



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/2648/2022-APPEAL / 2147-51
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-047/2023-24 and 05.06.2023
(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. 7/AC/DEM/MEH/ST/Bharat Panchal/2022-23 dated 24.05.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bharat Panchal Education Pvt. Ltd. (PAN - AAFCB3004M), 2nd Floor, Shilp Arcade, Near Underbridge, Unjha, Mehsana, Gujarat-384170

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:-

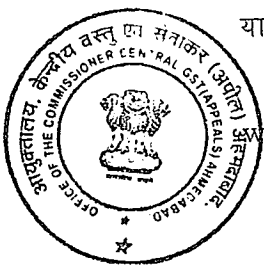
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः 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 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 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 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 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 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।

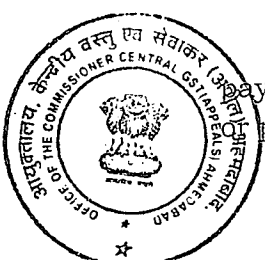
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



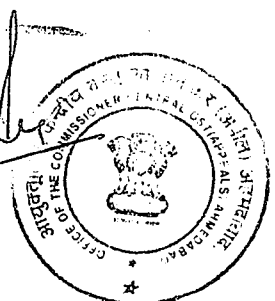
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Bharat Panchal Education Pvt. Ltd., 2nd Floor, Shilp Arcade, Near Underbridge, Unjha, Mehsana – 384170 (hereinafter referred to as “the appellant”) against Order-in-Original No. 7/AC/DEM/MEH/ST/Bharat Panchal/2022-23 dated 24.05.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division; Mehsana, Commissionerate: Gandhinagar (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAFCB3004MSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that there are discrepancies in the total income declared in Income Tax Return filed by the appellant when compared with ST-3 Returns filed by them. In order to verify whether the appellant had properly discharged the Service Tax liability during the FY 2015-16 and FY 2016-17, they were issued letter dated 04.05.2020 and 12.05.2020, through email, asking them to provide the details of such services provided during the said period. On verification of the documents submitted by the appellant, it appeared that the appellant had received an amount of Rs. 27,93,013/- in the FY 2015-16 and an amount of Rs. 16,90,317/- in the FY 2016-17 as Commission Income and not paid the Service Tax thereon under the ST-3 Returns filed by them for the said period.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V.ST/11A-249/Bharat Panchal/2020-21 dated 07.09.2020 demanding Service Tax amounting to Rs. 6,58,535/- for the period FY 2015-16 and FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 70, Section 77(2), Section 77C and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 6,58,535/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 and FY 2016-17. Further (i) Penalty of Rs. 6,58,535/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant were engaged in providing "Commercial Training and Coaching services" and registered under service tax registration number AAFCB3004MSD00L.
- The appellant had filed their ST-3 returns for the FY 2015-16 and FY 2016-17 and declared taxable value of services and service tax paid and such fact is already accepted by the adjudicating authority. But surprisingly, in the SCN as well as in the impugned order, taxable value declared in ST returns shown as NIL and income shown in Profit and Loss Account is entirely considered as taxable service by ignoring the taxable values on which service tax already paid by them. They submitted copies of ST-3 returns for the FY 2015-16 & FY 2016-17 along with appeal memorandum.
- They submitted that they are rendering services of Overseas Education Representatives in India to the universities outside India in providing assistance with the admissions and for that they are receiving commission from the main representative of foreign universities in India, which they had claimed as non-taxable/exempted from service tax by relying on Clause (I) of Section 66D, which reads as under:

““Services by way of -

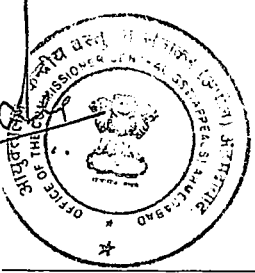
- (i) Pre-school education and education upto higher secondary school or equivalent;*
- (ii) Education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force;*
- (iii) Education as part of an approved vocational educational course.”*

- As well as Item No. 9 of Notification No. 25/2012-ST dated 20th June, 2012 reads as under:
 - "Services provided to an education institution in respect of education is exempted from service tax by way of Auxiliary Educational Services or renting of immovable property".
- Clause (f) of Para 2 of Notification No. 25/2012-ST dated 20.06.2012 defines auxiliary educational service as follows:



"(f) 'auxiliary educational services ' means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institution ordinarily carry out themselves but may obtain as outsources services from any other person, including services relating to admission to such institution, conduct of examination, catering for the student under any mid-day meals scheme sponsored by government, or transportation of student, faculty or staff of such institution."

- The matter has been further clarified by CBEC vide Circular No. 172/7/2013-ST dated 19th September 2013 that all services relating to education are exempt from service tax whether these are relating to imparting any skill in the..... Including service relating to admission to such institutions.
- In view of the above provisions, Services provided by the appellant is exempt from service tax. For the verification purpose they submitted copy of invoice which suggest that commission received for referring the students to foreign universities.
- The appellant submitted that the show cause notice issued and demand confirmed without any investigation and merely based on ITR/26AS data, which is not as per law. In this regard, they relied upon the following case laws:
 - a) M/s. Amrish Rameshchandra Shah V/s. Union of India and others (TS-77-HC-2021 Bom ST)
 - b) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) G.S.T.L. 96 (Tri. - All.)]
 - c) Kush Constructions V/s. CGST NACIN 2019 (24) GSTL 606 (Tri. - All.)
 - d) Alpa Management Consultants P. Ltd. V/s. CST 2007 (6) S.T.R. 181 (Tri. - Bang.)
- The adjudicating authority has exercised the extended period of limitation to consider all these charges and allegations. However, there is not an iota of evidence that shows how the appellant have conducted fraud. They have availed ST Registration, paid service tax on time and also have filed their returns. They have also disclosed full value in their Financial Statements and Income Tax Returns. Thus, there is nothing on record which suggests that they have suppressed any material which was required to be disclosed to the department. As SCN and impugned order itself suggests that this proceeding is started merely based on the 26AS and ITR data, it is clear that proceeding is started based on information provided by them only. Thus, there is no suppression and extended period of limitation can't be applied.



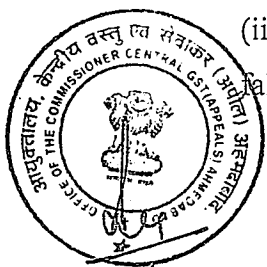
4. Personal hearing in the case was held on 15.03.2023. Shri Punit Prajapati, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16 and FY 2016-17.

6. It is observed that the adjudicating authority had confirmed the demand of Service Tax in the impugned order by observing as under:

"20. I further find from the Balance Sheet for the Year ended as on 31.03.2017 submitted by the assessee that the assessee has shown Income under the head of Commission amounting to Rs. 27,93,013/- & Rs. 16,90,317/- during F.Y. 2015-16 & F.Y. 2016-17, respectively (totally Rs. 44,83,330/-). I further find that the assessee has filed NIL ST-3 returns for 1st & 2nd half of F.Y. 2015-16 on 25.10.2015 and 25.04.2016, respectively whereas for 1st and 2nd half of F.Y. 2016-17, they declared taxable value of Rs. 1,96,307/- & Rs. 10,983/-, and paid applicable Service Tax thereon and filed ST-3 Returns under the category of taxable service viz. "Commercial Training and Coaching, Services" for said periods on 31.07.2017 & 31.07.2017, respectively. I, thus, find that the assessee has not declared the commission income of Rs. 27,93,013/- & Rs. 16,90,317/- during F.Y. 2015-16 & F.Y.2016-17, respectively (totally Rs. 44,83,330/-). In this regard it is worthwhile to mention that the assessee has neither submitted any clarification for not declaring the amount of Commission received during the F.Y. 2015-16 and F.Y. 2016-17 in ST-3 Returns nor submitted any documentary evidence that the said income is toward service falls under Negative list or exempted from service tax."

7. It is also observed that the main contentions of the appellant are that (i) they are rendering services of Overseas Education Representatives in India to the universities outside India in providing assistance with the admissions and for that they are receiving commission from the main representative of foreign universities in India, which they had claimed as non-taxable/exempted from service tax as per Clause (I) of Section 66D of the Finance Act, 1994; (ii) the commission received for referring the students for admission to foreign universities, falls under the 'auxiliary educational services' and are exempted as per Sr. No. 9 of



Notification No. 25/2012-ST dated 20.06.2012 read with CBEC Circular No. 172/7/2013-ST dated 19th September 2013; (iii) the appellant had filed their ST-3 returns for the FY 2015-16 and FY 2016-17 and declared taxable value of services and service tax paid and such fact is already accepted by the adjudicating authority but surprisingly in the SCN as well as in the impugned order, taxable value declared in ST returns are shown as NIL and income shown in Profit and Loss account is entirely considered as taxable service by ignoring the taxable values on which service tax already paid by them; and (iv) there is no suppression of facts and extended period of limitation can't be applied.

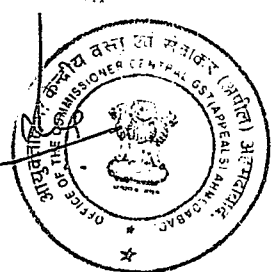
8. Now, I discuss the taxability of the service provided by the appellant in light of the exemption under Sr. No. 9 of the Mega exemption Notification No. 25/2012-ST. I find that during the FY 2014-15, vide Notification No. 06/2014-ST dated 11.07.2014, Sr. No. 9 of the Notification No. 25/2012-ST was substituted. Therefore, for the period of 01.04.2014 to 10.07.2014, Sr. No. 9 of the Notification No. 25/2012-ST read as under:

*"9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
(a) auxiliary educational services; or
(b) renting of immovable property;"*

8.1 I also find that CBEC vide Circular No. 172/7/2013 – ST dated 19.09.2013 clarified that all services relating to education viz. services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution, the transport services provided by the transport operator to the school, hostels, housekeeping, security services, canteen, etc. are exempt from service tax. The relevant portion of the said circular read as under:

"As defined in the said notification, "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the



transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

4. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services; canteen, etc."

8.2 From the period from 11.07.2014 onward, Sr. No. 9 of the Notification No. 25/2012-ST substituted vide Notification No. 06/2014-ST dated 11.07.2014, read as under:

"9. Services provided, -

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of, -

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;"

8.3 On plain reading of the aforesaid provision of Sr. No. 9(a) of the Notification No. 25/2012-ST read with Circular No. 172/7/2013-ST dated 19.09.2013, as existing during the period from 01.04.2014 to 10.07.2014, I find that the exemption to all type of "auxiliary educational services" was available up to 10.07.2014 and withdraw with effect from 11.07.2014. After, amendment in the Notification No. 25/2012-ST, as existing during the period with effect from 11.07.2014 to 31.06.2017, the exemption was available only to service provided to an educational institute for the below mention four types of services:

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

8.4 However, I find that the said exemption was available to the services provided to 'an education institute' and not to others. I find that the government had vide Notification No. 9/2016, dated 1-3-2016, inserted the Clause (oa) 'educational institution' in the definition under Para 2 of Notification No. 25/2012-ST, as amended, with effect from 14.05.2016 (date on which the Finance Bill, 2016, receives assent of the President of India). The said clause (oa) read as under:

(oa) "educational institution" means an institution providing services by way of:

(i) pre-school education and education up to higher secondary school or equivalent;



- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;"

8.5 I also find that the term "educational institute" was not defined under Notification No. 25/2012-ST until 14.05.2016. However, there is similar reference as above is available in the Section 66D of the Finance Act, 1994, which contains a negative list of services and clause (1) thereof [which was omitted from 14-5-2016] reads as under:

"66D(1) services by way of -

- (i) pre-school education and education upto higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- (iii) education as a part of an approved vocational education course;"*

8.6 In view of the above, I find that the "educational institution" for the purpose of exemption under the service tax law only included the three types of institution as enumerated above. The representative of foreign universities, from which the appellant had received commission income, cannot be termed as "educational institution" for claiming exemption from payment of service tax under the Finance Act, 1994. Therefore, the appellant were not eligible for exemption from service tax for such commission income under Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 06/2014-ST dated 11.07.2014, as applicable during the period from 11.07.2014 to 31.06.2017.

9. As regards, the contention of the appellant that the adjudicating authority has, while confirmed demand of service tax, calculated the demand of service tax on entire / whole income shown in Profit and Loss account, without deducting the taxable value declared in ST-3 returns by them for the FY 2015-16 and FY 2016-17, I find that the appellant have shown the taxable value of services amounting to Rs. 1,96,307/- and Rs. 10,983/- in the ST-3 Returns for the FY 2016-17 and they have also paid applicable service tax thereon. The adjudicating authority has also in the Para 20 of the impugned order observed the said facts and mentioned as under:

"whereas for 1st and 2nd half of F.Y. 2016-17, they declared taxable value of Rs.1,96,307/- & Rs. 10,983/-, and paid applicable Service Tax thereon and filed ST-3 Returns under the category of taxable service viz. "Commercial Training and Coaching, Services"

9.1 However, the adjudicating authority has not taken the said amount in to consideration when he has confirmed the demand of service tax. Thus, the impugned order passed by the adjudicating authority is not correct to that extent.

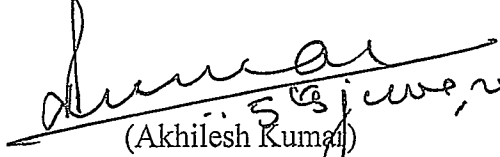


10. As regard, the contention of the appellant regarding invocation of extended period, I find that the appellant has failed to properly assess their Service Tax liability and also failed to file correct ST-3 Returns, though they were registered with Service Tax department. Thus, it can be construed that there was intentional withholding of material information/facts from the Department by way of suppression of facts in contravention of the provisions of the Finance Act, 1994 and the Rules made thereunder, which has resulted in non-payment of Service Tax in contravention of the provisions of the Finance Act, 1994. Regarding limitation, I find that *once the existence of element of suppression, mis-statement etc. as held in the case of M/s. Neminath Fabrics [2010 (256) ELT 369 (Guj.)], is found, the extended period is invocable and penal provisions are also invocable.* Therefore, I find that in this case, all essential ingredients exist to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1994 to demand the Service Tax not-paid/short-paid and the same had been correctly invoked by the adjudicating authority.


11. In view of the above discussion, I order for reduction in the liability of service tax to the extent of service tax already paid by the appellant as discussed in Para 9 and 9.1 of this order and uphold the remaining part of the impugned order passed by the adjudicating authority. The liability of interest and penalty under Section 78 of the Finance Act, 1994 may be determined accordingly.

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

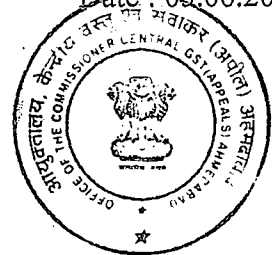
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date 05.06.2023



By RPAD / SPEED POST

To,

M/s. Bharat Panchal Education Pvt. Ltd.,
2nd Floor, Shilp Arcade,
Nr. Underbridge, Unjha,
Mehsana – 384170

Appellant

The Assistant Commissioner,
CGST, Division Mehsana,
Commissionerate: Gandhinagar

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Gandhinagar
- 3) The Assistant Commissioner, CGST, Division Mehsana
- 4) The Assistant Commissioner (HQ System), CGST, Gandhinagar

(for uploading the OIA)

✓ 5) Guard File

6) PA file

