आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST
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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2379/2022-APPEAL /988-92
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-009/2023-24 and 20.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	21.04.2023
(ङ)	Arising out of Order-In-Original No. 17/AC/DEM/MEH/ST/Paramjit Singh/2022-23 dated 19.05.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Paramjitsingh Balwantsingh Sokhi, 4, Kesar Nagar-2, Behind Sanskar Motors, Palavasna, ONGC Colony, Mehsana - 384003

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 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 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 अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 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 ज़मा 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 Shri Paramjitsingh Balwantsingh Sokhi, 4/ Keshar Nagar – 2, Behind Sanskar Motors, Palavasana, ONGC Colony, Mehsana -384003 [hereinafter referred to as the appellant] against OIO No. 17/AC/DEM/MEH/Paramjitsingh/2022-23 dated 19.05.2022 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant were registered for providing Consultancy Services and holding Service Tax Registration No. ADRPS2656JSD001. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns of the appellant for the period F.Y. 2015-16 and F.Y. 2016-17 vis-à-vis those in the ST-3 Returns filed for the said period. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had correctly discharged their Service Tax liabilities during the period F.Y. 2015-16 and F.Y.2016-17, letter/email dated 05.05.2020, 28.05.2020 and 01.07.2020 were issued to the appellant..They failed to submit any reply. The status of ST-3 Returns filed by the appellant during the period F.Y. 2015-16 and F.Y. 2016-17 is tabulated below :

Period (F.Y.)	Half Yearly Period	Whether ST_3 Return filed or otherwise	Taxable Value declared in ST-3 Return (in Rs.)
2015-16	April- 2015 to Sep.- 2015	Not Filed	00
2015-16	Oct.-2015 to Mar.- 2016	Filed	5,81,333/-
2016-17	April- 2016 to Sep.- 2016	Filed	00
2016-17	Oct.- 2016 to Mar.- 2017	Not Filed	00

3. The jurisdictional officers further observed that the nature of service provided by the appellant during the period were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA, 1994) and appeared to be taxable. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of difference between 'Income'

shown in the Income Tax Return and those shown in their ST-3 returns for the relevant period and calculated as below:

Financial Year (F.Y.)	Value declared as per Income Tax data	Taxable Value given as per ST-3 Returns (in Rs.)	Difference between ITR data and ST-3 returns. (in Rs.)	Service Tax payable (including SBC & KKC) (in Rs.)
2015-16	50,10,687/-	5,81,333/-	44,29,354/-	6,42,256/-
2016-17	48,12,935/-	00	48,12,935/-	7,21,940/-
Total	98,23,622/-	5,81,333/-	92,42,289/-	13,64,196/-

4. The appellant were issued a Show Cause Notice vide F. No. V.ST/11A-194/Paramjit Singh/2020-21 dated 18.08.2020 (in short 'SCN') wherein it was proposed as under:

- Demand and recover service tax amounting to Rs. 13,64,196/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act,1994 ;
- The SCN also proposed imposition of penalties under Section 70(1) , 77(2), 77C and 78 of the Finance Act, 1994;

5. The Show Cause Notice was adjudicated vide the impugned order wherein it was ordered that :

- the demand of Service Tax amounting to Rs.13,64,196/- (on the differential taxable value of Rs. 92,42,289/-) was confirmed under sub-section (2) of Section 73 alongwith interest under Section 75 of the Finance Act,1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act,1994;
- Penalty @ Rs. 200/- per day till the date of compliance or Rs.10,000/-, whichever is higher was imposed under Section 77(1)(c) of the Finance Act,1994;
- Penalty of Rs. 13,64,196/- was imposed under Section 78 of the Finance Act,1994 with option for reduced penalty under clause (ii) of Section 78(1) of the Finance Act, 1994.

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

- The SCN was issued in the case based on data received from Income Tax department and without any verification being carried out. This has caused undue hardship to the appellant. As the Income Tax returns are

filed by the appellant on time, there is no suppression of facts or misinformation on part of the appellant. The adjudicating authority has failed to discharge their burden of proof in invoking the extended period of limitation. In support they cited the decision of the Hon'ble Supreme Court of India in the case of Cosmic Dye Chemical Vs Collector of Cen.Excise, Bombay – [1995 (75) ELT 721 (SC)].

- The appellant is a salaried employee and he has earned income only from salary. In support of his contention, he had submitted copies of employment contract, promotion letter and bank statement before the adjudicating authority. These documents prove that the income earned by the appellant is ou of the purview of Service Tax as no service was provided and no consideration was earned by the appellant. He has only provided his services to his employer for which he has been given salary. The adjudicating authority has also acknowledged the fact of employment of the appellant in the impugned order. He has also noted regarding the salary received by the appellant during the period.

- The adjudicating authority has confirmed the demand entirely on the basis of income tax data without considering the aspect that the provisions of Income Tax and Service Tax are different and applicability is required to be determined accordingly. Various judicial authorities have settled that no demand of service tax can be confirmed on the basis of amounts shown as receivables in the Income Tax Returns. They relied on the following decisions :
  - J. Jesudasan Vs CCE – 2015 (38) STR 1099 (Tri.Chennai)
  - Alpha Management Consultant P.Ltd Vs CST – 2006 (6) STR 181 (Tri.Bang.)
  - Tempest Avertising (P) Ltd Vs CCE – 2007 (5) STR 312 (Tri.Bang.)

- The Appellants entire income is from salary and therefore merits exclusion mentioned under Section 65(B)(44) of the Finance Act,1994. As the income is not service liability of service tax does not arise.

- As there is no service tax liability on the appellant imposition of penalty is not justified. As there is no intention to evade tax penalty is not imposable. In support they cited the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Vs State of Orissa – 1978 ELT (J159).

7. Personal Hearing in the case was held on 13.03.2023, Shri Arpan A.Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He stated that the appellant had received the amount as salary and hence is exempt from service tax. He also re-iterated the submissions made in their appeal memorandum.

8. I have gone through the facts of the case, submissions made in the appeal memorandum and oral submissions made during the personal hearing. The issue to be decided in the case is whether the impugned order issued against the appellants, confirming the demand of Rs.13,64,196/- alongwith interest and penalties, is legal and proper or otherwise in the facts and circumstances of the case. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

9. It is observed that the demand in the case has been raised on the basis of data received from the Income Tax department. The appellants were registered with the department and had filed two ST-3 returns. No further verification was done and the SCN has been issued on the differential value on reconciliation of income tax data with the ST-3. Hence, the SCN was issued indiscriminately without carrying out any verification. Further, the appellant had produced various documents before the adjudicating authority in their defence submission and during personal hearing. However, the adjudicating authority has passed the impugned order without appreciation of facts available on record. Hence, I find that the SCN and the impugned order are vague.

9.1 I find it relevant to refer to refer to CBIC Instruction dated 26.10.2021. Para-3 of the said instruction categorically states 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 in light of the above instructions, it is found that the adjudicating authority has failed to follow the specific directions issued by the board and passed the impugned order without considering the details submitted by the appellant. Hence, the impugned order is not legally sustainable, being non-speaking order passed in violation of principles of natural justice.

10. As regards merits of the case, I find that the documents submitted by the appellant confirm that he was employed as a 'Tool Pusher' with M/s Jagson International Limited on contractual basis. The appointment letter specifies the monthly salary of the employee and clarifies that he is appointed for working in the 'Oil Rigs' on rotation basis of 28 days on/off. It is also observed that after the initial appointment for a period of 03 years, the employer company has promoted the appellant with an increase in salary and also mentioned that 'Tax at Source' would be deducted as per prevailing rate. The bank statement for the relevant period shows that all income earned by the appellant is from the salary credited by the employer. These facts are undisputed as the adjudicating authority has also recorded them in the impugned order at Para 26.5.

10.1 The adjudicating authority has rejected the contention of the appellant considering the fact that his employer has deducted TDS under Section 194J of the Income Tax Act, 1961, hence, the appellant would be treated as providing professional or Technical services to the company. The appellant has contended that he was employed by M/s Jagson International Limited on monthly salary basis and the bank statements also reflect that he has received monthly salary from the employer and the deduction of TDS was done by the employer company and the appellant was not aware as to under which section the same is being deducted. I find force in the argument of the appellant as the appointment letter, letter of promotion and bank account statement conclusively confirm the fact that the appellant was a salaried employee of M/s Jagson International Limited and not a service provider.

10.2 I find it relevant to refer to Section 65B(44)(b) of the Finance Act, 1994, relevant portions of which is reproduced as below :

SECTION [65B. Interpretations.—
In this Chapter, unless the context otherwise requires,

...

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

...

Upon examining the above provisions of the Finance Act, 1994 with the facts and circumstances of the case, I find that the status of the appellant is squarely covered under the exclusion clause under Section 65 B (44) (b) of the Finance Act, 1994 and is, therefore, exempt from payment of Service Tax.

10.1 The adjudicating authority has at para-26.7 of the impugned order rejected the payments received by the appellant from his employer to be considered as salary on the basis of variations in amounts credited each month. However, the appellant have contended that due to the variation of number of working days/hours in each month the salary of amount changes. Considering the specialized nature of the job of the appellant in the Oil Rig Industry, I find force in the argument of the appellant and considering the fact that the amount has been credited as 'Salary' in the bank account of the appellant by the employer, I am of the view that the adjudicating authority has erred in arriving at conclusion and the demand has been confirmed indiscriminately.

11. I find that the demand was raised entirely on the basis of the Income Tax return figures of the appellant and the demand was confirmed invoking extended period of limitation. The appellant have contended that they have duly filed their statutory Income Tax returns and no shortcoming was observed by the Income Tax department on these returns. Therefore, they have not suppressed any information from the authorities, hence, extended period of limitation under Section 73(1) of the Finance Act, 1994 cannot be invoked. It is further observed that the adjudicating authority has failed to discharge the obligation of substantiating the ingredients for invocation of extended period in the impugned order for confirming the demand. This has rendered the impugned order legally unsustainable and liable to be set aside.

11.1 My above view is supported by the following decisions of the judicial authorities :

- Decision of the CESTAT, WZB, Ahmedabad in the case of Reynolds Petro Chem Ltd. Vs Commissioner of C.Ex & S.T., Surat-I reported as 2023 (68) G.S.T.L. 292 (Tri. - Ahmd.). Relevant portion of the Order is reproduced below:

...

5.7 We also find that in the present matter for confirmation of service tax demand revenue also relied upon the TDS/26AS Statement. The said statement under provisions of Income-tax Act, 1961 is an Annual Consolidated tax statement. Income-tax and service tax are two different/separate and independent special Act and their provisions operate in two different fields. Therefore by relying the 26AS/TDS Statement under the Service Tax Act, demand of service tax cannot be made. We also find the support from the decision of M/s. Ved Security v. CCE, Ranchi-III - 2019 (6) TMI 383 CESTAT, Kolkata wherein it was held that the value of taxable services cannot be arrived at merely on the basis of the TDS statements filed by the clients inasmuch as even if the payments are not made by the client, the expenditure are booked based on which the Form 26AS is filed, which cannot be considered as value of taxable services for the purpose of demand of Service tax.

...

- Above decision was followed by the Hon'ble Tribunal WZB, Ahmedabad in the cases of *Vatsal Resources Pvt.Ltd. Vs Commissioner of C.Ex & S.T., Surat-I reported as 2023 (68) G.S.T.L. 279 (Tri. - Ahmd.)* and *Shreshth Leasing and Finance Ltd. Vs Commissioner of C.Ex & S.T., Surat-I reported as 2023 (68) G.S.T.L. 143 (Tri. - Ahmd.).*

- In both the above decisions, the Hon'ble CESTAT has also ruled that "*...Without prejudice, we also find that when the Service tax is demanded on alleged services, it is the responsibility of the department to show that the appellant had rendered these services to customers with positive evidences....*".

In view of the above judicial pronouncements, the impugned order confirming the demand of Service Tax amounting to Rs. 13,64,196/- on the basis of data obtained from Income Tax returns is legally unsustainable and is liable to be set aside.

12. In view of the above, I am of the considered view that the appellant is a Salaried Individual employed as 'Tool pusher' at Oil drilling Rig and the Income earned by him during the period is only from salary. Hence, the income of the appellant is covered under the exclusion clause of Section 65 B (44) (b) of the Finance Act, 1994. Accordingly, the impugned order confirming demand of service tax amounting to Rs. 13,64,196/- is set aside. As the demand fails to

sustain on merits there is no question of interest and penalty. The appeal filed by the appellant is allowed.

13. 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.

20th April, 2023..

(Akhilesh Kumar)
Commissioner (Appeals)

Dated: 20th April, 2023

Attested

(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.

To,
By RPAD/SPEED POST

Shri. Paramjitsingh Balwantsingh Sokhi,
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Copy to:

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