Span Apparels Pvt. Ltd. In all these cases, it has been held that the rent paid by the company to their director cannot be charged to service tax under Notification No. 30.2012-ST under reverse charge mechanism. The liability for payment of service tax would be on the provider of service. Hence, the order passed by the adjudicating authority to charge service tax amounting to Rs. 26,100/- under reverse charge mechanism fails to sustain on merits and is liable to be set aside along with interest and penalty.

11. As regards the issue of demand of Service Tax amounting to Rs. 1,64,556/-, which has been confirmed on account of 'Commission Income' earned by the appellant by way of bulk booking of domestic and international air tickets through other Travel Agents / IATA Agents, it is observed that the said demand has been proposed in SCN and confirmed in the impugned order on the grounds that the appellant had, by bulk booking of tickets, facilitated the IATA agents for which they had received 'Commission Income', which was shown separately under the head "Direct Income" in their financial records. The appellant had, by bulk booking of tickets, facilitated the IATA Agents in furtherance of their business and for this they had received "Commission", which is covered within

the ambit of definition of Service as defined under Section 65B(44) of the Finance Act, 1994 and were held to be taxable. The appellant, on the other hand, has by relying upon the Explanation appended to Rule 6(7) of the Service Tax Rules, 2002 contended that once the tax was paid on gross value, there was no need for payment of Service Tax on 'Commission Income'. The relevant Explanation to Rule 6(7) of the Service Tax Rules, 2002 reads as under:

> *Explanation : - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which* ***commission*** *is normally paid to the air travel agent by the airline.*

I find that there is no dispute regarding the discharge of Service Tax on bookings made by the appellant. The only dispute remains on the 'Commission Income' earned by the appellant by way of bulk booking of domestic and international Air Tickets through other Travel Agents / IATA Agents. In my considered view, when Service Tax has been discharged on the entire amount under Rule 6 (7) of the Service Tax Rules, 2002, then there is no grounds for charging Service Tax on the amount which the appellant was receiving by way of bulk booking commission. The inferences drawn by the adjudicating authority for confirming the amount of demand of Rs.1,64,556/- is not legal and proper and is required to be set aside.

11.1 My views are further re-inforced by the decision of the Hon'ble CESTAT (Allahabad Bench) in the case of Akbar Travels India Pvt. Ltd. Vs Commissioner of Central Excise, Lucknow [2018 (14) G.S.T.L. 248 (Tri. - All.)] wherein it was held that :

> ...
>
> *On perusal of records, we find that the appellant was registered in the category of Air Travel Agent. Air Travel Agent is defined as a person engaged in providing any service connected with the booking of passage for travel by air. The appellant discharged his service tax liability as provided under sub-rule (7) of Rule 6 of Service Tax Rules, 1994. The appellant received some incentives from the Airlines. Considering the said incentive to be consideration required to be included in the total consideration received for the purpose of assessment, the appellant was issued with a show cause notice dated 7-5-2010 which culminated into the passing of impugned Order-in-Appeal. The Original authority has dropped the demand holding that the appellant had exercised option not to pay tax on commission at the rates specified in Section 66 of the Act and they were paying service tax according to option available under Rule 6(7) of Service Tax Rules, 1994 on the basic fare value of the Air Ticket at rates specified in the said Rule. The said finding was set aside by the Learned*

Commissioner (Appeals) in the impugned Order-in-Appeal. We find that the view taken by the original authority, as recorded hereinabove is sustainable in law.

...

12. Regarding the issue of invoking extended period of limitation by the adjudicating authority for confirming the demand, the appellants have contended that since there was no suppression or mis-declaration on their part, invoking extended period is not legal and proper. They have also contended that since extended period was not invokable, penalty imposed under Section 78 of the FA, 1994 stands infructuous. Considering the facts of the case, I find that the issue was based on the differences of facts and figures observed between the statutory returns ST-3 filed by the appellants during the period and the Financial statements scrutinized by the Audit team during the course of Audit. As the Financial statements maintained by the appellant are their private records and not produced or appended with their statutory returns before the jurisdictional Service Tax authorities, the variations observed would tantamount to 'Suppression of Factual details' and consequently 'Mis-declaration' on part of the appellant. In the era of self-assessment, the onus of assessment is on the appellant and the department comes to know about it only through the ST-3 returns filed by them. The discrepancies, as above, were not declared in the ST-3 Returns and were noticed only during the course of audit. Therefore, I find that the adjudicating authority has correctly invoked the extended period of limitation in terms of proviso to Section 73 of the Finance Act, 1994 for confirming the demand and for imposition of penalty under Section 78 of the Finance Act, 1994.

13. In view of the discussions made above, the demand of Rs. 26,100/- confirmed in the impugned order on the "Rent paid to the Director for the renting of immovable property service, under RCM", as well as of Rs. 1,64,556/- on 'Commission Income' earned by the appellant by way of bulk booking of air tickets through other Travel Agents / IATA Agents are set aside along with consequential relief. The remaining portion of the impugned order is upheld.

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

attested

सोमनाथ चौधरी/SOMNATH CHAUDHARY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST (APPEALS), AHMEDABAD.

Attested:

कार्यालय केन्द्रीय वस्तु एवं सेवाकर (अपील) अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST APPEALS AHMEDABAD

(AKHILESH KUMAR)
Commissioner (Appeals)
Dated: 30th November, 2022

30th November, 2022.

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

To,
M/s. Dishan Holidays Private Limited,
60,61,62 Apana Bazar,
Vimal Super Market,
Near-Bhammariya Nala
Mehsana - 384002

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. TheAssistant Commissioner, CGST & Central Excise, Division : Mehsana, Commissionerate : Gandhinagar
4. The Dy/Assistant Commissioner (Systems), CGST Appeals , Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.