



सत्यमेव जयते

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

By SPEED POST

DIN:- 20230664SW0000222ECF

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1860/2022-APPEAL / 7179-11
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-031/2023-24 and 17.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.06.2023
(ङ)	Arising out of Order-In-Original No. 73/ADJ/GNR/PMT/2021-22 dt. 31.03.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Rajeshsinh Mithusinh Chauhan, 68/8, Ravalvas, Near Jain Derasar, Borij, Gandhinagar Thermal Power Station, Gandhinagar - 382041

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 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 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 हों।

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 ईए-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.

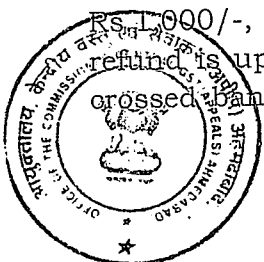
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

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

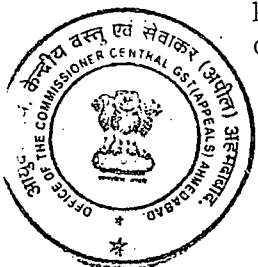
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Rajeshsinh Mithusinh Chauhan, 68/8, Ravalvas, Near Jain Derasar, Borij, Gandhinagar Thermal Power Station, Gandhinagar - 382041 [hereinafter referred to as the appellant] against OIO No. 73/ADJ/GNR/PMT/2021-22 dated 13.04.2022 [hereinafter referred to as the impugned order] passed by Deputy Commissioner, Central GST, Division: Gandhinagar, Commissionerate: Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant are holding Service Tax Registration No. AHYPC0985HST001 and are engaged in providing services under 'Contractor(Others)'. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their ST-3 Returns when compared with their Income Tax Return (ITR-5) and details of Form 26 AS for the period F.Y. 2015-16 and F.Y. 2016-17. Accordingly, letter/email dated 04.06.2020 was issued to the appellant calling for the details of services provided during the period F.Y. 2015-16 and F.Y. 2016-17. The appellant did not submit any reply. The services provided by the appellant during the relevant period were considered taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2015-16 and F.Y. 2016-17 was determined 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 :

Table

(Amount in Rs)

Sr. No	Details	F.Y.- 2015-16 (in Rs.)	F.Y.- 2016-17 (in Rs.)
1	Total Income as per ITR-5/Form 26AS	35,51,678/-	87,05,855/-
2	Income as per Service Tax Return	00	00
3	Differential Taxable Value (S.No-1-2)	35,51,678/-	87,05,855/-
4	Amount of Service Tax including cess	5,14,993.31/-	13,05,878.25/-
	Total	18,20,871.56/-	

2.1 Show Cause Notice F.No. V/04-43/SCN/O&A/RAJESHHSINH/20-21 dated 27.06.2020 was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 18,20,871.56/- for the period F.Y. 2015-16 & F.Y. 2016-17 under the proviso to Section 73 (1) of the Finance Act, 1994 along



with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was proposed under Section 76, 77 and 78 of the Finance Act, 1994.

2.2 The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs. 18,20,871.56/- was confirmed along with interest. Penalty equivalent to the amount of service tax confirmed was imposed under Section 78 of the Finance Act, 1994. Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant have filed the instant appeal alongwith application for condonation of delay in filing appeals on following grounds:

(i) They are engaged in providing Mess and Catering Services and are registered with Service Tax department. During the relevant period, they had provided services to the following entities :

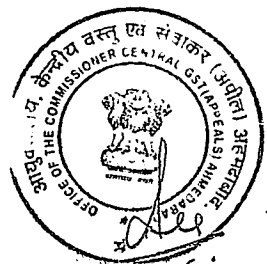
- Gandhinagar Dist. Co-operative Milk Producers Union Ltd.;
- Senior Coach, DSCC, Gandhinagar, Mahatma Gandhi Vidyamandir.
- Regional Coaching Centre, Gandhinagar.

(ii) They have provided their services in non-air conditioned places and not outdoor catering. This fact is also mentioned in the tender documents against which the services are provided.

(iii) They have provided services to mess attached with the service recipient entities which are non air-conditioned premises. Therefore, their services cannot be classified under 'Outdoor Catering service'. Services provided by them was exempted from Service Tax in terms of Sr. No. 19 of Notification No. 25/2012-ST dated 20.06.2012.

(iv) The demand was confirmed invoking extended period. As, there is no fraud, collusion, willful mis-statement or suppression of facts by the appellant in the case, therefore, the same is not invokable.

(v) The adjudicating authority has confirmed the demand by classifying the services provided by the appellant under 'Outdoor Catering Services'. However, he did not extend the benefit of abatement as per Notification No. 24/2012-ST dated 06.06.2012 as available to Service portion in outdoor catering services i.e 60% of the total value of services.



4. It is observed from the records that the present appeal was filed by the appellant on 30.06.2022 against the impugned order dated 31.03.2022, which was received by the appellant on 30.04.2022.

4.1 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:

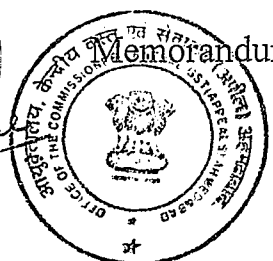
Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

4.2 As per the legal provisions above, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 29.06.2022 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 28.07.2022. This appeal was filed on 30.06.2022, i.e after a delay of 01 day from the last date of filing appeal, and is within the period of one month that can be condoned.

4.3 In their application for condonation of delay, the appellant have submitted that the delay has occurred as the appellant was suffering from viral fever. The grounds of delay cited by the appellant appeared to be genuine, cogent and convincing. Considering the submission, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

5. Personal hearing in the case was held on 15.03.2023. Shri Rahul Mistri, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, and materials



available on records. The issue before me for decision is whether the demand of Service Tax confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

7. It is observed that the appellant are registered under Service Tax and during the relevant period they were engaged in providing services related to serving food/meal and beverages in 'Mess' (eating joint/canteen). As per materials available on record, during the period F.Y. 2015-16 & F.Y. 2016-17, they have provided services to Gandhinagar Dist. Co-operative Milk Producers Union Ltd.; Senior Coach, DSCC, Gandhinagar, Mahatma Gandhi Vidyamandir and Regional Coaching Centre, Gandhinagar. These facts are undisputed.

7.1 It is further observed from the copy of Form 26AS submitted by the appellant for the period F.Y 2015-16 and F.Y. 2016-17 that they had received amounts under Section 194C of the Income Tax Act, 1961 from various service recipients as per table below:

Table

Sl. No	Financial Year (F.Y.)	Amount Credited from (Name of TDS Deductor)	Amount (in Rs.)
1	2015-16	Gandhinagar District Co-op Milk Producers Union Ltd.	16,44,000/-
2	2015-16	Senior Coach DSCC Gandhinagar, Mahatma Gandhi Vidya Mandir.	37,12,793/-
		Total for F.Y. 2015 - 16	53,56,793/-
3	2016-17	Regional Coaching Centre	69,89,515/-
4	2016-17	Senior Coach DSCC Gandhinagar, Mahatma Gandhi Vidya Mandir.	17,16,340/-
		Total for F.Y. 2016 - 17	87,05,855

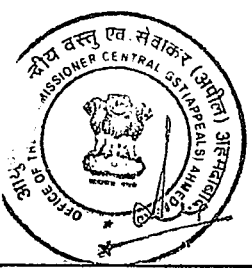
These figures were submitted by appellant before the adjudicating authority as well.

8. The appellant have, before the adjudicating authority, claimed exemption from service tax under Sr. No. 19 of Notification No. 25/2012-ST dated 20.06.2012. It is relevant to examine the words and phrases of the said exemption clause which is reproduced as under :

*Government of India
Ministry of Finance
(Department of Revenue)*

Notification No. 25/2012-Service Tax New Delhi , the 20th June, 2012

G.S.R.....(E).- 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 Act) and in supersession of notification number 12/2012- Service Tax, dated the 17 th

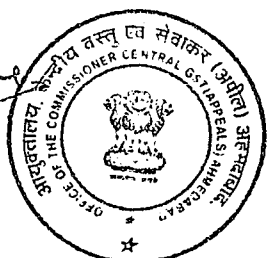


March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

...
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;
 ...

8.1 Examining the above legal provisions with the submissions made by the appellant, it is observed that the appellant are engaged in providing services of serving food and beverages etc. in a mess run by the Sports Authority of Gujarat (SAG) and they have also obtained contracts for running Canteen facilities at various Sports Complexes under the SAG in the state of Gujarat. The specimen copy of the tender documents submitted alongwith the appeal papers also confirm that the Tender was floated by the Sports Authority of Gujarat (SAG) and the Tender is named as 'Mess Contract for Sports Authority of Gujarat'. As per the conditions of the tender the applicant had to serve food and beverages as per the fixed 'Menu'. The contractor cannot collect any extra payment from the sportsperson utilizing the Mess facility.

8.2 However, while deciding the claim of the appellant seeking exemption, the adjudicating authority has not discussed the claim of exemption and has confirmed the demand by taking recourse to definition of Outdoor Catering Service under Section 65(105)(zzt) of the Finance Act, 1994 and definitions vide clause (24) and clause (76a) of Section 65 ibid. It is noteworthy to mention that all these legal provisions considered by the adjudicating authority for confirming the demand pertained to the pre-negative list regime of Service Tax i.e period prior to 01.07.2012. As the demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17, The legal provisions prevailing prior to that period would not be applicable in deciding the taxability. These facts clearly indicate that the demand was indiscriminately confirmed by the adjudicating authority without considering the submissions made by the appellant. These shortcomings in the impugned order have rendered it a non-speaking order and legally unsustainable being issued in violation of the principles of natural justice. Hence, it is liable to be set aside.



9. It is also observed that, the Sports Authority of Gujarat (SAG), vide their letter dated 20.04.2017 and 13.05.2018, have certified that during the period F.Y. 2015-16 & F.Y. 2016-17, the appellants were awarded contracts for non air- conditioned canteen/providing food and catering to the following sports facilities as per work order issued by SAG :

- Senior Coach, Regional Sports Center, Ahmedabad ;
- Sports Hostel Naroda, Canteen;
- Savvy Swaraj Sports Living, Canteen;
- Adani Shantigram Canteen;
- Sports Complex, Khokhra Canteen;

These documents were also not considered by the adjudicating authority while passing the impugned order.

9.1 It is also observed that in one instance the appellant had provided Catering services to Gandhinagar Dist. Co-operative Milk Producers Union Ltd at the premises of the service receiver. As these services were not provided at '*a restaurant or mess or eating joint ...*' and actually provided at the premises of the service receiver, they would not merit exemption under Sr. No. 19 of Notification No. 25/2012-ST dated 20.06.2012 as claimed by the appellant. This issue has not been discussed by the adjudicating authority in the impugned order.

9.2 It is also observed that although the appellants have submitted copies of contracts in support of their claim, they have not submitted sample copy of work order and/or Bills/Invoices/R A Bills issued by them to corroborate the fact that the services were completed by them as per the terms and conditions of the contract awarded in this regard. They have submitted certificates from various service receivers vide which they have attempted to corroborate their claim of providing catering services in non-airconditioned mess. It is also observed that the applicability of service tax on services provided in a 'Non Air conditioned Mess' is covered under Sr. No. 19 of Notification No. 25/2012-ST dated 20.06.2012, wherein the said services have been categorically exempted from levy of service tax. Further, the CBIC has issued clarification in the matter vide M.F. (D.R.) Office Memorandum F. No. 297/07/2015-CX.9, dated 9-6-2015, relevant portions reproduced as under :



At present, Service Tax is chargeable on services provided by restaurants, eating-joints or messes which have the facility of air-conditioning or central air-heating in any part of the establishment at any time during the year in relation to serving of food or beverages. Restaurants, eating-joints or messes which do not have the facility of air-conditioning or central air-heating in any part of the establishment are exempt from service tax. In other words, only air-conditioned or air-heated restaurants are required to pay Service Tax.

...

10. In view of the above discussions I am of the considered opinion that the findings of the adjudicating authority are not legally sustainable which were arrived at without examining the submissions and documents produced by the appellant, which is in violation of the principles of justice. Further, even in the SCN issued to the appellant, there is no allegation that the appellant is collecting service charge as part of the cost. It is also found that the appellants have claimed exemption under Sr. No. 19 of Notification No. 25/2012-ST dated 20.06.2012. Further, they have claimed abatement under Notification No. 24/2012-ST dated 06.06.2012. However, from among the services provided by them to various service receivers, some merit exemption under the said clause whereas others do not. Hence, in the absence of adequate documents and data for quantification of the services as to which merit exemption and which do not, I am left with no alternative than to remand the case back to the adjudicating authority for de-novo adjudication of the case after considering the claim of the appellants and examination of documents submitted by them. Their claim for abatement under Notification No. 24/2012-ST also shall be examined in the de-novo proceedings.

11. Accordingly, the impugned order is set aside and is remanded back to the adjudicating authority for adjudication afresh on the basis of documents provided by the appellant. It is also directed that the claim of exemption is required to be adjudicated on the basis of examination of the documents provided by the appellant in this regard. The appellants are directed to submit all documents before the adjudicating authority within 15 days of receipt of this order.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(AKHILESH KUMAR)
Commissioner (Appeals)

Dated: 17th May 2023

Attested:

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



BY RPAD / SPEED POST

To

M/s. Rajeshsinh Mithusinh Chauhan,
68/8, Ravalvas, Near Jain Derasar,
Borij, Gandhinagar Thermal Power Station,
Gandhinagar – 382041

Copy to:

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

