



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:- 20230864SW000000B778

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2457/2022-APPEAL / 14522-81
(ख)	अपील-आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-064/2023-24 and 31.07.2023
(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	16.08.2023
(ङ)	Arising out of Order-In-Original No. PLN-AC-STX-17/2021-22 dt. 09.02.2022 passed by Assistant Commissioner, CGST Division Palanpur, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Modh Vasudev Purushotambhai, Savitri Mandap and Decorators, Vadi Road, Deesa, Dist- Banaskantha, Gujarat - 385535.

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:-

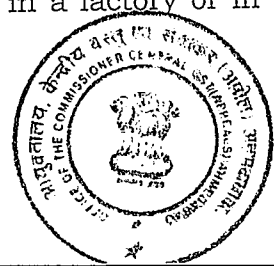
Revision application to Government of India:

(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 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के 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.

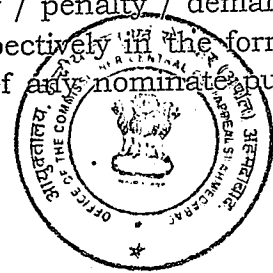
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों 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 nominated 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 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 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, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

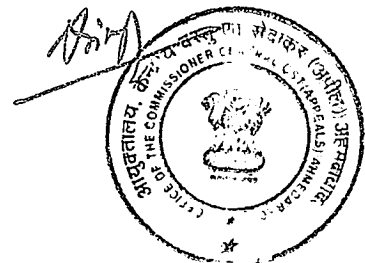
The present appeal has been filed by M/s. Modh Vasudev Purushottambhai, Savitri Mandap Decorators, Vadi Road, Deesa, Dist. Banaskantha, Pin- 385535 (hereinafter referred to as the appellant) against Order in Original No. PLN-AC-STX-17/2021-22 dated 07.02.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Palanpur, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were engaged in the business activity of service sector and were holding Service Tax Registration Nos. ACGPM2298CSD001 and ACGPM2298CSD002 for providing taxable services. From the data received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their Income Tax Returns (ITR-5) and Form 26AS (TDS) for the period F.Y.2016-17. Accordingly, letters dated 14.05.2019, 01.11.2019, 13.12.2019 and 10.01.2020 were issued to the appellant calling for the details of services provided during the period F.Y.2016-17. The appellants failed to submit any reply. It was observed by the jurisdictional officers that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (F'A,1994), and their services were not covered under the 'Negative List' as per Section 66D of the FA,1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 (as amended).

3. The jurisdictional officers also observed that the appellant did not file their Service Tax Returns (ST-3) for the period F.Y. 2016-17, hence, their Service Tax liability for the F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' shown in the ITR-5 and Form 26AS for the relevant period provided by the Income Tax department as per details below :

Table

Sr. No	Details	F.Y. 2016-17 (Amount in Rs.)
1	Total Income Declared as per ITR-5	1,61,26,186/-
2	Income on which Service Tax paid	0/-
3	Difference of Value (Sr.No.1 – Sr.No.2)	1,61,26,186/-
4	Service Tax alongwith Cess (15%) not paid/short paid	24,18,927.9/-



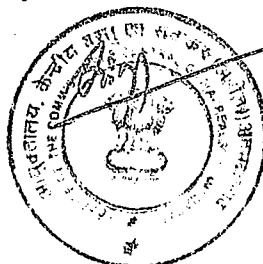
3. The appellant was issued a Show Cause Notice vide F.No. IV/16-01/PLN/Prev/TP/SCN/2020-21 dated 12.06.2020 (in short 'SCN') wherein it was proposed to:

- Demand and recover service tax amounting to Rs. 24,18,928/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalties under Section 76, 77(2) , 77(3)(c) and 78 of the Finance Act, 1994;

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs. 24,18,928/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. Penalty amounting to Rs. 24,18,928/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty under proviso to clause (ii). Penalty of Rs. 10,000/- was imposed under Section 77 (2) of the Finance Act, 1994 and Penalty of Rs.10,000/- was imposed under the provisions of Section 77 (1) (c) of the Finance Act, 1994. Penalty of Rs. 2,41,893/- was imposed under Section 76 of the Finance Act, 1994.

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

- The SCN was received by them on 24.05.2022, i.e after issuance of the impugned order. They had also not received any of the letters issued to them as mentioned in the impugned order.
- The demand was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest and penalty entirely on the basis of data received from Income Tax department without conducting any inquiry.
- The nature of services carried out by them during the F.Y. 2015-16 and F.Y.2016-17 were exempted either under Section 66D of the FA, 1994 or by virtue of Notification No. 30/2012-ST dated 20.06.2012 read with Rule 2(1)(d) and accordingly, no service tax liability can be fastened on the appellant.



6. Personal hearing was held on 17.04.2023 for deciding the issue of condonation of delay, Ms Jahanvi Chudasama, Chartered Accountant, appeared on behalf of the appellants for hearing. She reiterated the submissions made in the application for condonation of delay.

6.1 It is observed from the records that the present appeal was filed by the appellant vide e-mail on 14.06.2022 against the impugned order dated 07.02.2022, which was admittedly received by the appellant on 15.03.2022.

6.2 It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

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

6.3 As per the legal provisions above, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 15.05.2022 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 14.06.2022 .

6.4 In their application for condonation of delay, the appellant have submitted that the matter was handed over to a consultant who misguided them by informing that the due date of filing appeals have been extended. However, upon learning the factual situation that their case may not be covered under the extension of time limit, they appointed a new consultant who prepared the appeal memo for filing. Hence the delay had occurred due to incorrect advise of the old consultant and delay had occurred inadvertently. These reasons were also explained by them during the course of personal hearing, which appeared to be cogent and convincing. Considering the submissions and explanations during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.



7. Subsequently, personal hearing was held on 26.06.2023. Shri Tapas Ruparelia, Chartered Accountant, appeared for the hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also submitted that they provided Mandap Keeper Services and have paid appropriate VAT. Therefore, they were eligible for applicable abatement towards tax liability. However, the lower authority has passed the impugned order without allowing abatement on ex-parte basis without any verification. The appellant further submitted that they have not collected any service tax from their customers and therefore are eligible for cum-duty benefit. They requested to allow the benefit of abatement and cum-duty benefit. The appellant was willing to discharge their liability on correctly determined tax. They also requested for a lenient view on imposition of penalty, since they had not filed the returns due to ignorance and not with an intention to evade tax. Being illiterate they were not properly guided by their accountant. They undertook to submit a copy of the ITR Form, 26AS, Financial Statements, sample invoices and agreements within a week time.

7.1 The appellant vide their e-mail dated 13.07.2023 submitted Copy of Form 26AS for the F.Y. 2016-17; Copy of Financial Statement, Copy of Form 3CB, copy of Sample Invoice and Copy of Income Tax Return for the F.Y. 2016-17

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing and submissions made vide additional documents. The issue before me for decision is whether the impugned order issued to confirm the demand of Service Tax amounting to Rs. 24,18,928/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.

8.1 It is observed from the case records that the appellant are registered with the department. However the SCN was issued based on the data received from Income Tax department. It appeared to the jurisdictional officers that the appellant had shown income from services amounting to Rs. 1,61,26,186 during F.Y. 2016-17, for which they had not provided any explanation to the department. This resulted in issuance of SCN dated 12.06.2020 and thereafter issuance of the impugned order. It is further observed that the impugned order has been passed ex-parte.



8.2 As regards the contentions of the appellants that they did not receive the SCN and letters issued to them, I find that there is no evidence on record to suggest that the SCN was served upon the appellant. The appellants have further submitted that the SCN was received by them on 24.05.2022 i.e after issuance of the impugned order. It is also observed that the SCN was issued entirely on the basis of data received from Income Tax department without conducting any independent inquiry by the issuing authority. The SCN was issued without mentioning any category of service even though the appellants were registered with the department. Further, the adjudicating authority has also not caused any verification in the matter and decided the matter ex-parte against the appellant.

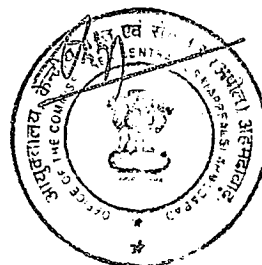
8.3 I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

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

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

9. It is observed that the appellant have submitted various documents in their defence alongwith their appeal memorandum. As per the said documents they have submitted that, during the period F.Y. 2016-17 they were providing Mandap Keeper Services. During the course of assessment, they have claimed abatement @ 30% on gross amount charged by them, in terms of Sr.No.04 of Notification No. 26/2012-ST dated 20.06.2012.

10. In order to have a better understanding, the relevant portions of Notification No. 26/2012-ST dated 20.06.2012 are reproduced below:



Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 26/2012- 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 13/2012- 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. 211 (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 taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely:-

Sl. No	Description of Service	Percentage	Conditions
1	2	3	4
1	Services in relation to financial leasing including hire purchase	10	NIL
2	...		
3	...		
4	Bundled Service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention centre, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting such premises	70	(i)CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
...	...		

...
Explanation. -

...
B. For the purposes of exemption at Serial number 4 -

The amount charged shall be the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating) and whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services supplied to the service provider, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

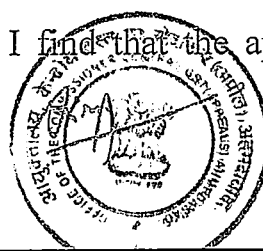
...

[F.No. 334 /1/ 2012- TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

10.1 Examining the above legal provisions with the facts and circumstances of the case and the documents submitted by the appellant, I find that the appellant have



submitted that they have not availed any Cenvat Credit on any input/ input services/capital goods under Service tax and have also not transferred any credit by filing Tran-1. It is also observed that appellants are providing the services of Mandap, Shamiana etc alongwith Food/catering services, hence their services fall under the definition of Bundled Services and are therefore eligible for availing abatement in terms of Sr.No.04 of Notification No. 26/2012-ST dated 20.06.2012.

11. It is further observed that the appellants have contended that they are eligible for cum-duty benefit on the ground that they have not collected any service tax from their service receivers. From the copy of Invoices produced by the appellant it is observed that they are not charging any Service Tax vide the Invoices. It is also observed that the adjudicating authority has not discussed anything in contrary to this fact. Hence, I find force in the argument of the appellants in their claim of cum-duty benefit in the facts and circumstances of the case.

11.1 In this context I find it relevant to refer to the decision of the Hon'ble Supreme Court in the appeal filed by the department in the case of *Commissioner v. Advantage Media Consultant - 2009 (14) S.T.R. 149 (S.C.)*. I also find it worthwhile to refer to the decision of the Hon'ble Tribunal Ahmedabad in the case of *Precise Engineer Vs Commissioner of Central Excise & Service Tax, Vadodara* reported as 2019 (370) E.L.T. 356 (Tri. - Ahmd.), wherein deciding the issue of cum-duty benefit the Hon'ble Tribunal held that :

...
5. *As regards the submissions of the Ld. Counsel on benefit of cum-duty-price, we do agree that since exemption has been denied, the duty should be recomputed considering the cum-duty benefit as held by the Hon'ble Supreme Court in the case of CCE, Delhi v. Maruti Udyog Limited - 2002 (141) E.L.T. 3 (S.C.). Therefore, the Adjudicating Authority should re-calculate the duty by considering the benefit of cum-duty.*
...

Following the above decisions of the superior authorities, I find that the appellants are eligible for the benefit of cum-duty-price and the demand is required to be re-calculated considering the same.

12. It is also observed from the documents submitted by the appellant that as per their Balance Sheet for the F.Y. 2016-17 an amount of Rs.1,61,26,186/- is shown as Total Direct Income / Mandap Decoration and Food Income. They have also produced a Khata-vahi account in respect of Mandap Decoration and Food Income for the period F.Y. 2016-17 which also reflects the total amount of Rs. 1,61,26,186/-

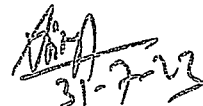


as received in their bank account. Hence Total Income from Services during the period F.Y. 2016-17 is the same as declared in the SCN. Further, they are eligible for abatement @ 30%, i.e Service Tax is required to be calculated on 70% of the total Value of services. Therefore, considering the abatement the taxable amount comes to Rs. 1,12,88,330/-.

12.1 Regarding the valuation, it is undisputed that Service Tax should be levied on the 'services' portion only. In respect of such bundled services, as provided by the appellant, the 'Services Portion' is required to be ascertained from the total amount. It has already been discussed that the appellant are eligible for cum-duty benefit. Hence, the valuation is required to be done in terms of Notification No. 24/2012-ST dated 20.06.2013, i.e Rule 2C – (Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.) of the 'Service Tax (Determination of Value) Second Amendment Rules, 2012'. Therefore, in the instant case since the appellants have not provided the services within a restaurant, 'Service Portion' is to be determined as 60% of the Value. Accordingly 60% of Rs. 1,12,88,330/- comes to Rs. 67,72,998/-. The Service Tax liability of the appellant calculated on the above 'Service Portion' comes to Rs. 10,15,950/-.

13. Accordingly, the impugned order is set aside. On the basis of the contentions of the appellant and the documents produced by them their Service Tax liability for the period F.Y. 2016-17 is ascertained at Rs. 10,15,950/- . An amount of Rs.2,000/- is imposed as Penalty under Section 77 (2) of the Finance Act, 1994 for non-filing of mandatory statutory Service Tax Returns during the period F.Y. 2016-17. The appeal filed by the appellant is allowed in above terms.

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)

Date: ___ July, 2023

Attested:

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



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2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy /Asstt.Commissioner, Central GST Division – Palanpur,
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for
uploading the OIA)
5. Guard File.
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