



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4570/2023-APPEAL/अ - ७५
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-166/2023-24 and 22.12.2023
(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	03.01.2024
(ङ)	Arising out of Order-In-Original No. PLN-AC-ADJ-STX-22/2023-24 dated 09.06.2023 passed by the Assistant Commissioner, CGST, Division - Palanpur, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Nalanda Edutech Pvt. Ltd., Gurupujan Society, Deesa Road, Palanpur - 385001

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 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 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.

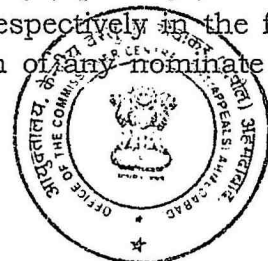
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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 और 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 Nalanda Edutech Pvt Ltd, Gurupujan Society, Deesa Road, Palanpur – 385001 [hereinafter referred to as “the appellant”] against Order in Original No. PLN-AC-ADJ-STX-22/2023-24 dated 09.06.2023 [hereinafter referred to as “the impugned order”] passed by the Assistant Commissioner, CGST, Division - Palanpur, Commissionerate - Gandhinagar [hereinafter referred to as “the adjudicating authority”].

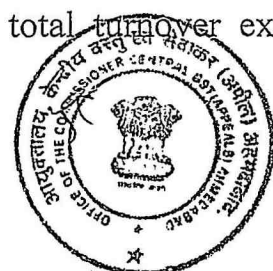
2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax and were holding PAN No. AAECN9433F. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2016-17, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, in order to seek information, letter dated 14.10.2021 was issued to the appellant calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers considering the services provided by the appellant as taxable under Section 65 B (44) of the Finance Act, 1994 determined the Service Tax liability for the F.Y. 2016-17 on the basis of value of ‘Sales of Services’ under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2016-17	11,59,446/-	15%	1,73,916.9/-

3. The appellant was issued Show Cause Notice No. GEXCOM/SCN/ST/9711/2021-CGST-DIV-PLN-COMMRTE-GANDHINAGAR dated 19.10.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.1,73,916.9/- under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 77(1)(a), Section 77(1)(b), Section 77(1)(c)(i), Section 77(1)(c)(ii), Section 77(2) and Section 78 of the Finance Act, 1994. It was also proposed that Service Tax liability not paid during the F.Y. 2017-18 (upto June 2017), ascertained in future due to non-availability of pertaining data.



4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :
- Service Tax demand of Rs.1,73,916.9/- was confirmed for the F.Y. 2016-17 under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
 - Service Tax Demand was confirmed for the F.Y. 2017-18 (upto June-2017), but not ascertained due to non-availability of pertaining data.
 - Penalty of Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.
 - Penalty of Rs.20,000/- was imposed under Section 70 of the Finance Act, 1994.
 - Penalty of Rs.10,000/- was imposed under Section 77(1)(b) of the Finance Act, 1994.
 - Penalty of Rs.10,000/- or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date till the date of actual compliance, was imposed under Section 77(1)(c)(i) & Section 77(1)(c)(ii) of the Finance Act, 1994.
 - Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
 - Penalty of Rs.1,73,916.9/- was imposed under Section 78(1) of the Finance Act, 1994 with option for reduced penalty in terms of clause (ii).
5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:
- The adjudicating authority has erred in confirming the demand of Service Tax Rs. 1,73,916.9/- along with interest and penalty of Rs. 1,73,916.9/- in sheer disregard of Provisions of the Finance Act, 1994.
 - They further submitted that as per Notification no. 33/2012 dated 20-06-2012, the central government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act.
 - They stated that in the income tax return for the financial year 2015-16, the appellant reported a taxable turnover of Rs. 34,000/-. However, an additional income of Rs. 1,80,000 from IMS Proschool Pvt Ltd is indicated in the Form 26AS for the same fiscal year. Regrettably, the appellant erroneously recorded this income in the financial year 2016-17 instead of the correct financial year 2015-16. This accounting error resulted in the total turnover exceeding 10



lakhs in the financial year 2016-17. If the income of Rs. 1,80,000 for the financial year 2015-16 had been correctly accounted for in that same fiscal year, the turnover for the financial year 2016-17 would have been Rs. 9,79,446 (computed as 11,59,446 - 1,80,000). As a result, the appellant would have remained within the exemption limit of ten lakhs when calculating their service tax liability for the financial year 2016-17. Accordingly no service tax liability arises in the financial year 2016-17.

➤ Further, they requested to consider the above stated facts and set aside the impugned *ex-parte* order.

6. It is observed from the records that the present appeal was filed by the appellant on 18.08.2023 against the impugned order dated 09.06.2023, which was reportedly received by the appellant on 16.06.2023.

6.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

6.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 16.08.2023 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 16.09.2023. This appeal was filed on 18.08.2023, i.e after a delay of 02 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

6.3 In their application for Condonation of delay in filing the appeal, they submitted that the reason for 02 days delay due to non-generation of the challan after



the payment of pre-deposit. These reasons of delay were also explained by them during the course of personal hearing, the grounds of delay cited and explained by the appellant appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal was condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

7. Personal Hearing in the case was held on 15.12.2023. Shri Sachin Dharwal, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal.

8. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.1,73,916.9/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order decided by *ex-parte*, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period of F.Y. 2016-17.

9. Examining the submissions made by the appellant, I find that they are engaged in the activity of "Training Programme Services". As per sales ledger account & ITR of 2015-16, the appellant had showed only Rs. 34000/- in sales ledger and ITR. Appellant's claim that Rs.1,80,000/- pertains to the F.Y. 2015-16 is not sustainable and appears to be after thought.

9.1 I find that the appellant has submitted the copied of ITR, Form 26AS & Sales Ledger Account for the F.Y. 2015-16 & F.Y. 2016-17. As per the ITR related to F.Y. 2015-16 the turnover is only Rs.34,000/-. Hence, the benefit of Notification No. 33/2012-ST dated 20.06.2012 is available to the appellant. The taxable value, therefore, comes to only Rs.1,59,446/- (11,59,446- 10,00,000). Appellant is liable to pay service tax on this taxable value along with interest and equal penalty under Section 78 of the Finance Act, 1994. Further, late fee under Section 70 and various penalties under section 77 are also liable to be upheld.

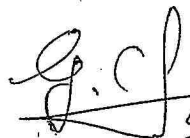


10. In view of the above, I pass the following order in appeal :

- (i) Service Tax on the taxable value of Rs.1,59,446/- only is upheld. Benefit of Notification No. 33/2012-ST dated 20.06.2012 is granted.
- (ii) Interest on the Service Tax as per para (i) above is upheld.
- (iii) Penalties under Section 70, 77(1)(a), 77(1)(b), 77(1)(c)(i&ii) and 77(2) of the Finance Act, 1944 are upheld.
- (iv) Penalty equal to Service Tax as per para (i) above are upheld.

11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

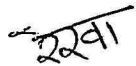
The appeal filed by the appellant stands disposed of in above terms.


22.12.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 22nd December, 2023

सत्यापित/Attested :



रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

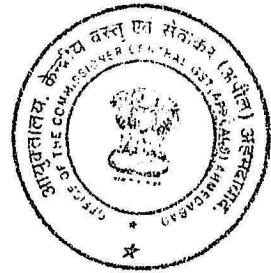
By REGD/SPEED POST A/D

To,

M/s Nalanda Edutech Pvt Ltd,

Gurupujan Society, Deesa Road,

Palanpur – 385001.



Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
3. The Assistant Commisisoner, CGST & CEX, Palanpur Division, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.
6. PA File.