



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/1855/2022-APPEAL / 2115-21
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-037/2023-24 and 26.05.2023
(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. 124/AC/DEM/MEH/ST/Mark INC/2021-22 dated 25-03-2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mark Inc (Prop. Abdulhamid Rasulbhai Sachora), Plot No. 146, Paiki G/F Shop 03, Agarwal Estate Piplaj Pirana Road, Bareja, Ahmedabad, Gujarat - 382425

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

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

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

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में 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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-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 संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

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

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

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा 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, penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

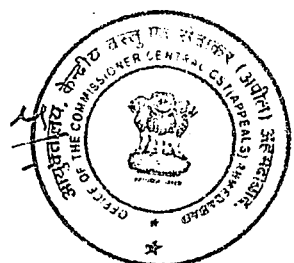
The present appeal has been filed by M/s Mark Inc. (Proprietor Abdulhamid Rasulbhai Sachora), 25, Karishma Park Society, Visnagar Road, Mehsana – 384002, [new address – Plot No. 146, Paiki, G/F, Shop No. 03, Agrawal Estate, Piplaj Pirana Road, Bareja, Ahmedabad – 382425] (hereinafter referred to as the appellant) against Order in Original No. 124/AC/DEM/MEH/ST/Mark Inc/2021-22 dated 01/04/2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. BDAPS9657MSD001 for providing taxable services. As per the information received through Preventive Section, HQ, Gandhinagar vide DG Systems Report No. 02 and 03, 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. 2015-16 and F.Y. 2016-17. Accordingly, letter dated 08.05.2020 was issued to the appellant through e-mail 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) or "Total amount paid/credited under Section 194C, 194I, 194H & 194J of Income Tax Act, 1961" as provided by the Income Tax department as per details below :

Table

				(Amount in Rs)
Sr. No	Period	Differential Taxable Value as per Income Tax data	Rate of Service Tax	Amount of Service Tax
1	F.Y.- 2015-16	1,15,51,349/-	14.5%	16,74,946/-
2	F.Y.- 2016-17	0	15%	0
			Total	16,74,946/-

3. The appellant were issued Show Cause Notice vide F.No. V.ST/11A-19/Mark/2020-21 dated 29.06.2020 (in short 'SCN'), wherein it was proposed to:



- Demand and recover service tax amounting to Rs. 16,74,946/- under the 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(2), 77C and 78 of the Finance Act, 1994;

4. The said SCN was adjudicated vide the impugned order, ex-parte, wherein the demand for Rs. 16,74,946/- was confirmed under Section 73 (2) of the Finance Act, 1994 alongwith interest under Section 75. Penalty amounting to Rs. 16,74,946/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under clause (ii). Penalty of Rs.10,000/- was imposed under Section 77 (2) of the Finance Act, 1994 and Penalty @ Rs. 200/- per day till the date of compliance or Rs. 10,000/- whichever is higher, was imposed under the provisions of Section 77 (1) (C) of the Finance Act, 1994.

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

⊙ The appellant was registered under Service Tax for 'Construction Services other than residential complex, including commercial/industrial buildings or civil structures', 'Design service other than interiors decoaration and fashion designing', 'Interior decoration/designer services'. During the period F.Y. 2015-16, they were engaged in work contract with a company for carrying out interior, civil, electrical, dismantling, POP, Ceiling works etc as per specifications provided by the service receiver.

⊙ During the period, they had total sales of Rs. 99,40,163/- which was reflected in their audited financial statement. Out of this amount Rs. 98,31,761/- was received from a single company for execution of works contract. Hence, in terms of sub rule (ii) of Rule 2A of Service Tax (Determination of Value) Rules, 2006, they were eligible for abatement @ 60% for calculation of taxable amount.

⊙ Considering their services as Works Contract Service, they are also eligible for 'Partial Reverse Charge Mechanism' as per Sl. No. 9 of Notification No. 30/2012-ST dated 20.06.2012. In terms of the said exemption, they were



required to pay Service Tax @ 50% only, as remaining 50% was to be paid by the service receiver in terms of 'Partial Reverse Charge Mechanism'.

- ⊙ Considering the abatement and partial RCM, they have prepared and submitted a calculation of Service Tax in tabulated form which is reproduced below :

(Amount in Rs.)					
Sl.No	Date of Invoice	Invoice Value	Taxable Value (in Rs.) [40% of Invoice value]	Total amount of S.Tax @ 14% / 14.5%	Actual S. Tax Liability (50% of total S.Tax amount)
1	2	3	4	5	6
1	09.08.2015	22,14,000/-	8,85,600/-	1,23,984/-	61,992/-
2	08/09/2015	17,82,240/-	7,12,896/-	99,805/-	49,903/-
3	08/09/2015	6,31,774/-	2,52,710/-	35,379/-	17,690/-
4	20.02.2016	20,35,830/-	8,14,332/-	1,18,078/-	59,039/-
5	20.02.2016	7,11,242/-	2,84,497/-	41,252/-	20,626/-
6	20.02.2016	18,64,005/-	7,45,602/-	1,08,112/-	54,056/-
7	02.03.2016	5,92,670/-	2,37,068/-	34,375/-	17,187/-
	Total	98,31,761/-	39,32,704/-	5,60,986	2,80,493/-

- ⊙ Against the Service Tax liability of Rs. 2,80,493/- as calculated by them, they have paid Service Tax amounting to Rs. 2,80,494/- vide two challans dated 16.04.2016 and 24.05.2016. Accordingly, the liability of service tax was paid by them.
- ⊙ They also submitted that due to shifting their residence from Mehsana to Ahmedabad and the COVID-19 pandemic, they had not received the SCN on time. However, upon receiving the SCN, they had replied vide letter dated 04.08.2020. They informed that they were facing problems with the 'ACES computer system' and are not able to download their duty payment challan or ST-3 returns and therefore requested for extension of date of filing reply. Further, they communicated with the Service Tax authorities vide email dated 10.03.2021 enclosing their Tax Audit Report and Invoice. They also furnished their annual turnover figures as Rs. 99,40,163/- and the fact of availing the benefit of partial RCM. For similar reason of change of residence, they had received the impugned order very late. After repeated efforts they were able to download the duty payment challan but the ST-3 Returns were still not downloaded.

- ① They also submitted that due to shifting their residence from Mehsana to Ahmedabad and the COVID-19 pandemic, they had not received the SCN on time. However, upon receiving the SCN, they had replied vide letter dated 04.08.2020. They informed that they were facing problems with the 'ACES computer system' and are not able to download their duty payment challan or ST-3 returns and therefore requested for extension of date of filing reply. Further, they communicated with the Service Tax authorities vide email dated 10.03.2021 enclosing their Tax Audit Report and Invoice. They also furnished their annual turnover figures as Rs. 99,40,163/- and the fact of availing the benefit of partial RCM. For similar reason of change of residence, they had received the impugned order very late. After repeated efforts they were able to download the duty payment challan but the ST-3 Returns were still not downloaded.



⊙ As the adjudicating authority had confirmed the demand of Rs. 16,74,946/- calculated on a taxable value of Rs. 1,15,51,349/- entirely on the basis of data obtained from the Income Tax Returns hence the same is not sustainable.

© They have informed the service tax authorities vide letter dated 10.03.2021 regarding the services rendered by them as well as turnover details with the tax audit report. They are eligible for benefit of abatement in terms of sub rule (ii) of Rule 2A of Service Tax (Determination of Value) Rules, 2006 and partial RCM in terms of Sl. No. 9 of Notification No. 30/2012-ST dated 20.06.2012 their service tax liability. They have paid their service tax liability on time and nothing is outstanding as the demand is wrongly calculated.

6. It is observed from the case records that the present appeal was filed by the appellant on 27.06.2022 against the impugned order dated 01.04.2022, which was received by the appellant on 15.04.2022.

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 legal provisions above, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 14.06.2022 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 13.07.2022. This appeal was filed on 27.06.2022,



i.e after a delay of 13 days from the last 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, the appellant have submitted that they had sold their old residence at Mehsana and shifted to Ahmedabad. Therefore the SCN and impugned order was not received by them on time. Upon receiving message about SCN they have sent e-mail to the jurisdictional officers. They also requested for condonation of delay as their delay was unintentional. The reasons appeared to be cogent and convincing. Considering the submissions of the appellants, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

7. Personal Hearing in the case was held on 10.02.2023 and 13.03.2023. Shri Mohammed Zuber M. Ghanchi, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted a reconciliation / working of Income reported in Form 26AS. He also re-iterated submissions made in appeal memorandum and submitted copies of challan evidencing payment of service tax, Invoice wise details of service provided during the relevant period, copy of ledger account, copy of Invoices raised by them during the relevant period, copy of Form 26AS and VAT Return.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the various documents submitted during personal hearing. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs. 16,74,946/- confirmed vide the impugned order alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

9. It is observed from the case records that the SCN in the case has been issued only on the basis of data received from the Income Tax department. The appellant is registered with the service tax department, which is apparent from the SCN which mentions the Service Tax Registration No. of the appellant. It is also observed that the SCN was issued without classifying the services provided by the appellant which implies that, no further verification has been caused so as to





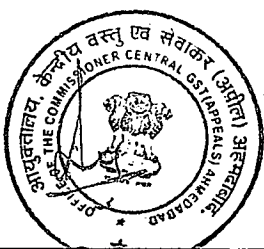
ascertain the exact nature of services provided by the appellant during the period F.Y. 2015-16. Hence, the SCN issued in this case is vague.

9.1 It is also observed that the appellants vide their letter dated 04.08.2020 had cited reasons to request for extension for submitting documents. They have also contended that vide email dated 10.03.2021, they had furnished information regarding their turn over for the relevant period and also submitted a copy of tax audit report. However, these facts are not acknowledged by the adjudicating authority, who passed the impugned order ex-parte on the basis of the demand of Service Tax proposed vide the SCN, which was issued entirely on the basis of data received from the Income Tax department.

9.2 I find that at Para 15 of the impugned order, it has been recorded that the opportunity of personal hearing was granted on 04.02.2022, 21.02.2022 and 14.03.2022 but the appellant had neither appeared for hearing nor asked for any extension for PH. The adjudicating authority had, thereafter, decided the case ex-parte.

9.3 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 judgment 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 not legally sustainable.

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

...  
*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee*  
 ...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN and the impugned order has been issued indiscriminately and mechanically without application of mind, and is vague, being issued in clear violation of the instructions of the CBIC discussed above. Further, as the impugned order has been passed ex-parte, the violation of principles of natural justice is apparent.

11. I find that the appellant have, in their appeal memorandum and in additional submission, submitted various documents in their defence, as below :

- reconciliation / working of Income reported in Form 26AS;
- copies of challan evidencing payment of service tax;
- Invoice wise details of service provided during the relevant period;
- copy of ledger account ;
- copy of Invoices raised by them during the relevant period;
- copy of Form 26AS
- copy of VAT Return.

These submissions of the appellant were not perused by the adjudicating authority earlier as neither did they submit a defence reply nor did they defended their case personally.

11.1 It is further found that the appellant have claimed abatement of 60% from the value of Services provided in terms of Rule 2A of Service Tax (Determination of value) Rules, 2006. Further, they have also claimed benefit of partial Reverse

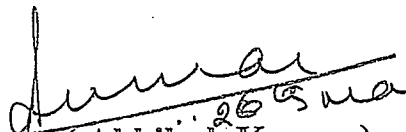


Charge Mechanism (RCM) in terms of Sl. No. 9 of Notification No. 30/2012-ST dated 20.06.2012.3. They have also contended that they had paid applicable service tax before issuance of the SCN. These submissions of the appellant are being presented before this authority for the first time. Therefore, it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submissions of the appellant, made in the course of the present appeal, and, thereafter, adjudicate the matter.

12. In view of the above, I am of the considered view that since the appellants have contested the SCN for the first time before this authority and the matter requires verification of the documents of the appellant, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contentions of the appellant before concluding the issue of granting abatement and/or partial RCM to the appellants. Therefore, the matter is remanded back for denovo adjudication after affording the appellant the opportunity of filing their defense reply and after granting them the opportunity of personal hearing.

13. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to submit their written submission with all relevant documents to the adjudicating authority within 15 days of the receipt of this order. The appellant should also attend the personal hearing as and when fixed by the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

14. 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.

  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date: 26<sup>th</sup> May, 2023

Attested:

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



BY RPAD / SPEED POST

To

M/s Mark Inc.

(Prop. Abdulhamid Rasulbhai Sachora),

25, Karishma Park

Visnagar Road,

Mehsana – 384002,

Plot No.146 Paiki, Society,

G/F Shop No.03,

Agrawal Estate,

Piplaj Pirana Road,

Bareja, Ahmedabad – 382425

## Copy to:

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

