



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner.

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20230964SW0000818945

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1280/2020 -APPEAL /5459 - 63
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-090/2023-24 and 28.08.2023
(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	11.09.2023
(ङ)	Arising out of Order-In-Original No. 03/ST/OA/NRM/20-21 dated 05.10.2020 passed by the Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Maher Tour, Shop No. 117, 1st Floor, Sun Complex-2, Motipura, Himmatnagar - 383001.

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 कर्ज शुल्क 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 सुताबिक 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 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 उन्नित 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 OJO 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 होती 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 मामलों में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 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 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 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."

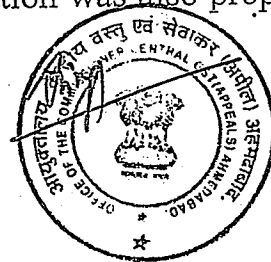


अपीलिय आदेश / ORDER-IN-APPEAL

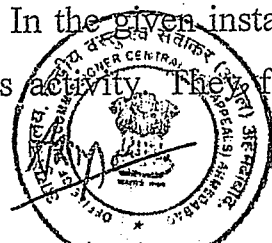
The present appeal has been filed by M/s. Maher Tour, Shop No. 117, 1<sup>st</sup> Floor, Sun Complex-2, Motipura, Himmatnagar – 383001 (hereinafter referred to as the appellant) against Order in Original No. 03/ST/OA/NRM/20-21 dated 05.10.2020 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division- Himmatnagar, Gandhinagar Commissionerate [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing Tour Operator Services' and holding Service Tax Registration No. AEYPN6232MSD001 for the said category of service i.e. 'Tour Operator Services'. The said service do not fall under the Negative List of Services as defined under Section 66D of the Finance Act, 1994. Investigation was initiated against the appellant firm by the Preventive Wing of Commissionerate CGST, Gandhinagar. During the course of the investigation it was observed that the said service provider has not discharged their service tax liability arising out of services provided as tour operator in respect of 'Haj tour package' for the period October, 2013 to March, 2017. It was also observed by the investigation that the appellant was providing different services to their customers such as, Air Ticket booking, Visa, Accommodation, Food, Lodging, Transportation services under the category of 'packaged tour agent'. The investigators also confirmed that during the period October, 2013 to March-2017 the appellant had neither filed their ST-3 returns nor paid service tax. It therefore, appeared that the appellant had willfully suppressed the gross taxable amount to evade service tax amounting to Rs.24,05,026/-. During the course of the investigation the appellant paid service tax amounting to Rs.8,65,762/- on 20.07.2018.

2.1 Show Cause Notice No. IV/CGST/HMT/01/Maher/2019-20 dated 08.04.2019 was issued to the appellant proposing to recover the Service Tax amounting to Rs.24,05,026/- (considering the net taxable value as Rs. 1,74,07,692/-) on taxable service “Tour Operator services” along with interest. Imposition of penalty was proposed under Section 74 and 78 of the Finance Act, 1994. The amount of service tax paid in the course of the investigation was also proposed to be appropriated.

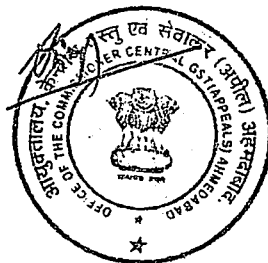


3. The said SCN was adjudicated vide the impugned order wherein :
- the demand for service tax amounting to Rs. 24,05,026/- was confirmed under Section 78 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994;
  - Penalty was imposed under Section 78 of the Finance Act, 1994, but without quantifying the amount. The adjudicating authority also extended the benefit of reduced penalty in terms of proviso to clause (ii) of Section 78 of the Finance Act, 1994;
  - Penalty amounting to Rs. 20,000/- was imposed for violation of Section 70 of the Finance Act, 1994 as amended by Section 74 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
3. Aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:
- i) The receipts earned by the appellant are for providing outbound Haj and Umrah pilgrimage tour services and the said services are not liable to Service Tax as the services are rendered outside the taxable territory. The issue of whether service tax is payable in respect of outbound tours for performing Haj and Umrah is pending before the Hon'ble Supreme Court and therefore, the adjudicating authority has prematurely decided the matter:
  - ii) The observation of the adjudicating authority that the petitions before the Hon'ble Supreme Court were all dismissed as withdrawn is erroneous. The said judgement dated 11.12.2019 was not decided against the petitioners. The Hon'ble Supreme Court had directed the CBIC to decide the representation of the petitioners and in case the petitioners were not satisfied, it was open for them to revive the matter.
  - iii) The issue is still pending before the Supreme Court vide W.P (C) No. 977/2020 (Diary No. 16463-2020) in the case of All India Haj Umrah Tour Organisers Asociation, Mumbai Vs UOI and Others. Thus the matter is yet to be decided by the Hon'ble Supreme Court.
  - iv) The conduct of religious activity is exempted from service tax vide Notification No. 25/2012-ST dated 20.6.2012. In the given instance the essence of the activity is conducting religious activity. They facilitate



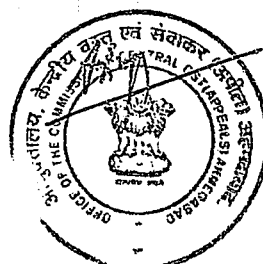
performance and conducting of Haj ritual as per the guidelines of the government of India.

- v) The pilgrims contribute for all arrangements including tickets, foreign exchange, stay at Kingdom of Saudi Arabia, to the authorized private operator who has to do it through only a Moallim, authorized operator for Haj operations of Saudi Arabia. The service tax on air tickets and foreign exchange as levied by the airline company or forex dealer is discharged and no excess amount is collected from the pilgrim. The appellant have to seek necessary arrangement from the Moallim as per the amount the pilgrim is interested to spend. This amount is paid to the Moallim. They guide, assist, lead and manage the pilgrim.
- vi) As per the general interpretation of law of Entry 5 Clause (b) of Notification No.25/2012-ST dated 20.6.2012, this was considered as conduct of religious ceremony. Haj or Umrah is a religious celebration and a special ceremony for every Islamic follower.
- vii) Due to the bonafide belief that on such activities no tax is leviable they had not collected any amount towards service tax from their customers.
- viii) The Hon'ble Supreme Court had dismissed the appeal of the government against the decision of the Hon'ble Tribunal in the case of Atlas Tours and Travels Pvt Ltd. The Tribunal had in their order dated 15.1.2015 held that in view of the decision in the case of M/s. Cos & Kings India Ltd and M/s. Travel Corporation of India, services of outbound tours are provided outside India. The facts of the present case are squarely covered by the above decisions.
- ix) Even after introduction of the Negative List from 01.07.2012, only those services are taxable which are provided in the taxable territory. Haj and Umrah are performed outside the taxable territory and therefore, levy of service tax is completely arbitrary and unconstitutional. It is a settled principle that Service Tax is a destination based tax i.e. the place where the services are actually consumed or the destination where the services are consumed will be the place of levy of service tax and in this case the services are consumed in Saudi Arabia i.e. outside the taxable territory and therefore, the impugned order is to be set aside.





- x) The adjudicating authority has summarily brushed aside all the judgements quoted by them on the basis that they were pertaining to the period prior to Negative List. This is totally erroneous inasmuch as with the introduction of Negative List there was not change in the scope and extent of service tax law. Section 64 of the Finance Act, 1994 stood as it is without any change.
- xi) The Hon'ble Tribunal, Mumbai in their order dated 15.1.2015 held that planning and organizing Haj Pilgrimage is not a taxable service because service is rendered beyond the territory of India. The appeal filed by the revenue against this order was also dismissed by the Court.
- xii) Consideration received for operating and arranging outbound tours and consumed by the customers outside India is not liable to levy and collection of service tax.
- xiii) The invoking of extended period would be only justified when they knew about the tax liability and still however, did not pay the tax and deliberately avoided such payment. Mere failure to pay service tax on account of interpretation of law would not be a case to invoke extended period of limitation.
- xiv) There was no fraud, collusion, willful mis-statement or suppression of facts with intention to evade payment of tax. Therefore, the SCN should have been issued within the period of 18 months from the relevant date.
- xv) The government was aware of the facts in the matter and it was due to the fact that each court was negating the right of the government to levy tax, the government granted exemption to the Haj Committee vide introduction of Entry 5A in the exemption list. The government has granted exemption to the said organization on 20.8.2014. Further, vide Notification No. 25/2016-ST dated 17.5.2016 the government itself admitted that tax was not being paid prior to the notification. Thus it is abundantly clear that non-payment of service tax is not attributable to any kind of fraud, willful mis-statement or suppression of facts.
- xvi) They have been granted category 1 of Authorised operator for Haj pilgrimage by the Ministry of External Affairs. It is on policy guideline of the government that since they are not authorized forex dealer, they



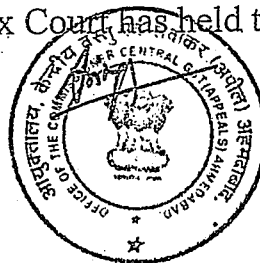
obtained service of forex dealer for deposit of foreign currency. Appropriate service tax has been paid on the service performed in India.

- xvii) They firmly believe that the matter is of conducting religious ceremony and not that of tour operator since tour operator has freedom to plant, schedule or organize or arrange tours. Schedule of Haj is as per Islamic calendar and planning, organizing and arrangements can only be done by the Moallim in Saudi Arabia.
- xviii) It is held in a number of cases that when service tax was not collected from recipient of service, consideration received has to be treated as cum-tax. They rely upon the case laws in this regard. Since they have not collected service tax, they are eligible for benefit of cum tax valuation.
- xix) In the absence of mens rea penalty cannot be imposed. There is no element of fraud, willful mis-statement or suppression of facts with intent to evade payment of service tax as all income received was accounted for in the books of accounts and subjected to income tax. In the absence of suppression, deliberate attempt to evade service tax cannot be alleged. They rely upon the decision in the case of Pahwa Chemicals Pvt Ltd reported in 2005 (189) ELT 257 (SC).

4. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri Gunjan Shah, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and further stated that the matter is pending before Hon'ble Supreme Court and a decision is expected soon. He made a request through e-mail.

5. The appellant while contesting the issue submitted that the matter is pending before the Hon'ble Supreme Court in Writ Petition (Civil) No. 977/2020 filed by All India Haj Umrah Tour Organisers Association, Mumbai Vs. UOI. He also requested to keep the matter pending till the outcome of the above writ petition. Accordingly, the above appeal, filed by the appellant was transferred to Call-Book on 03.12.2021.

5.1 The Hon'ble Supreme Court of India has decided the Writ Petition (C) NO.977 OF 2020 alongwith other similar Writ Petitions in the Writ Petition 755 of 2020, vide Order dated 26.07.2022, wherein the Apex Court has held that :





65. Hence, we are of the considered view that the arguments based on discrimination have no substance at all, as HGOs and the Haj Committees do not stand on par and in fact, the Haj Committees constitute a separate class by themselves, which is based on a rational classification which has a nexus with the object sought to be achieved.

66. Therefore, there is no merit in the challenge in the petitions. We have already clarified that we have not dealt with the issue of extra-territorial operation of the service tax regime which is kept open to be decided in appropriate proceedings, as requested by the parties.

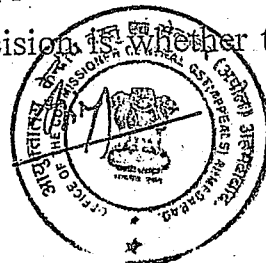
67. We are, therefore, of the view that the petitions are devoid of merit and the same are, accordingly, dismissed. No order as to costs.

From the above, it is clear that the SLP filed by the appellant was disposed off by the Hon'ble Apex Court. In pursuance, of the said order of the Hon'ble Supreme Court, the instant appeal was retrieved from Call Book and taken up for decision under intimation to the respondents.

6. Personal hearing in the case was held on 13.03.2023 though virtual mode. Shri Gunjan Shah, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and submitted copy of judgement of Hon'ble Supreme Court in the case of All India Haj Umrah Tour Organizer Association, 2022 (63) G.S.T.L. 129 (S.C.). He also submitted copies of two judgements of Hon'ble Tribunal in the case of M/s National Tours & Travels Agency as well as in the case of Roca Bathroom Products Pvt Ltd., (2023) 2 Centa 40 (Tri.Mad).

6.1 On account of change in the appellant authority, personal Hearing in the case was held again on 30.06.2023 through virtual mode. Shri Gunjan Shah, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and further stated that the services were provided by the appellant to the Hajj Pilgrims outside India. Therefore, the same are not taxable in India. Further, since the issue was disputed and under litigation before the Supreme court, no suppression can be alleged. Hence, extended period cannot be invoked in this case. Therefore, he requested to set aside the impugned order.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearings and material available on records. The issue before me for decision is whether the impugned



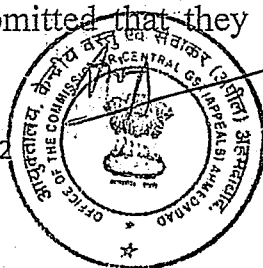
order confirming the demand of Service tax amounting to Rs. 24,05,026/- alongwith interest and penalty in the facts and circumstances of the case is legal and proper or otherwise. The period of demand is October-2013 to March-2017, i.e 01.10.2013 to 31.03.2017.

7.1.. It is observed from the case records that the appellant is a Proprietorship firm registered under Service Tax and engaged in the activity of 'Tour Operator Service'. It is further observed that during the relevant period they have provided 'Haj tour package' to their customers which included various services as 'Air Ticket booking', Visa, Accommodation, Food, Lodging, Transportation pertaining to the Pilgrims going for Haj and Umrah to the holy places of Mecca and Medina in Saudi Arabia.

Although the appellant was registered under Service Tax, they have not filed their Service Tax Returns and they have not paid any Service Tax during the period. These facts are undisputed. The demand of Service Tax was raised by way of investigation conducted by the officers of Service Tax department. The fact of non-filing of mandatory Service Tax Returns (ST-3) as well as non-payment of Service tax was confirmed by the proprietor of the firm.

7.2 Period involved in the dispute is from October, 2013 to March, 2017 i.e. post Negative List regime (introduced from 01.07.2012). As per Section 65B (44) of the Finance Act, 1994 service means any activity carried out by a person for another for consideration, and includes a declared service. In the instant appeal I find that it is not a matter of dispute that a service has been provided. The only dispute is regarding the taxability with reference to whether the service was provided within the taxable territory of India or otherwise and whether the service is exempted by Notification No. 25/2012-ST dated 20.6.2012.

7.3 I find that the customer of the appellant are all based in India and these are the customers who go to Saudi Arabia for Haj pilgrimage. Therefore, the service provided by the appellant is to a service recipient based in India. The appellant have contended that the stay, food and transportation services during the Haj tour of a pilgrim are all provided by the authorized operator for Haj operations in Saudi Arabia and the appellants do not have any control over these services, these facts are undisputed. The appellant have also submitted that they arrange for the air



tickets and forex and also guide, assist, lead and manage the pilgrim's manner and place at which they have to perform the Haj rituals. Therefore, it is forthcoming that while the accommodation, food and transportation in Saudi Arabia is provided by the authorized operator based outside the Indian territory, the services of arranging air tickets, forex as well as planning, guiding and managing the pilgrim's Haj provided by the appellant was provided within Indian territory. These services are provided in India to the pilgrims based in India. Hence, the contention of the appellant that the services provided by the appellant are outside the territory of India are partially correct.

8. It is also undisputed that the taxability of the services provided by the appellant were under dispute during the relevant period and the appellant had filed Writ Petition No.977 of 2020 alongwith various other petitioners before the Hon'ble Apex Court. Harping on a favourable outcome, the appellant neither filed their ST-3 Returns nor did they pay any service tax. It is also apparent that the appellant had co-operated with the investigation in as much as the quantum of demand was calculated entirely on the basis of Profit & Loss statements and other documents provided by the appellant. This also confirms the bonafide of the appellant. The Hon'ble Supreme Court of India while deciding the Writ Petitions vide order dated 26.07.2022 had considered that the services provided by the appellant as "Taxable".

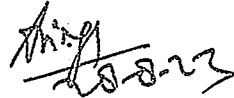
9. Although, the Hon'ble Supreme Court observed that "...We have already clarified that we have not dealt with the issue of extra-territorial operation of the service tax regime which is kept open to be decided in appropriate proceedings, as requested by the parties...". The Hon'ble court has confirmed that the 'Package of Services' provided by the appellant cannot be dissected on the premise that partially services were provided within the Indian territory and partially outside India. Since the service provider and the service receiver are both of Indian Origin the services are taxable in nature. Regarding the services provided by the appellant in the instant case, the services of Air ticket booking was provided in India and the remaining services were provided outside the Indian territory, but as per the above order the 'Packaged Services' cannot be bifurcated. Also, since the service provider and the service receiver both are of Indian Origin, the services are taxable.



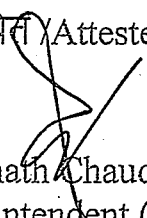
10. In view of the above discussions, the services provided by the appellant are taxable in nature and therefore the impugned order is upheld and the appeal filed by the appellant is rejected.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

  
(SHIV PRATAP SINGH)  
Commissioner (Appeals)  
Dated: 28<sup>th</sup> August, 2023

सत्यापित / Attested:

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



By REGD/SPEED POST A/D

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Sun Complex-2, Motipura,  
Himmatnagar – 383001.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division- Himmatnagar , Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.