



सत्यमेव जयते

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

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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231064SW000041944B

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1423/2023-APPEAL / 7526-30
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-112/2023-24 and 25.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	26.10.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/171/22-23 dated 28.12.2022 passed by the Assistant Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shri Ganesh Developers, Shop No. 7, Block No. 744, Rakanpur Char Rasta, Village-Rakanpur, Taluka-Kalol, Gandhinagar, Gujarat

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

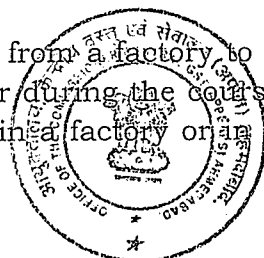
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

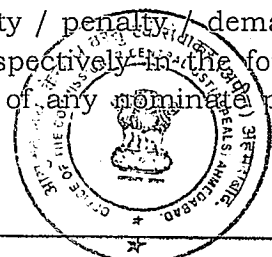
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 nominated 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 पढ़ी 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 रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

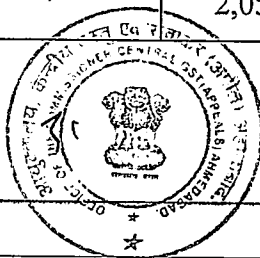
The present appeal has been filed by M/s Shri Ganesh Developers, Shop No. 7, Block No. 744, Village-Rakanpur, Rakanpur Char Rasta, Taluka-Kalol, Gandhinagar, Gujarat-382721 (hereinafter referred to as "*the appellant*") against Order in Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/171/22-23 dated 28.12.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST and Central Excise, Division- Kalol, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing services falling under the category of Renting of Immovable Property service and Works contract service and were registered under Service Tax registration No. ABRFS5004JSD002. As per the information received from the Income Tax department discrepancies were observed in the total income declared by the appellant in their Income Tax Return (ITR) when compared with Service Tax Returns (ST-3) filed by them for the period F.Y. 2016-17. In order to verify, letters & emails dated 01.10.2021, 08.10.2021 & 11.10.2021 were issued to the appellant calling for documents i.e Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS & Service Tax Ledger etc. for the period F.Y. 2016-17. They did not file any reply.

2.1 The jurisdictional officers observed that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services shown in the ITR-5/Form – 26AS and Taxable Value shown in ST-3 return for the relevant period as per details below :

Table-A

Sr. No	Details	(Amount in Rs)
		F. Y. 2016-17
1	Taxable Value as per ITR data	20,77,664/-
2	Taxable Value declared in ST-3 return	7,06,848/-
3	Difference of value mentioned in 1 & 2 above	13,70,816/-
4	Amount of Service Tax along with Cess (@ 15%) not paid / short paid	2,05,622/-



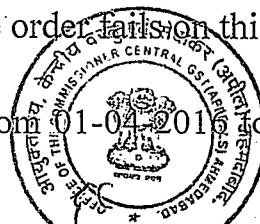
3. Show Cause Notice vide F. No. V/15-02/SCN/Ganesh/21-22 dated 14.10.2021 (in short 'SCN') was issued to the appellant, wherein it was proposed to:

- Demand and recover service tax amounting to Rs. 2,05,622/- under proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77(1)(c)(i), 77(1)(c)(ii), 77(2) and 78 of the Finance Act, 1994;

4. The SCN was adjudicated vide the impugned order wherein the demand for Rs. 2,05,622/- was confirmed under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75. Penalty amounting to Rs. 2,05,622/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii). Penalty of Rs. 5,000/- was imposed under Section 77(1)(c)(i) & 77(1)(c)(ii) of the Service Tax Rules, 1994 respectively.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds :

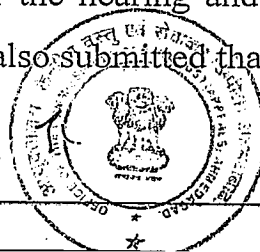
- The appellant is a partnership firm, having Service Tax Registration No. ABRFS5004JSD002 and are engaged in providing services falling under Renting of Immovable property service.
- Appellant are registered service provider & discharged all tax liabilities regularly. Their only income has been renting income. Rent received is from two types of properties. When the rent is from commercial property, it is liable to service tax and due tax is paid thereon. However, when rent is received for residential property, no tax is payable, being negative service under Section 66D (m).
- It must be noted that once the service is in negative service category, the onus to prove taxability shifts to the Department. The department, with evidences, must allege that the transaction is not covered under negative service. This is clearly different from claim of exemption. However in facts of present case, Department did not discharge its burden to prove that the rent was not from residential property. The order falls on this count alone.
- They also submitted that for the period from 01-04-2016 to 30-09-2016 the



return was to be filed on 19-10-2016 the period of five years would expired on 25-10-2020. The notice is dated 14-10-2021. This is also prior to the period covered under extension ordinance. Thus the demand for the period is beyond five years and hence cannot be sustained.

- It is settled principle that when the department intends to demand tax, the onus to allege and prove that there was taxable service is on the Department. This onus must be discharged. There cannot be any presumption about the transaction being taxable. For this reason alone the notice is required to be set aside.
- Thus the property, when used for residential use, no service tax is payable. This is not exemption notification where the onus to prove eligibility shift on the appellant. This is negative service list and hence the onus to prove that our services were taxable would be squarely on department.
- Without prejudice to above, we have enclosed list, entry-wise, showing the rent received from residential properties. The total rent so received is Rs 6,94,800/-. These tallies with the amount of difference shown in the notice.
- They also enclosed copies of each invoice in the list, copies of municipal assessment orders showing the property to be used for residential purpose, invoices of Electricity company showing use as residential. These evidences clearly establish the nature of rent income. Thus the entire difference on which demand is made is in respect of rent received from residential properties. Such service being negative service is not taxable. The demand therefore cannot be sustained.
- When the demand is not sustainable, questions of interest or penalties do not arise. Appellant has correctly paid the tax and filed returns. The order cannot be sustained and must be dropped. Even otherwise the issue is legal in nature. The service is clearly non-taxable service and hence no tax can be demanded. The demand is also time barred. Hence, the appellant requested to set aside the impugned order with consequential relief.

6. Personal Hearing in the case was held on 11.09.2023. Shri Shridev J. Vyas, Advocate, appeared on behalf of the appellant for the hearing and reiterated the submissions made in the appeal memorandum. He also submitted that the appellant



was from renting out of residential property on which no service tax was applicable. The appellant had submitted reply to the adjudicating authority which had been ignored and the order has been passed on ex-parte basis. Therefore, he requested to set aside the impugned order.

6.1 On account of change in the appellate authority Personal Hearing was once again scheduled on 10.10.2023. The appellant replied vide e-mail dated 13.10.2023 wherein they submitted that they have made their submissions vide earlier Personal Hearing and the same may be considered for deciding the appeal as they do not wish to submit further submissions. Accordingly, the above e-mail of the appellant was taken on record and the appeal was taken up for disposal.

7. It is observed from the case records that the appellant were registered with the service tax department and have filed their Service Tax Returns (ST-3) during the period F.Y. 2016-17. However, the SCN in the case was issued only on the basis of data received from the Income Tax department without classifying the services provided by the appellant which implies that, no further verification has been caused so as to ascertain the exact nature of services provided by the appellant during the period F.Y. 2016-17.

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

*Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)*

*CX & ST Wing Room No.263E,
North Block, New Delhi,
Dated- 21st October, 2021*

*To,
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.
Director General DGGI*

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.

Madam/ Sir,

...

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

...

Examining the specific Instructions of the CBIC as above with the facts of the case, I find that the SCN in the case has been issued mechanically and indiscriminately without causing any verification and without application of mind, and is vague, being issued in clear violation of the instructions of the CBIC discussed above.

8. It is further observed from the documents submitted by the appellant that they have filed their ST-3 Returns regularly during the period F.Y. 2016-17. This implies that the appellant have made complete disclosures before the department and the department was aware about the activities being carried out by the appellant, and these facts are not disputed. However, the demand of service tax was confirmed vide the impugned order under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 vide the impugned order, invoking the extended period of limitation.

8.1 In this regard, I find it relevant to refer the decision of the Hon'ble Supreme Court of India in the case of *Commissioner Vs. Scott Wilson Kirkpatrick (I) Pvt. Ltd. - 2017 (47) S.T.R. J214 (S.C.)*], wherein the Hon'ble Court held that "...ST-3 Returns filed by the appellant wherein they Under these circumstances, longer period of limitation was not invocable".

8.2 Further, the Hon'ble High Court of Gujarat in the case of *Commissioner Vs. Meghmani Dyes & Intermediates Ltd. reported as 2013 (288) ELT 514 (Guj.)* ruled that "if, prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".

- I also rely upon the decision of various Hon'ble Tribunals in following cases :
 - (a) *Aneja Construction (India) Limited Vs. Commissioner of Service Tax, Vadodara [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]*
 - (b) *Bhansali Engg. Polymers Limited. Vs. CCE, Bhopal [2008 (232) E.L.T. 561 (Tri.-Del.)]*
 - (c) *Johnson Matthey Chemical India P. Limited Vs. CCE, Kanpur [2014 (34) S.T.R. 458 (Tri.-Del.)]*



In view of the above findings and following the above judicial pronouncements, I find that the impugned order was passed in clear violation of the settled law and is therefore legally incorrect, unsustainable and liable to be set aside on these grounds alone.

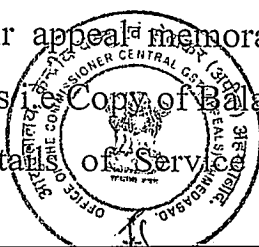
9. I also find that the adjudicating authority has recorded at Para 15 of the impugned order, that opportunity for personal hearing was granted on 14.06.2022, 12.12.2022 and 22.12.2022 but the appellant neither appeared for hearing nor asked for any extension and did not file any written submission. The adjudicating authority had, thereafter, decided the case *ex-parte*.

9.1 In terms of Section 33A (1) of the Central Excise Act, 1944, (made applicable to Service Tax vide Section 83 of the Finance Act, 1994) the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that in the instant case, three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. I find it relevant to refer to the decision of the *Hon'ble High Court of Gujarat* in the case of *Regent Overseas Pvt. Ltd. Vs. UOI - 2017(6) GSTL 15 (Guj)* wherein it was held that:

12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing."

Considering the facts of the instant case with the legal provisions and the order of the Hon'ble High Court, I find that the impugned order has been passed in violation of principles of natural justice and is legally unsustainable.

10. I also find that the appellant have, in their appeal memorandum and in additional submission, submitted various documents, i.e. Copy of Balance Sheet and P&L Account, Reconciliation Statement and details of Service Tax payment



challans for the relevant period. They also submit that during the period F.Y. 2016-17 they were engaged in providing services related to 'Renting of Immovable Property'. During the period they have rented their properties for Commercial as well as Residential purpose. Further, in respect of the income received from properties rented for Commercial purpose they have declared them in their ST-3 Returns and paid the requisite amount of Service Tax, these facts are not disputed by the department. Regarding the income earned from renting of immovable Properties for Residential purpose they have claimed exemption from Service Tax in terms of Section 66 D (m) of the Finance Act, 1994.

10.1 I also find that as per the Balance Sheet/Profit & Loss Account submitted by the appellant for the period F.Y, 2016-17 the total Income was shown as Rs.20,77,664/-, this figure is tallied with the amount reflected in the SCN and impugned order. Further, as per the reconciliation statement submitted by the appellant it shows that during the period F.Y. 2016-17 they have paid total Service Tax amounting to Rs. 2,06,257/-. This fact is also corroborated with the details of duty payment challans submitted by the appellant. From the above it also emanates that during the period F.Y. 2016-17 the appellants have paid service tax on a total taxable value of Rs.13,82,864/-. Considering the said taxable value of Rs. 13,82,864/- as Net taxable value, the differential value i.e difference of Rs.20,77,664/- and Rs. 13,82,864/- comes to Rs. 6,94,800/-.

10.2 As per the Profit & Loss Account for the period F.Y. 2016-17 submitted by the appellant, I find that for the Head- Income they have declared an amount of Rs. 6,94,800/- as Income from 'Renting of Property for residential purpose'. They have also declared an amount of Rs. 13,82,864/- as Income from Renting of Property for Godown Purpose. As claimed by the appellant, the relevant portion of Section 66 D (m) of the Finance Act, 1994 is reproduced below :

SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

...

(m) services by way of renting of residential dwelling for use as residence;

...



Upon examining the above legal provisions with the facts of the case, I find that Services provided by way of renting of residential welling for use as a residence are exempted from the leviability of Service Tax in terms of Section 66 D (m) of the Finance Act, 1994.

11. In view of the above discussions, I am of the considered view that during the period F.Y. 2016-17, the income amounting to Rs. 6,94,800/- earned by the appellant as 'Income from Renting of Immovable Property for residential purpose' is exempted from the levy of Service Tax in terms of Section 66 D (m) of the Finance Act, 1994. Further, it is also apparent that the appellant have paid Service Tax on the remaining amount of Rs. 13,82,864/- as discussed supra. Therefore, the demand of Service Tax amounting to Rs. 2,05,622/- confirmed vide the impugned order is unsustainable on merits as well as per law. As the demand fails to sustain, the demand of interest and penalty also fall.

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

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.




ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 25th Oct, 2023

सत्यापित / Attested :


Superintendent (Appeals)
CGST Appeals, Ahmedabad

By REGD/SPEED POST A/D

To,
M/s Shri Ganesh Developers,
Shop No. 7, Block No. 744,
Village-Rakanpur, Rakanpur Char Rasta,
Taluka-Kalol, Gandhinagar,
Gujarat-382721.



Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad;
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar;
3. The Deputy /Asstt. Commissioner, Central GST, Division- Kalol, Gandhinagar Commissionerate;
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website;
- ✓ 5. Guard file;
6. PA File.

