



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**

DIN:- 20230764SW000000A04B

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2675/2022-APPEAL
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-055/2023-24 and 21.07.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	24.07.2023
(ङ)	Arising out of Order-In-Original No. 01/D/GNR/PMT/2022-23 dated 23.05.2022 passed by the Assistant Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Arm Associates (PAN-AAKFA4240Q), P-1, Surbhi Complex, Plot No.347/1, Sector-22, Gandhinagar, Gujarat-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:-

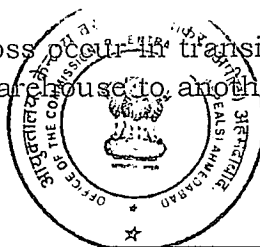
**Revision application to Government of India:**

(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, मंसद 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 प्रकिया 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 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 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 (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, 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-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 पंढी 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 रू 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 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।

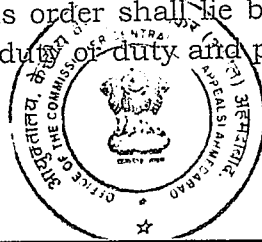
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

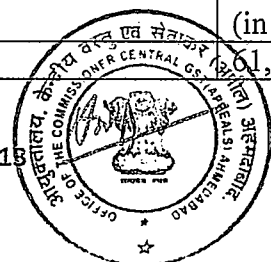
This Order arises out of an appeal filed by M/s. Arm Associates, Surbhi Complex, P-1, Plot No. 347/1, Sector-22, Gandhinagar, Gujarat [hereinafter referred to as the appellant] against OIO No. 01/D/GNR/PMT/2022-23 dated 23.05.2022 [hereinafter referred to as the impugned order] passed by Deputy Commissioner, 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 engaged in providing 'Renting of immobile property services' and are registered with Service Tax under Registration No. AAKFA4240QSD001. Whereas an analysis of 'Sales/Gross Receipts from Services (Value from ITR)', the 'Total Amount paid/credited under 194C/194H, 194I, 194J of the Income Tax Act, 1961 and 'Gross Value of Services Provided' was undertaken by the CBDT for the period F.Y. 2014-15. The details of the said analysis was shared by the CBDT with the CBIC.

2.1 On perusal of the said analysis the jurisdictional officers observed that the appellant have shown less amount of the 'Gross Value of Services Provided' in their Service Tax Returns (ST-3) when compared with the 'Sales/Gross Receipts from Services (Value from ITR)' declared in their ITR-5. The officers also suspected that this mismatch in the declared values may have resulted in short payment/non-payment of Service Tax during the relevant period. In order to verify these discrepancies, letter/email was issued to the appellant calling for documents viz. Balance Sheets, Profit & Loss Account, Income Tax Returns, Form-26AS, Service Income details, Service Tax Ledger and ST-3 returns for the period F.Y. 2014-15. The appellant did not submit any reply. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2014-15 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

Sr. No	Details	F.Y. - 2014 - 15 (in Rs.)
1	Value of Services declared in ITR filed	61,93,150/-



2	Total Amount paid/credited under 194C/194H, 194I, 194J of the Income Tax Act, 1961	00
3	Value of Services declared in ST-3 Returns	16,50,000/-
3	Differential Value (S.No-1-3)	45,43,150/-
4	Amount of Service Tax including cess (@ 12.36%)	5,61,533/-

3. Show Cause Notice F.No. IV/16-09/TPI/PI/Batch 3B/2018-19/Gr.III/3804 dated 25.06.2020 (SCN for short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 5,61,532/- for the period F.Y. 2014-15 under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalties were proposed under Section 77 and 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs. 5,61,532/- (considering the taxable value as Rs. 45,43,150/-) was confirmed along with interest under Section 75 of the Finance Act, 1994. Penalty amounting to Rs. 5,61,532/- was imposed under Section 78 of the Finance Act, 1994. Penalty @ Rs.200/- per day till the date of compliance or Rs. 10, 000/- whichever is higher under the provisions of Section 77 of the Finance Act, 1994.

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

(i) They are a Partnership firm having school building and hostel building. Out of the above buildings, the school building was given on rent to M/s Global Education and Charitable Trust, who are running a school at the premises. They availed exemption on the rental Income earned from educational institute, by virtue of Sr.No.9 of mega exemption notification No. 25/2012-ST dated 20.06.2012 upto 10.07.2014. The said exemption was withdrawn by Notification No. 06/2014-ST dated 11.07.2014 with effect from 11.07.2014. Accordingly, they obtained registration under Service Tax and availed threshold exemption of Rs. 10,00,000/- in terms of Notification No. 33/2012-ST dated 20.06.2012. Service Tax was assessed and paid by them on the remaining amount taxable value after deduction of the threshold exemption of Rs. 10 lakhs.

(ii) They were also providing hostel accommodation to the students of Gandhinagar International Public School and claimed exemption in terms of



Sr.No. 18 of mega exemption Notification No. 25/2012-ST dated 20.06.2012. Hence as a partnership firm they fall under the following two categories of service :

- Renting of immovable property to the educational institution.
- Providing Hostel accommodation to students of Gandhinagar International Public School.

(iii) They requested to be heard in person and to drop the demand of service tax confirmed against them.

6. It is observed from the records that the present appeal was filed by the appellant on 26.08.2022 against the impugned order dated 23.05.2022, which was reportedly received by them on 12.06.2022.

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 11.08.2022 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 10.09.2022. This appeal was filed on 26.08.2022, i.e after a delay of 14 days from the last date of filing appeal, and within the period of one month that can be condoned.

6.3 In their application for condonation of delay they have submitted that one of their partners who was looking after all taxation matters developed serious health issues and was under treatment. His entire focus being shifted towards his



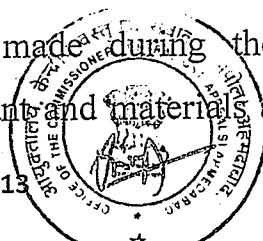
treatment and health, hence the filing of appeal was delayed by 014 days. The grounds of delay cited by the appellant appeared to be genuine, cogent and convincing. Considering the submissions the delay in filing appeal was condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

7. Personal hearing in the case was held on 18.05.2023. Shri Narendra Singh Sankhla, Authorised representative, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum. He also submitted copy of judgement of Advance Ruling and of Hon'ble High Court in GST matters. He stated that he would submit relevant documents of assessment like income tax return, profit & loss account and agreement with school as additional written submission.

7.1 The appellants submitted an additional written submission on 29.05.2023. They submitted copies of receipt of Hostel Fees collected ; Ledger of Hostel Fees for the F.Y. 2014-15; Income tax return with computation of income for F.Y. 2014-15 ; copy of Form-26AS; Copy of Balance Sheet as on 31.03.2015; Copy of Profit & Loss account for the F.Y. 2014-15 alongwith the same.

7.2 On account of change in the appellate authority Personal Hearing was again conducted on 23.06.2023. Shri Narendra Singh Sankhla, Tax Practitioner, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal and the additional written submissions made by them. He further submitted that Hostel Rent income was exempted from service tax under mega exemption notification under the category of accommodation services where daily tariff is below rupees one thousand. The income from renting of immovable property to the educational institute was exempted from service tax upto 10.07.2014 under mega exemption notification 25/2012-ST. The appellant had taken service tax registration in 2014 after withdrawal of the exemption and filed ST-03 returns and had paid taxes on proportionate basis. The lower authority has ignored the submissions without any discussion or reasoning. Therefore, he requested to set aside the impugned order.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional submissions made by the appellant and material available on records.



The issue before me for decision is whether the demand of Service Tax amounting to Rs. 5,61,532/- 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. 2014-15.

9. It is observed from the case records that the appellant obtained registered under Service Tax in the month of January-2015. They had filed their ST-3 return for the second half year of F.Y. 2014-15 on 23.04.2015. As per the ST-3 Returns during the relevant period they were engaged in providing taxable services falling under the category of 'Renting of Immovable Property Service'. They have also claimed and availed threshold exemption under Notification No.33/2012-ST dated 20.06.2012 and paid an amount Rs.1,71,345/- towards Service Tax during the period F.Y. 2014-15. These facts are undisputed. However, the SCN was issued on 25.06.2020 entirely on the basis of data received from Income Tax department and without causing any inquiry. The adjudicating authority vide the impugned order have confirmed the demand under Section 73 of the Finance Act, 1994 by way of invoking the extended period of limitation without carrying out any further verifications or considering the submissions of the appellant.

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

Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,

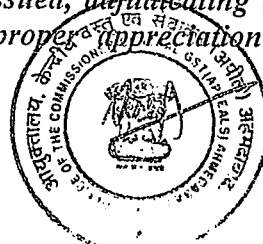
Dated- 21<sup>st</sup> October, 2021

To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.  
Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.

Madam/ Sir,

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





Examining the specific Instructions of the CBIC, with the facts and circumstances of the case, I find that the SCN as well as the impugned order has been passed indiscriminately and mechanically without application of mind, and is vague, issued in clear violation of the instructions of the CBIC discussed above. Further, the demand being confirmed indiscriminately vide the impugned order invoking the extended period of limitation has rendered the impugned order legally unsustainable and liable to be set aside in terms of limitations alone.

10. I find that the confirmed demand of Service Tax amounting to Rs.5,61,532/- was calculated considering the taxable value as Rs. 45,43,150/-. The appellants have contended that during the period F.Y. 2014-15 they were engaged in the activity of Renting of Immovable Property to Educational Institutions and accordingly claimed and availed exemption in terms of Sr.No.9 (b) of Notification No. 25/2012-ST dated 20.06.2012, as amended vide Notification No. 06/2014-ST dated 11.07.2014. The relevant portion of Sr.No.9 (b) of Notification No. 25/2012-ST dated 20.06.2012 and amending Notification No. 06/2014-ST dated 11.07.2014 are reproduced below for better understanding :

*Government of India  
Ministry of Finance  
(Department of Revenue)  
Notification No. 25/2012-Service Tax*

*New Delhi , the 20 th 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 17 th 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:-*

...

*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;*

...

The above notification was amended by the Notification No. 06/2014-ST dated 11.07.2014 and the amended portion is reproduced as below :

*Government of India  
Ministry of Finance  
(Department of Revenue)  
Notification No.06/2014 - Service Tax*



New Delhi, the 11th July, 2014

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

(1).In the said notification, in the opening paragraph,—

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;”;

10.1 From the above it is evident that the exemptions availed by the appellant were withdrawn with effect from 11.07.2014, and accordingly, their services of Renting of immovable property to Educational Institution were liable to Service Tax from 11.07.2014. From the figures reflected in Form 26AS submitted by the appellant, it is apparent that they have received an amount of Rs. 33,00,000/- (in 12 equal instalments of Rs. 2,75,000/-) under Section 194I(b) of the Income Tax Act, 1961 from an Educational Trust. The appellants have also submitted a reconciliation statement for the above amount and from the same it is evident that out of the said amount of Rs. 33,00,000/- an amount of Rs. 9,13,710/- merits exemption as the same pertains to the period prior to 11.07.2014.

10.2 It is further observed that the appellants have claimed and availed the benefit of threshold exemption vide Notification No.33/2012-ST dated 20.06.2012. The relevant portion of the said notification is reproduced below :

Government of India  
Ministry of Finance  
(Department of Revenue)  
Notification No. 33/2012 - 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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1 st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-



section (i), vide G.S.R. number 140(E), dated the 1<sup>st</sup> March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

...

Explanation.- For the purposes of this notification,-

...

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

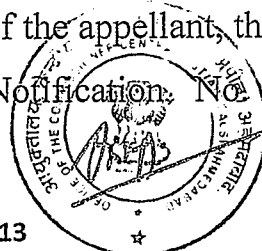
...

10.3 Comparing the above legal provisions with the facts of the case, I find that the appellant are eligible for the said threshold exemption. Accordingly, an amount of Rs.10,00,000/- is required to be reduced to arrive at the correct taxable amount. The details of calculation of the taxable amount is tabulated as per Table below :

Sr. No	Details	Amount (in Rs.)
1	Total amount received under Section 194I(b) of the Income Tax Act, 1961 from an Educational Trust, as per Form-26AS.	33,00,000/-
2	Amount claimed as exemption under Notification No.25/2012-St (for the period 01.04.2014 to 10.07.2014)	9,13,710/-
3	Amount claimed as threshold exemption	10,00,000/-
4	Total Taxable Value for the period F.Y. 2014-15 [Sr.No.1 – (Sr.No.2 + Sr.No.3)]	13,86,290/-
5	Taxable Value declared as per ST-3 Return	13,86,290/-

Therefore, from the above it emerges that out of the Value of Rs. 61,93,150/- considered for computation of the demand vide the impugned order, an amount of Rs. 33,00,000/- stands justified and merits deduction.

11. The appellants have further contended that they have provided hostel accommodation facility to various students during the relevant period and have also claimed exemption on the same in terms of Sr. No. 18 of Notification No. 25/2012-ST dated 20.06.2012. In order to have a better understanding of the provisions of exemption vis-à-vis the claim of the appellant, the relevant portion of the mega-notification as amended by Notification No. 06/2014-ST dated 11.07.2014 is reproduced below :



Government of India  
Ministry of Finance  
(Department of Revenue)  
**Notification No. 25/2012-Service Tax**

New Delhi, the 20 th 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 17 th 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:-*

*18. Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;*

11.1 Examining the above legal provisions in light of the facts and circumstances of the case I find that the appellants have provided Hostel Facility to individual students for accommodation. Further, the documents produced by them also confirm that they have received Hostel admission fee and Hostel Term Fees from individual students of various classes. They have also produced complete Ledger account for the period F.Y. 2014-15 showing the details of amount received from the Hostel facilities being managed by them. These documents also confirm the fact that the 'Tariff' for accommodation charged from the students was below one thousand rupees per day. Therefore, I am of the opinion that the appellants are eligible for exemption under Sr. No. 18 of Notification No. 25/2012-ST dated 20.06.2012, as amended in respect of an amount of Rs.28,93,150/- received by them during the relevant period.


12. In view of the above discussions I am of the considered view that out of the amount of Rs. 61,93,150/- considered for computation of the demand vide the impugned order, an amount of Rs. 33,00,000/- stands justified and merits deduction as per discussions at Para-10 supra. Further, the amount of Rs. 28,93,150/- also merits exemption under Sr. No. 18 of Notification No. 25/2012-ST dated 20.06.2012, as amended.

13. Accordingly, the impugned order confirming the demand of service tax amounting to Rs. 5,61,532/- is set aside on merits as well as on limitation. As the




demand of service tax fails to sustain, the question of interest and penalty does not arise. The appeal filed by the appellant is allowed.

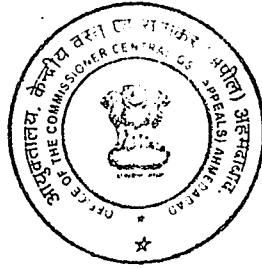
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Dated: \_\_\_ July, 2023

Attested:

  
(Somnath Chaudhary)  
Superintendent, CGST,  
Appeals, Ahmedabad



BY RPAD / SPEED POST

To

M/s. Arm Associates,  
Surbhi Complex, P-1,  
Plot No. 347/1,  
Sector-22, Gandhinagar, Gujarat

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Gandhinagar.
3. The Deputy/Asstt. 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.

