



सत्यमेव जयते

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

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1455/2022-APPEAL / 152 -56
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-021/2023-24 and 04.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	09.05.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-ADC-PBM-016-21-22 dated 21.01.2022 passed by the Additional Commissioner, CGST, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Top Education, Plot No. 720, Shopping Centre, Sector-22, Gandhinagar - 382022

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, 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 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 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 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।

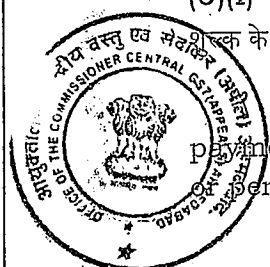
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."



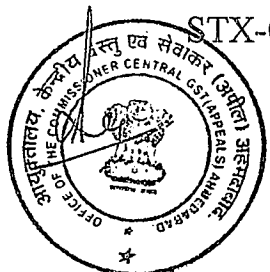
अपीलिय आदेश / ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Top Education, Plot No.720, Shopping Centre, Sector-22, Gandhinagar-382022 (in short 'appellant') against Order-in-Original No. AHM-CEX-003-ADC-PBM-016-21-22 dated 21.01.2022 (in short 'impugned order') passed by the Additional Commissioner, Central Excise & CGST, Commissionerate : Gandhinagar (in short 'adjudicating authority').

2. Briefly stated, the facts of the case are that on the basis of investigations carried out by the Preventive Wing of erstwhile Central Excise, Commissionerate-Ahmedabad-III, it was found that the appellant was running coaching classes for the students for preparation for competitive examination like IIT, JEE, AIEEE, GUJCET etc. falling under the category of taxable service viz. "Commercial Coaching Centres and Tutorial Service" under Section 65(105) (zzc) of the Finance Act, 1994. It was also found that the appellant had obtained Service Tax Registration no.AACCT4982HST001 dated 05.12.2007, collected service tax on fees from the students, but, did not deposit the same to the Govt. Account and also failed to file service tax return in form ST-3. This fact was admitted by the Director of the appellant. Considering the services rendered by the appellant as 'Commercial Training or Coaching'service a Show Cause Notice was issued F.No.V.ST/15-85/OFF/OA/2012 dated 22.10.2012 (in short 'SCN) to the appellant vide which it was alleged as to why :

- Services provided by the appellant amounting to Rs. 2,18,69,338/- should not be treated as taxable value considering the services provided as taxable services within the meaning of Section 65(105)(zzc) of the Finance Act,1994.
- Demand and recover Service Tax amounting to Rs. 23,25,747/- under proviso to Section 73(1) of the Finance Act,1994 alongwith interest under Section 75 of the act. Appropriation of an amount of Rs. 1,00,000/- paid by them vide Challan dated 11.05.2012 against the demand of service tax.
- Penalty was proposed under Sections 70, 76, 77 and 78 of the Finance Act,1994.

3. The SCN was adjudicated by the adjudicating authority vide OIO No. AHM-STX-003-ADC-057-13 dated 29.11.2013 wherein :

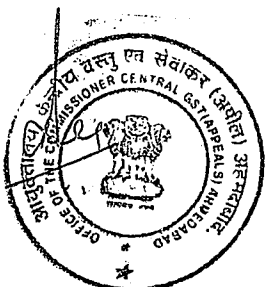


- (a) An amount of Rs. 1,93,90,538/-, being gross amount received, was considered as taxable service under “Commercial Training or Coaching Service” as defined under Section 65(26) of the Finance Act, 1994 for the purpose of charging service tax under Section 67 *ibid*;
- (b) Demand of Service Tax amounting to Rs. 20,67,774/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75;
- (c) demand of Rs. 2,57,973/- was dropped;
- (d) An amount of Rs. 1,00,000/- paid during investigation was appropriated against service tax liability confirmed *vide* (b) above;
- (e) Penalty of Rs. 200/- per day from the date on which service tax was due upto 09.05.2008 or 2% of such tax per month, whichever is higher, was imposed under Section 76 of the Finance Act, 1994;
- (f) The appellants were directed to pay the specified amount under Rule 7(c) of Service Tax Rules, 1994 read with Section 77(2) of the Finance Act, 1994;
- (g) Penalty of Rs. 10,000/- or Rs. 200/- per day was imposed under Section 77(2) of the Finance Act, 1994;
- (h) Penalty of Rs. 20,67,774/- was imposed under Section 78 of the Finance Act, 1994 with an option for reduced penalty under proviso to clause (ii).

3. Aggrieved with the said order dated 29.11.2013, the appellant filed an appeal before the Commissioner (Appeals -I), Central Excise, Ahmedabad, who decided the appeal vide OIA No. AHM-EXCUS-003-128-14-15 dated 22.12.2014, wherein it was ordered that :

11. ...I allow the appeal by way of remand to the adjudicating authority for verification and re-quantify the demand afresh in the light of my findings at Para Nos.8.1, 8.8 and 8.9 above, and reject the appeal in light of my findings at Para Nos.8.2 and 9 above. ...

In other words, the Commissioner (Appeals) while allowing the appeal by way of remand, rejected the relief sought by the appellant in respect of an amount of Rs. 7,61,560/- and also the Cum-duty benefit sought by them. However, he allowed re-quantification of the tax liability after extendeing the benefit of threshold exemption for the period F.Y. 2007-08.

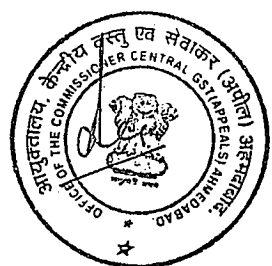


4. In the remand proceedings, the issue was decided vide the impugned order in compliance with the directives of the Commissioner (Appeals). The adjudicating authority has in the impugned order ordered as under :

- Demand of Service Tax amounting to Rs. 19,68,894/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- An amount of Rs. 1,00,000/- paid during investigation was appropriated against service tax liability confirmed;
- Penalty of Rs. 200/- per day from the date on which service tax was due upto 09.05.2008 or 2% of such tax per month, whichever is higher, was imposed under Section 76, of the Finance Act, 1994;
- The appellant was directed to pay the amount specified under Rule 7(C) of the Service Tax Rules, 1994 read with Section 77(2) of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.
- Penalty of Rs. 19,68,894/- was imposed under Section 78 of the Finance Act, 1994 with an option for reduced penalty under proviso to clause (ii).

5. Being aggrieved with the impugned order, the appellant have filed this appeal alongwith an application for condonation of delay on following grounds :

- As, the demand was confirmed merely relying on the statements of Panch witnesses and on the basis of cash receipts randomly, it is based on assumptions and presumption without corroborative evidence, as admissions made are not conclusive evidences. The relied on the decision of the *Hon'ble CESTAT, Ahmedabad in the case of Goyal & Co. Construction Pvt.Ltd and Shri Mukesh Agarwal Vs C.S.T, Service Tax, reported as 2022 (4) TMI 735.*
- The impugned order was issued without following the principles of natural justice as optimum opportunities for personal hearing was not granted by the adjudicating authority. Moreover, the period of adjudication was affected with Covid-19 pandemic ample opportunity should have been extended before deciding the case. They relied upon the judgement of *Hon'ble High Court of Gujarat in the case of Regent Overseas Vs Union of India reported as 2017 (3) TMI 557 ; in the case of Remankhan Belin Vs State of Gujarat [2020] 117 taxmann.com 175 (Gujarat) and in the case of*



Virani Industries Vs State of Gujarat – R/SCA/7355/200. They also referred to the decision of the Hon'ble Supreme Court of India in the case of *Asstt. Collector of C.Ex. Vs National Tobacco of India Ltd. – 1978(2) ELT J416 (SC)*.

Regarding the misclassification of the services provided by them, they contended that due to the prevailing confusion in respect of classification of the services during the relevant period and relying on the belief that 'Education' is exempted from the purview of taxation, they had classified their services without any malafide intention. In support, they relied upon the decision of Hon'ble Bombay High Court in the case of *Pr.Commr. of Service Tax Vs Shree Chanakya Education Society* reported as 2017(362) ELT 741(Bom.).

Income from sale of books to their students is required to be deducted from taxable value as they had maintained separate records for the same and this aspect was not verified by the adjudicating authority. They relied on the decision of CESTAT Allahabad in the cases of *M/s Rubicon Rostrum Coaching Pvt.Ltd reported as 2017 (11) TMI 690* and *Major Kalshi Classes Pvt.Ltd reported as 2020(2) TMI 759*.

As they have not charged service tax from the service receivers, therefore cum-duty valuation benefit is available to them. In support, they relied on the following decisions :

- Balaji Manpower Service reported as 2019(31)GSTL 418 (P&H).
- M/s Honda Cars India Ltd reported as 2018 (3) TMI 257 (Cestat New Delhi)
- Hi-line Pens Ltd. reported as 2017 (5) GSTL 423 (Tri.Del.)
- M/s Hans Interiors reported as 2016-TIOL-1155-Cestat-Chennai.
- Polaris Software Lab Ltd. reported as 2016-TIOL-427-Cestat-Mad.
- M/s P C Constructions, M/s Raj & Co. reported as 2015-TIOL-1569-Cestat-All.



- ◉ The SCN as well as the OIO has failed to establish the issue of wilful suppression, hence the SCN and OIO are arbitrary, vague and incoherent.
- ◉ The extended period of limitation is improperly invoked as the department has failed to establish the ingredients of invoking the same as there is no suppression of facts with an intent to evade payment of tax. Therefore, the demand raised vide SCN and confirmed by the OIO under Section 73 without discharging the liability to prove the ingredients of invoking the same is barred by limitation. Further, as no demand is payable, interest and penalty does not arise.
- ◉ They further referred to the following decisions :
 - ▣ Decision of the Hon'ble Supreme Court in the case of Hindustan Steel Vs State of Orissa – 1978 (2) ELT J159.
 - ▣ Decision of the Hon'ble Supreme Court in the case of UOI Vs Rajasthan Spinning and Weaving Mills reported as 2009 (238) ELT 3 (SC).
 - ▣ Sourav Ganguly Vs UOI [2016 (43) STR 482 (Cal.)]
 - ▣ South City Motors Vs CST, Delhi [2012-25-STR-483 (Tri.Delhi)]
 - ▣ C.R.Scooters Vs CCE, Vadodara [2012-25-STR-177(Tri.Ahmd)]
 - ▣ Decision of Hon'ble CESTAT in the case of YCH Logistics (India) Pvt. Ltd. Vs CCE & CST, Bangalore Service Tax-I [2020 (3) TMI 809].
 - ▣ Decision of Hon'ble CESTAT in the case of Bumi Geo Engineering Ltd. Vs Commissioner of Service Tax, Chennai -III [2018 (7) TMI 616]
 - ▣ Decision of Hon'ble CESTAT in the case of Satish Kumar Contractor Vs CCE, Panchkula [2018 (3) TMI 1429].
 - ▣ Decision of Hon'ble CESTAT in the case of Ishvarya Publicities Pvt.Ltd Vs Commissioner of Service Tax, Chennai – II [2016- TIOL-1409-CESTAT-MAD].
 - ▣ Decision of the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs CCE, Chandigarh -I – 2007 (216) ELT 177 (SC)]
 - ▣ Decision of the Hon'ble High Court of Delhi in the case of DTC Vs Commissioner of Service Tax – 2015-TIOL-961-HC-DEL-ST.



- Decision of the Hon'ble High Court of Madras in the case of CCE, Tiruchirapalli Vs Shri Suthan Promoters – 2010-TIOL-623-HC-MAD-ST.
- Gujarat Guardian Limited – 2016 (46) STR 737 (Tri.Ahmd.)
- Fascel Limited – 2017 (52) STR 434 (Tri.-Ahmd).

6. Personal hearing was held on 10.02.2023 for deciding the issue of condonation of delay, Ms Labdhi Shah, Chartered Accountant, and Ms Trishala Sheth, Advocate, appeared on behalf of the appellants for hearing. They reiterated the submissions made in the application for condonation of delay.

6.1 It is observed from the records that the present appeal was filed by the appellant on 27.05.2022 against the impugned order dated 21.01.2022, which was received by the appellant on 21.01.2022.

6.2 It is 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.”

6.3 As per the legal provisions above, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 20.03.2022 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 19.04.2022 . However, considering the Covid-19 pandemic, the Hon'ble Supreme Court of India vide Order dated 10.01.2022 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. It was further directed by the Hon'ble Supreme Court that where the limitation would have expired during the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all



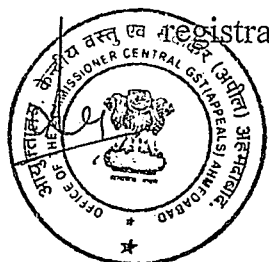
persons shall have a limitation period of 90 days from 01.03.2022. Therefore, in pursuance of the above order of the Hon'ble Supreme Court the period of limitation in the instant case begins from 01.03.2022 and the stipulated period of two month ends on 30.04.2022. Further, the condonable period of one month is completed on 29.05.2022. This appeal was filed on 27.05.2022, i.e after a delay of 28 days from the last date of filing appeal, and is within the period of one month that can be condoned.

6.4 In their application for condonation of delay, the appellant have submitted that their employee handling the Service Tax related documents were infected with the COVID-19 virus and quit the job. Thereafter, the documents were collected from the said person and handed over to a new employee. Due to the mishap, the filing of appeal was delayed. These reasons were also explained by them during the course of personal hearing, which appeared to be cogent and convincing. Considering the submissions and explanations during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

6.5 Subsequently, personal hearing was held on 17.04.2023. Shri Bishan R Shah and Ms Labdhi Shah, both Chartered Accountants, appeared for the hearing on behalf of the appellant. They re-iterated the submissions made in the appeal memorandum.

7. I have carefully gone through the facts of the case, the submissions made in the appeal memorandum, submission made at the time of personal hearing and other evidences available on records. I find that the issue to be decided in the instant appeal is whether the Service Tax amounting to Rs. 19,68,894/- confirmed vide the impugned order alongwith interest and penalty in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2007-08 to F.Y. 2011-12.

8. It is observed that the appellant was engaged in running coaching classes for students from Std. VIII to Std. XII of CBSE and GSEB and also providing coaching courses for IIT, JEE and AIEEE etc. They have classified their services under taxable service "Commercial Coaching Centers and Tutorial Services" in terms of Section 65(105)(zzc) of the Finance Act, 1994. They had obtained registration with the Service Tax department since May, 2012. It is further



observed that the impugned order has been passed in remand proceedings ordered by the Commissioner (Appeal-I), Central Excise, Ahmedabad vide OIA No. AHM-EXCUS-003-128-14-15 dated 22.12.2014. The matter was remanded back to the adjudicating authority with specific directions for verification and re-quantification of the demand in light of the findings at Para-8.1, 8.8 and 8.9 of the said OIA. The adjudicating authority has complied with the directives of the Commissioner (Appeal-I), in as much as the aspects of threshold exemption and re-quantification of the demand considering the factor of double taxation of advance fee receipts were verified and extended to the appellant. Interest and penalty has also been reduced after re-quantification of the demand.

8.1 It is further observed that the adjudicating authority has recorded at Para-8 of the impugned order that the appellant did not attend personal hearing in the case. He has, at Para 9, Para 15 and Para 15.1 of the impugned order observed that the appellant vide their letter dated 13.09.2021 informed that M/s Top Education Consultant Pvt. Ltd had filed an application under the SVLDRS Scheme of the Government and paid an amount of Rs. 20,00,000/- as full and final settlement of the case. This aspect was verified by the adjudicating authority and it was found that M/s Top Education Consultant Pvt. Ltd is a separate entity than the appellant.

8.2 As regards the contention of the appellant regarding violation of principles of natural justice, I find that the appellant were granted opportunities for personal hearing on 27.05.2021, 17.06.2021, 02.07.2021, 26.07.2021, 15.09.2021 and 22.11.2021. The appellant had sought adjournment on two occasions. Even after the second adjournment, the appellant were granted opportunity for personal hearing on three occasions. Hence, I find that the adjudicating authority has granted sufficient opportunities to the appellant to present their case, which they did not avail. Hence, their contentions are rejected.

9. As regards the contention of granting cum-duty valuation benefit, I find that the issue has already been decided by Commissioner (Appeal-I), Central Excise Ahmedabad against the appellant vide OIA No. AHM-EXCUS-003-128-14-15 dated 22.12.2014. They have not challenged the said OIA. The issue stands decided against them. Hence, the contentions of the appellant being devoid of merit

is rejected.



9.1 As regards the contention of the appellant that there is no suppression of facts with an intention to evade payment of Service Tax, I find that the Commissioner (Appeal-I), Central Excise Ahmedabad vide OIA No. AHM-EXCUS-003-128-14-15 dated 22.12.2014 while denying the benefit of cum-duty benefit has categorically recorded that *"had it not been preventive action by the department, the payment of service tax would have gone unheeded by the appellant.."*. Further, the appellant have not challenged the above findings of OIA. The same stands decided against them. Therefore, I do not find any merits in the contention of the appellant.

9.2 As regards the other contention to exclude income from sale of books to students from taxable turnover, I find that this issue was not raised earlier. It is pertinent to mention that the appellant have not challenged the order of Commissioner (Appeals-I), Central Excise, Ahmedabad. The remand proceedings was limited to the directions contained in Para 8.1, 8.8 and 8.9 of the OIA. The adjudicating authority has decided the issue based on the directions of Commissioner (Appeals-I), which is not challenged in this proceedings. Hence, the assessment made vide the impugned order is legal and proper. The contentions of the appellant are rejected being devoid of merits.

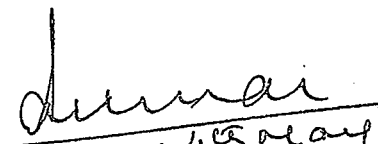
10. In view of the discussions made above, I am of the considered view that the impugned order was passed in compliance to the directives of the Commissioner (Appeals-I), and the grounds of appeal filed by the appellant in this appeal are found to be devoid of merits. The appeal is liable to be rejected.

11. Accordingly, the appeal filed by the appellant is dismissed.

12. 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.

Attested

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


(Akhilesh Kumar)
Commissioner (Appeals)

Dated: 04th May, 2023



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By RPAD/SPEED POST

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



