आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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Website : www.cgstappealahmedabad.gov.in

सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20230864SW000011251C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2724/2022-APPEAL /AHM-68
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-071/2023-24 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-66/2022-23 dated 30.06.2022 passed by The Assistant Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jayeshbhai Nandlal Vaidhya,16, Sadbhav Building, Shastri Nagar Society, Jayveer Nagar Char Rasta, Near Bus Stand, Patan, Gujarat-384265.

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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
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 2ndfloor, 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. Registar 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 ओदश 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 हैं।

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 संषोधित 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 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 in 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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. Jayeshbhai Nandlal Vaidya, 16, Sadbhav Building, Shashtri Nagar Society, Jayveer Nagar Char Rasta, Near Bus Stand, Patan-384265 [hereinafter referred to as the appellant] against OIO No. PLN-AC-STX-66/2022-23 dated 30.06.2022 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, Division: Palanpur, 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. AAQPV1078HST001 and are engaged in providing taxable services. 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) for the period F.Y. 2016-17. Accordingly, letter/email dated 23.05.2020 was issued to the appellant calling for the details of services provided during the period F.Y. 2016-17. 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. 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 as per details below :

Table

Sr.No	Details	F.Y. – 2016 - 17 (in Rs.)
1	Taxable value as per Income Tax data i.e Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J or Sales/Gross Receipts from Services (From ITR)	10,65,900/-
2	Taxable Value declared in ST-3 Returns	00
3	Differential Taxable Value (S.No-1-2)	10,65,900/-
4	Amount of Service Tax including cess (@ 15%)	1,59,885/-

2.1 Show Cause Notice F.No. AR-V/JAYESHBHAI N. VAIDYA/ST-3-SCN/2020-21 dated 17.06.2020 (SCN for short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 1,59,885/- for the period 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.

2.2 The SCN was adjudicated ex-parte vide the impugned order wherein the demand for service tax amounting to Rs. 1,59,885/- (considering the taxable value as Rs. 10,65,900/-) was confirmed along with interest. Penalty equivalent to the amount of service tax confirmed was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty in terms of clause (ii). Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994 and Penalty @ Rs.200/- per day till the date of compliance or Rs. 10, 000/- whichever is higher under the provisions of Section 77(1)(c) of the Finance Act, 1994.

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

(i) They are a Proprietorship firm and engaged in carrying out Educational Services by way of running Tuition Classes. During the period F.Y. 2016-17 the appellant has earned income from such educational services and the SCN was issued by the department only on the basis of Income Tax data. Communications from the department were either not received or received very late, hence, they were unable to submit required details. The adjudicating authority has passed the impugned order on the basis of data received from Income Tax department without carrying out any verifications. The appellants was also not given opportunity to submit their case.

(ii) The SCN was issued entirely on the basis of data received from Income Tax department and without verification of facts. Further, the SCN was despatched through e-mail only without any confirmation of its receipt. They have promptly filed their Income Tax returns wherein they have declared all the facts required to be declared.

(iii) The adjudicating authority have confirmed the demand under Section 73 of the Finance Act., invoking extended period of time limitation. Whereas, there was no suppression of facts or malafide intention on part of the appellant. Moreover, the department have failed to fulfil their burden to prove and justify the validity of invoking the extended period of limitation. In absence of the same

the SCN becomes invalid and incorrect. In support of their contention they cited the decision of the Hon'ble Supreme Court of India in the case of M/s Cosmic Dye Chemical Vs Collector of Central Excise, Bombay reported as 1995 (75) ELT 721 (SC).

(iv) That the SCN was issued in violation of the guidelines issued by the Board vide Circular No. 1053/02/2017-CX, dated 10.03.2017 issued from F.No. 96/1/2017-CX.I. The Circular categorically states that SCN should be issued after proper verification of facts and the onus is on the department to prove the invocation of extended period of five years. They also alleged that the SCN dated 17.06.2020 was time barred as it was issued after the stipulated period of five years.

(v) During the relevant period the appellant carried out education related tuition activities and he has received an Income of Rs. 10,65,900/- during the period F.Y. 2016-17. They are eligible for exemption upto a value of Rs. 10,00,000/- in terms of Notification No. 33/2012-ST dated 20.06.2012. However, the SCN was issued and demand was confirmed without considering the same.

(vii) As per their above submissions, since no demand of Service Tax is sustainable, therefore, imposition of penalty stands infructuous. In support they cited that decision of the Hon'ble Supreme Court in the case of Hindustan Steel Vs State of Orissa reported as 1978 ELT (J159).

4. Personal hearing in the case was held on 30.06.2023. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for hearing. He submitted that the appellant had earned the income by providing tuition classes. The taxable value was taken from IT data, on which the demand was confirmed by the adjudicating authority without considering the exemption for basic threshold limit. He submitted copy of ITR and balance sheet and profit and loss account for the F.Y. 2015-16 in this regard and requested to set aside the impugned order.

5. 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. 1,59,885/- 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. 2016-17.

6. 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 "Educational Services-Tuition Class". During the period F.Y. 2016-17 they have filed their ST-3 Returns. These facts are undisputed. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant and the impugned order was issued without causing any further verifications in this regard.

6.1 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***

...

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

7. It is further observed that the appellants have filed their ST-3 Returns for the relevant period and 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 being carried out by the appellant and these were never disputed. However, the impugned order was issued invoking the extended period of limitation. 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".*

7.1 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 Mattey Chemical India P. Limited* v. *CCE, Kanpur* [2014 (34) S.T.R. 458 (Tri.-Del.)]

7.2 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 settled law and is therefore legally unsustainable and liable to be set aside on grounds of limitation alone.

8. The appellants have submitted the ITR-4 filed by the appellant for the period F.Y. 2015-16 which confirms that the Income of the appellant during the preseding Financial Year i.e F.Y. 2015-16 was below Rs. 10,00,000/- and accordingly claimed threshold exemption in terms of Notification No. 33/2012-ST dated 20.06.2012. The relevant portion of the notification is reproduced below :

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 st 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:

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii)the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for

each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

Explanation.- For the purposes of this notification,-

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(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."

8.1 Examining the above legal provisions with the facts and circumstances of the case I find that the appellant are eligible for basic threshold exemption of Rs. 10,00,000/- during the period F.Y. 2016-17 which was not considered by the adjudicating authority and the demand was confirmed indiscriminately.

9. In view of the discussions I am of the considered view that the impugned order confirming the demand of service tax amounting to Rs. 1,59,885 /- was issued indiscriminately in violation of the limitation clause as well as the principles of natural justice and therefore, these discrepancies have rendered the order legally incorrect and unsustainable and liable to be set aside on merits as well as on limitation. As the demand fails to sustain, the question of interest and penalty does not arise.

10. In view of the above discussions the impugned order is set aside and the appeal filed by the appellant is allowed.

11. अपीलकर्ताद्वारादर्जकीगईअपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।
The appeals filed by the appellant stands disposed of in above terms.

21-07-23

(Shiv Pratap Singh)
Commissioner (Appeals)

Attested:

(Somnath Chaudhary)
Superintendent, CGST,
Appeals, Ahmedabad

Dated: 21 July, 2023

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