



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20230164SW0000222D75

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/897/2022-APPEAL / 2556-60
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-093/2022-23 and 18.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	20.01.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-ADC-PBM-015-21-22 dated 21.12.2021 passed by the Additional Commissioner, CGST & CE, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bliss Enterprise, C/603, Atishay Residency, Koteshwar Road, Motera, Ahmedabad, Gujarat- 380005

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 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 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 संबोधित 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."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Bliss Enterprises, presently situated at C/603, Atishay Residency, Koteswar Road, Motera, Ahmedabad – 380005 (previous address at C/302, SANGATH 4, Motera Stadium, Sabarmati, Ahmedabad – 380005 (hereinafter referred to as the “appellant”) against the Order-in-Original No. AHM-CEX-003-ADC-PBM-015-21-22 dated 31.12.2021 (hereinafter referred to as the “impugned order”) passed by the Additional Commissioner, Central GST, Gandhinagar (hereinafter referred to as the “adjudicating authority”). The appellant were registered with Service Tax Department under Service Tax Registration No. AFRPG8483MSD003 for providing "Business Auxiliary Service".

2. On the basis of information received from the Income Tax Department, it was observed that there was difference between the total income declared in the Income Tax Return/26AS and the Service Tax Returns filed by the appellant for the F.Y. 2014-15. The appellant was asked to explain the difference by issuance of letters and emails. However, the appellant did not respond. It appeared to the jurisdictional officers that the nature of activities carried out by the appellant in the Income Tax data were covered under the definition of service and hence they were liable to levy of Service Tax at appropriate rate. Accordingly, the differential Service tax payable by the appellant was determined on the basis of difference between the value of "Sales/Gross Receipts (derived from Value reflected in ITR)" as provided by the Income Tax Department and the taxable Value declared in their ST-3 returns for the Financial Year 2014-15 as below:

Sr. No.	Details	(Amount in Rs.)
1.	Value as per Income Tax Data Or Sales/Gross Receipts (as reflected in ITR)	15,49,89,091
2.	Taxable Value declared in ST-3 Return	0
3.	Difference of Taxable Value (1-2)	15,49,89,091
4.	Amount of Service Tax along with Cess ( 12% Basic + @% E.Cess + 1% H.E. Cess) not paid/ short paid	1,91,56,649

2.1. The appellant were issued a Show Cause Notice (SCN) under F. No. V.ST/15-62/DEM/OA/2020-21 dated 17.09.2020 proposing Service Tax demand of Rs. 1,91,56,649 for the Financial Year 2014-15 by invoking extended period of limitation under proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Act. It was also proposed to impose penalty under Sections 77 and 78 of the Finance Act, 1994. The SCN has been issued by applying relaxation provided vide "The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020)" and published in Part-II - Section - I of the Official Gazette of India published on 31st March, 2020.



According to which, the last date of issuance of SCN was extended till 30.09.2020 vide F No CBEC- 20/06/08/2020-GST dated 27.06.2020.

3. The SCN was adjudicated vide the impugned order wherein the proposals made in the SCN were confirmed.

4. Being aggrieved by the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on following grounds:

(i) The impugned order was passed in violation of principles of natural justice. They did not receive the personal hearing notices and hence proper opportunity for hearing was not provided to them. The Hon'ble Supreme Court in catena of judgments has held that principles of natural justice ought to be followed even in the absence of any provision under the statute to that effect. They relied on following judgments:

- a. Dharampal Satyapal Ltd. Vs. Dy. Commissioner of C.Ex, Gauhati - 2015 (320) ELT 3 (SC)
- b. UOI & Ors Vs. MadhumilanSyntex Pvt. Ltd. - 1988 (35) ELT 349 (SC)
- c. Morarji Goculdas B&W Co. Ltd. Vs. UOI 1996 (83) ELT 259 (SC)

(ii) There are no business transactions in name of the appellant and therefore, the service tax cannot be demanded from the appellant. It is to be appreciated that the proprietor of appellant and BAE were common and therefore, both the said firms were operating under the same PAN number. Accordingly, the Service Tax liability, if any, ought to have been demanded from BAE and not from the appellant. They enclosed copies of ST-3 Returns of the appellant along with Form 26AS and Income Tax Return of BAE.

(iii) The services of a selling agent or a distributor of SIM Cards or re-charge coupon vouchers were exempted from leviability of service tax in terms of Notification No. 12/2012-ST and therefore, there cannot be any leviability of service tax on the appellant/BAE. The relevant condition of the Notification No. 12/2012-ST (supra) is reproduced below:

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66 B of the said Finance Act, namely:-

1...28



29. Services by the following persons in respective capacities-

.....

(e) a selling agent or a distributor of SIM cards or recharge coupon vouchers; or

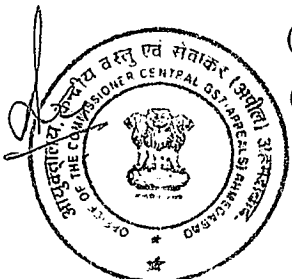
(iv) In terms of the above-mentioned Notification No.12/2012-ST (Supra), the Appellant/BAE was exempted from the leviability of service tax and therefore, the impugned order with respect to demanding of Service Tax along with interest and imposing penalty is bad in law and not sustainable.

(v) When the Appellant/BAE is exempted from Service Tax, then no Service Tax can be levied upon the Appellant/BAE and the Revenue department is bound to follow and consider the exemption Notification. In the case of Commissioner of Central Excise, Gujarat v. M/s. Reliance Petroleum Ltd. reported in 2008 (227) E.L.T. 3 (S.C.), it was observed by Hon'ble Supreme Court that an exemption notification has to be considered liberally and the benefit thereof should not be denied by taking recourse to doctrine of narrow interpretation.

(vi) The company M/s Vodafone has already discharged the liability of Service Tax on gross amount charged for providing re-charge coupons to the customers and therefore, Service Tax cannot be demanded from the Appellant. It is submitted that there is no intention of the Legislature to collect Service Tax twice on the same amount of service. As the amount of service tax had already been paid by the Company, the impugned order demanding service tax on the said amount from the Appellant is arbitrary, illegal and unlawful. In the case of CCE Vs. Chotey Lal Radhey Shyam reported in 2018 (8) GSTL 225 (All), it was held that the activity of sale of SIM cards and recharge coupons by the traders being purely a trading activity, commission received by such traders/franchisees from telecom companies is not leviable to Service Tax under the category of Business Auxiliary Service especially when the telecom companies had already discharged Service Tax on said cards and coupons on their sale to traders on principal to principal basis.

(vii) On perusal of the definition of "service" under Section 65B (45) of the Act, it appears that the following ingredients are required to be satisfied to consider the particular transaction as service:

- (i) Activity is required to be undertaken;
- (ii) That activity is required to be carried out by a person for another person,
- (iii) Consideration must flow,
- (iv) Declared service is also considered as a part of service.



In the present case, the impugned order is silent on the above mentioned ingredients as provided under Section 65B (44) and therefore, the question of demanding Service tax liability does not arise.

(viii) The adjudicating authority erred in not considering that the Show Cause Notice has not mentioned following aspects:

- i. Who is the service provider,
- ii. Who is the service receiver;
- iii. Nature of transactions,
- iv. Who paid consideration;
- v. Value of alleged services;

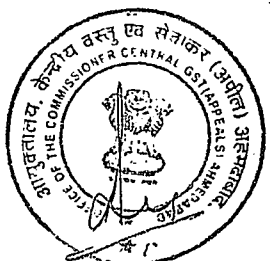
In absence of any finding on the above mentioned aspect, the impugned order erred in confirming Service Tax.

(ix) In the case of Centre for Entrepreneurship Development Versus C.C.E., Bhopal reported in 2017 (4) GSTL 338, the Hon'ble Tribunal, New Delhi quashed the demand on the premise that the entire demand was made in a summary manner simply based only on balance sheet of the assessee without any detailed analysis of various activities of the assessee. Further, it is a settled position of law that service tax cannot be demanded merely on the basis of income shown in Income tax return. They relied on the case law of Alpa Management Consultants Pvt. Ltd. Vs. CST, reported in 2007 (6) S.T.R. 181 (Tri-Bang.), and the recent decision of M/s. Luit Developers Pvt. Ltd. Vs. CGST & Central Excise, reported in 2022-TIOL-180-CESTAT-KOL. In this case, it was held as under:

*"I also find force in the submission of the Ld Counsel for the appellant that figures reflected in Form 26AS cannot be used to determine Service Tax liability unless there is any evidence shown that it was due to a taxable service as held in Kush Constructions(supra). Also, figures shown to Income Tax authorities cannot be used to determine Service Tax as held in Synergy Audio Visual Workshop Pvt Ltd(supra) and Deluxe Enterprises(supra)."*

(x) They also claimed the benefit of Cum Duty price as Section 67 of the Act provides that the gross amount charged for the service is inclusive of Service Tax payable, in a case when no tax has been separately collected on service and tax has been demanded subsequently. They relied upon following decisions:

- (a) Sri Chakra Tyres Vs. CCE (Madras) reported in 1999 (108) ELT 361.
- (b) Rohit Detective & Security Agency vs. CC Ex - 2009 (14) STR 689 (T)
- (c) Gem Star Enterprises (P) Ltd. Vs. CCE, 2007 (7) STR 342;



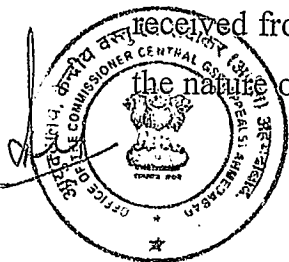
(xi) Extended period of limitation ought not to have been invoked in the present case as the Show Cause Notice was issued on 17.09.2020 for the disputed period from FY 2014-15 and therefore, demand for the disputed period is barred by limitation. The larger period of limitation can be invoked only on those grounds which are specifically provided under the Statute viz. is suppression, omission or failure to disclose information with intent to evade the payment of service tax. If the department seeks to invoke the extended period of limitation on the ground other than those mentioned in the statute, then such invocation of extended period of limitation is bad in law. The Appellant has filed Service Tax returns for the FY14-15 wherein the Appellant has categorically displayed the value of Taxable Service as "0", and filed return within "0" liability. The Appellant has not suppressed any information from the Respondent and therefore, larger period of limitation is not invocable in the present case. They relied upon the following case laws:

- (a) Pahwa Chemicals Private Limited vs. CCE, Delhi [2005 (189) E.L.T. 257 (S.C.)],
- (b) Commissioner v/s. Meghmani Dyes & Intermediate Ltd.[2013 (288) ELT 514 (Guj.)]
- (c) Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata 2016-TIOL-779 HC-KOL-ST
- (d) Delhi International Airport Ltd. Vs. Commissioner of CGST-2019(24) GSTL 403 (7)
- (e) Binjrajka Steel Tubes Ltd. Vs. Commissioner of C Ex, 2016 (342) EL T 302 (T)
- (f) Roma Henny Security Service Pvt Ltd. Vs. Commissioner of Service Tax, Delhi, 2018 (8) G.S.T.L. 239 (Del.)

5. Personal hearing in the case was held on 23.11.2022. Shri Amit Ladha, Advocate, appeared on behalf of the appellant for personal hearing. He re-iterated the submissions made in the appeal memorandum. He also submitted a compilation of case laws during hearing.

6. I have carefully gone through the case records, the impugned order and the submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service amounting to Rs. 1,91,56,649 for the Financial Year 2014-15 by invoking extended period of limitation under proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Act and imposing penalty under Sections 77 and 78 of the Finance Act, 1994, in the facts and circumstances of the case, is legal and proper or otherwise.

7. It is observed that the appellant is registered with the department and had filed Nil return for the F.Y. 2014-15. The SCN in the case has been issued only on the basis of data received from the Income Tax department. No further verification has been caused so as to the nature of services provided by the appellant. It is further observed that the appellant had





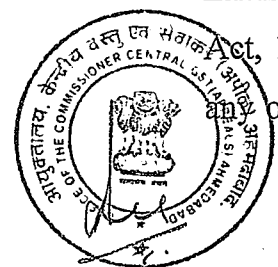
submitted before the adjudicating authority, vide letter dated 07.10.2020 that the firm is a proprietorship concern and had not made any transaction from their firm. The PAN number of the proprietor pertained to another firm named M/s B. A. Enterprise, which was engaged as distribution of SIM Cards or Re-charge coupon vouchers for M/s Vodafone, which were exempted from Service Tax in terms of Notification No. 12/2012-ST. The adjudicating authority has rejected the claim of the appellant as they had not supported their contentions with any documents. The appellant were granted opportunities for personal hearing on 22.11.2021, 07.12.2021 and 23.12.2021 and as the appellant did not appear on any of the dates, the demand has been confirmed against the appellant and penalties imposed ex-parte, merely on the basis of data received from the Income Tax department, without any further verification by the adjudicating authority.

7.1 I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

...  
 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 and the impugned order has been passed indiscriminately and mechanically without application of mind, and are vague, being issued in clear violation of the instructions of the CBIC discussed above.

8.. It is observed that the appellant have contended that they did not receive any notice for personal hearing. It is observed that the adjudicating authority has granted three dates for personal hearing and thereafter rejected the contention of the appellant on the grounds of non-submission of documents. In this regard, I am of the view that, the impugned order has been adjudicated in violation of principles of natural justice. I find that the firms owned by the proprietor of appellant were registered with the department. The appellant had clearly disputed the service tax liability by stating that the amount in question pertained to another firm owned by the proprietor of the firm, which were exempted from levy of service tax. No verification of the claim of the appellant was made, eventhough they were registered with the department and had filed ST-3 returns. Further, as per Section 33 A of the Central Excise Act, 1944 made applicable to the Service Tax matters vide Section 83 of the Finance Act, 1944, the adjudicating authority is required to give three adjournments before passing an order. Hence, the adjudicating authority was supposed to give another date for hearing



as stipulated under the law. The adjudicating authority should have been more prudent before confirming the service tax liability on the appellant particularly when the matter only required reconciliation of income in ITR/Form 26 AS with those of ST-3 Returns.

9.. It is also observed that the appellant has along with the appeal memorandum submitted Audit Report for the firm M/s B. A. Enterprise, a Proprietorship Firm under PAN No. AFRPG8483M for the F.Y. 2014-15, wherein as per the Form No. 3 CD filed before the Income Tax department, the said firm had shown Income from Sales (Vodafone) amounting to Rs.15,49,89,091/-. This is the same amount considered by the adjudicating authority for determining the service tax liability of the appellant. It is apparent from the record that the proprietor of the appellant had two firms under the same PAN. Hence, I find merit in the contentions of the appellant that the SCN has been issued in respect of another firm owned by the appellant. The appellant has also submitted copies of the ledger showing the transactions in the said firm B A Enterprises.

10. In view of the discussions made above, I find that the impugned order passed by the adjudicating authority is not sustainable on merits as well as on grounds of being passed against the principles of natural justice and therefore is deserved to be set aside. Further, as the documents submitted by the appellant during the appeal proceedings were produced for the first time before this authority, it would be prudent to remand the matter to the adjudicating authority to examine the matter afresh in light of the documents presented by the appellant and pass a reasoned order after following the principles of natural justice. The appellant is also directed to present before the adjudicating authority all the relevant documents within 15 days of passing this order to arrive at correct assessment. The adjudicating authority shall also consider the other alternative contentions raised by the appellant in appeal proceedings while concluding the adjudication.

11. 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 Kumar*  
18<sup>th</sup> January, 2023.  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Date: 18<sup>th</sup> January, 2023

Attested:

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



**BY RPAD / SPEED POST**

To,

M/s. Bliss Enterprises,  
C/603, Atishay Residency,  
Koteshwar Road, Motera,  
Ahmedabad – 380005

**Copy to:**

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

