



सत्यमेव जयते

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

By SPEED POST

DIN:- 20230864SW0000000B46

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/55/2023-APPEAL / 4207 - 11
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-061/2023-24 and 25.07.2023
(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	07.08.2023
(ङ)	Arising out of Order-In-Original No. 31/ADJ/GNR/PMT/2021-22 dated 21.03.2022 passed by The Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Maruti Holidays, (Prop-Jayashreeben Kantilal Sharma) Office No. 129, Meghmalhar Complex, Sector-11, Gandhinagar, Gujarat - 382011 (New Address:- Plot No 1742/2, Near Swaminarayan Temple, Sector-2D, Gandhinagar - 382007).

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

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

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

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाने हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में 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 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.

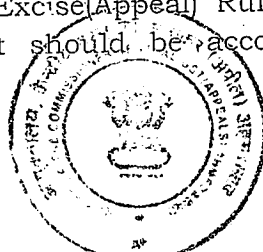
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



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

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

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

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलों 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."

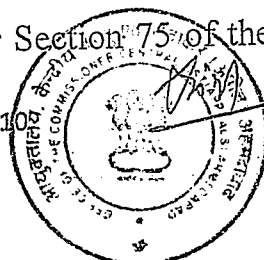


अपीलिय आदेश / ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Maruti Holidays, (Prop.: Jayashreeben Kantilal Sharma) Office No. 129, Meghmalhar Complex, Sector-11, Gandhinagar, Gujarat - 382011 [hereinafter referred to as the appellant] against OIO No. 31/ADJ/GNR/PMT/2021-22 dated 21.03.2022 [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 registered with Service Tax under Registration No. BQMPS7350CSD001 and are engaged in providing services relating to 'Business Auxiliary Service', 'Air Travel Agent Service' and 'Tour Operator Service'. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their ST-3 Returns when compared with their Income Tax Return (ITR-5) and details of Form 26 AS for the period F.Y. 2015-16 and F.Y. 2016-17. Accordingly, letter dated 15.09.2020 was issued to the appellant calling for the details of services provided during the period F.Y. 2015-16 and F.Y. 2016-17. The appellant submitted their Income Tax Return (ITR), Form-26AS, Balance Sheet vide their reply dated 23.09.2020. The appellant had filed their Service Tax Returns (ST-3) during the period F.Y. 2015-16 and F.Y. 2016-17. 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 period F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period after reconciliation for each service provided separately they calculated an amount of Rs. 41,54,775/- as short payment of Service Tax for the period F.Y. 2015-16 and F.Y. 2016-17.

2.1 Show Cause Notice F.No. GEXCOM/SCN/ST/1165/2020-CGST-DIV-GNR dated 16.10.2020 (SCN in short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 41,54,775/- for the period F.Y. 2015-16 and F.Y. 2016-17 under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.



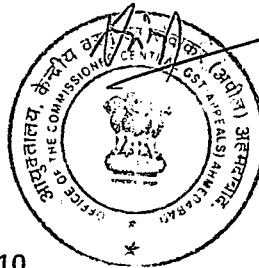
Imposition of penalty was proposed under Section 77(2), 77C and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs. 41,54,775/- was confirmed along with interest. Penalty amounting to Rs. 41,54,775/- was imposed under Section 78 of the Finance Act, 1994. Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994 .

4. Being aggrieved with the impugned order, the appellant have filed the instant appeal on following grounds:

(i) They are a Proprietorship firm engaged in the providing services related to 'Air Travel Agent Service', 'Business Auxiliary Service' and 'Tour Operator Service'. They are registered with Service Tax department, filed their Service Tax Returns (ST-3) during the period F.Y. 2015-16 and F.Y. 2016-17 and also paid Service Tax as assessed. They had received letter dated 15.09.2020 from the jurisdictional Superintendent calling for documents. They had promptly submitted ST-3 returns, Service Tax Ledger, Income Tax Returns, Form 26AS, Profit & Loss Account and Balance Sheet for the period F.Y. 2015-16 and F.Y. 2016-17. Consequently they received the SCN.

(ii) They had filed their reply to the SCN on 02.12.2020 alongwith a detailed worksheet and a request for personal hearing via e-mail, as the physical copy of the reply was not received at the jurisdictional office due to COVID-19 restrictions. However, the adjudicating authority did not consider their submissions and passed the impugned order on 21.03.2022 without granting any personal hearing. However, the impugned order was not received by the appellant and they were apprised about the same on receipt of letter No. GEXCOM/TAR/F/ST/159/2022-GST-RANGE-2-DIV-GNR-COMMRTE/582 dated 27.09.2022 from the jurisdictional officer. Upon request for a copy of the impugned order, the adjudicating authority forwarded the impugned order vide letter dated 30.09.2022 which was finally received by them on 01.11.2022 vide e-mail.



(iii) During the period F.Y. 2015-16 and F.Y. 2016-17 they had provided Air Travel Agent services and booked income with gross receipt. The basic fare of the Air Tickets booked by them was as per below table :

Sr. No	Details	Period	Amount (in Rs.)
1	Basic Fare of International Air Ticket	F.Y. 2015-16	1,83,47,346/-
2	Basic Fare of International Air Ticket	F.Y. 2016-17	2,54,04,146/-
3	Basic Fare of Domestic Air Ticket	F.Y. 2015-16	94,87,342/-
4	Basic Fare of Domestic Air Ticket	F.Y. 2016-17	81,84,201/-

In respect of the above bookings, the adjudicating authority have calculated the Service Tax on the gross amount of Air Ticket value.

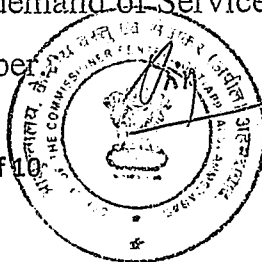
(iii) In respect of the calculations done in the impugned order in respect of Misc. Services, they explained that they had provided various miscellaneous services to their clients e.g. Visa assistance, Travel Insurance etc. The expenses incurred in respect of these services on behalf of the travelers are reimbursed except for the commission charges. However, in respect of these services, the adjudicating authority have considered the gross value as taxable value for calculating service tax liability. As, the service tax liability should have been calculated below :

Taxable Value =(Misc.Service Charge Income) – (Misc.Service Charge Expnse)

(iv) They have acted as pure agents of their service receivers in respect of the services provided by them. Hence, the expenses incurred by them on behalf of the service provider are required to be excluded to arrive at the taxable value in terms of Rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006, as amended.

(v) Regarding the services related to booking of Air Tickets on behalf of their clients they contended that the Net Taxable Value is required to be arrived at in terms of sub rule 7 of Rule 6 of the Service Tax Rules, 1994, as amended vide Notification No.05/2015-ST dated 01.03.2015 and Notification No. 15/2015-ST dated 19.05.2015, whereas the adjudicating authority has calculated the Service tax on gross value, which is incorrect.

(vi) As they have filed their ST-3 Returns regularly and there is no suppression of willful mis-statement or intention to evade payment of service tax on their part, hence, confirmation of the demand of Service Tax in terms Section 73(1) of the Finance Act, 1994 is not proper.

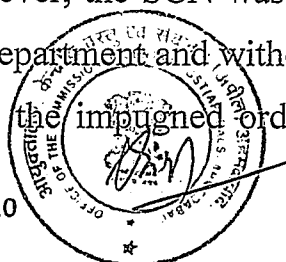


(vii) Alongwith the appeal papers they have submitted complete working of their taxable services for the period F.Y. 2015-16 and F.Y. 2016-17 alongwith comparison with their ST-3 Returns filed by them. They have also submitted a copy of Final Audit Report (FAR) No. 571/2015-16-Service Tax, dated 17.02.2016 issued from F.No. VI/1(b)-63/IA/2015-16/C-II/AP-VII by the Assistant Commissioner, Central Excise, Circle-II, Audit-I, Ahmedabad. They have also submitted copies of their ST-3 Returns for the relevant period.

5. Personal hearing in the case was held on 26.06.2023. Shri Narendra Singh Sankhla, Tax Practitioner, appeared on behalf of the appellant for hearing. He submitted that the appellants provided services related to tours and travel. The lower authority has confirmed the demand on the gross value of receipts without taking into consideration the expenses which are in the nature of reimbursements. The appellant had discharged tax liability on the amount of net receipt of commission by filing ST-3 Returns. Therefore the impugned order is bad in law. The appellant had replied to the show cause notice through e-mail and had also appeared for personal hearing before the adjudicating authority. However, the lower authority has passed the impugned order ex-parte ignoring the submissions. He requested to set aside the order in original.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, and materials available on records. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 41,54,775/- confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

7. It is observed from the case records that the appellant are registered under Service Tax and during the relevant period that they were engaged in providing taxable services falling under the category of 'Air Travel Agent Service', 'Business Auxiliary Service' and 'Tour Operator Service'. During the period F.Y. 2015-16 and F.Y. 2016-17 they have filed their ST-3 Returns and paid Service Tax as assessed. These facts are undisputed. However, the SCN was issued entirely on the basis of data received from Income Tax department and without referring to the ST-3 returns filed by the appellant. Further, the impugned order was passed ex-



parte without causing any further verifications as well as ignoring the submissions made by the appellant.

7.1 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- 21st October, 2021

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

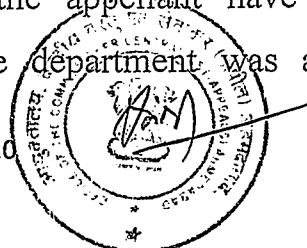
Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.

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 of the case, I find that the SCN was issued mechanically and is vague issued in clear violation of the instructions of CBIC. The impugned order has been passed ex-parte indiscriminately without application of mind, issued in clear violation of the instructions of the CBIC discussed above as well as in violation of the principles of judicial discipline. These defects have rendered the impugned order legally unsustainable and liable to be set aside.

8. It is further observed that the appellants have filed their ST-3 Returns for the relevant period. They have claimed and availed abatement in respect of 'Tour Operator Service' in terms of Sr.No. 11 of Notification No. 26/2012-ST dated 20.06.2012, as amended during the F.Y. 2015-16 and F.Y. 2016-17. It is also observed that they have not received any 'short/non duty payment notice' from the jurisdictional officers. This implies that the appellant have made complete disclosures before the department and the department was aware about the



activities of the appellant as well as their assessment were not disputed by the department. However, the demand of service tax was confirmed under Section 73 of the Finance Act, 1994 invoking the extended period of limitation.

8.1 The appellants have submitted a copy of Final Audit Report (FAR) No. 571/2015-16-Service Tax, dated 17.02.2016 issued from F.No. VI/1(b)-63/IA/2015-16/C-II/AP-VII by the Assistant Commissioner, Central Excise, Circle-II, Audit-I, Ahmedabad. From the said FAR it is observed that Audit of the service tax records of the appellant was carried out upto September-2015 (F.Y. 2015-16). The observations taken by Audit was promptly complied by the appellant and none of the observations were similar to the discrepancies pointed out in the SCN. Hence, I find that the assessment of the records of the appellant was confirmed by the department upto September-2015 of the F.Y. 2015-16. However, the SCN in the case was issued covering the same period and the demand of Service Ta amounting to Rs. 41,54,775/- was confirmed invoking the extended period of limitation.

8.2 In this regard it is relevant to refer the decision of the Hon'ble Supreme Court of India in the case of *Commissioner v. Scott Wilson Kirkpatrick (I) Pvt. Ltd. - 2017 (47) S.T.R. J214 (S.C.)*], wherein the Hon'ble Court held that "...ST-3 Returns filed by the appellant wherein they Under these circumstances, longer period of limitation was not invocable".

8.3 The Hon'ble High Court of Gujarat in the case of *Commissioner v. Meghmani Dyes & Intermediates Ltd. reported as 2013 (288) ELT 514 (Guj.)* ruled that "if, prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".

• I also rely upon the decision of various Hon'ble Tribunals in following cases :

- (a) *Aneja Construction (India) Limited v. Commissioner of Service Tax, Vadodara* [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]
- (b) *Bhansali Engg. Polymers Limited. v. CCE, Bhopal* [2008 (232) E.L.T. 561 (Tri.-Del.)]
- (c) *Johnson Matthey Chemical India P. Limited v. CCE, Kanpur* [2014 (34) S.T.R. 458 (Tri.-Del.)]



8.4 Respectfully following the above judicial pronouncements and comparing them with the facts and circumstances of the case, I find that the impugned order have been issued in clear violation of the above judicial pronouncements and is therefore legally unsustainable and liable to be set aside.

9. The appellants have submitted a reconciliation sheet alongwith detailed comparison of the figures reflected in their books of accounts vis-à-vis their ST-3 Returns. Upon examining the same I find force in the arguments of the appellant that expenses incurred by the appellant during the course of providing the services were not considered for deduction while arriving at the taxable value by the adjudicating authority. Upon referring to the relevant provisions of Service Tax Rules, 1994 I find that, in terms of Rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006, as amended, the appellants are eligible for the necessary deductions. Over and above these aspects have been approved by the officers of Audit for the partial period covered under the FAR referred supra.

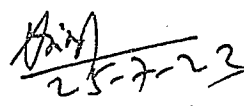
10. In view of the above discussions I am of the considered view that the the impugned order were arrived at ignoring the submissions of the appellant, and passed in violation of the principles of natural justice is legally unsustainable. Further the findings of the adjudicating authority are vague, indiscriminate and incorrect. Therefore, the impugned order is liable to be set aside..

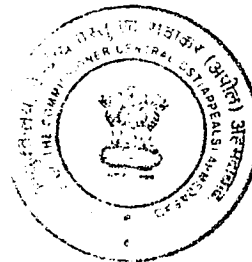
11. Accordingly, the demand of Service Tax amounting to Rs. 41,54,775/- confirmed vide impugned order is set aside. As the demand fails to sustain, the question of interest and penalty does not arise. The appeal filed by the appellant is allowed.

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

Attested:

(Somnath Chaudhary)
Superintendent, CGST,
Appeals, Ahmedabad


(Shiv Pratap Singh)
Commissioner (Appeals)
Dated: 25 July, 2023



BY RPAD / SPEED POST

To

M/s. Maruti Holidays,
(Prop.: Jayashreeben Kantilal Sharma)
Office No. 129, Meghmalhar Complex,
Sector-11, Gandhinagar,
Gujarat - 382011

Copy to:

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

