



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

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| (क) | फाइल संख्या / File No.  | GAPPL/COM/STP/2720 /2022-APPEAL /6287-81  |
| (ख) | अपील आदेश संख्या और दिनांक /<br>Order-In-Appeal No. and Date  | AHM-EXCUS-003-APP-099/2023-24 and 22.09.2023  |
| (ग) | पारित किया गया /<br>Passed By   | श्री शिव प्रताप सिंह, आयुक्त (अपील)<br>Shri Shiv Pratap Singh, Commissioner (Appeals)                   |
| (घ) | जारी करने की दिनांक /<br>Date of issue  | 25.09.2023  |
| (ङ) | Arising out of Order-In-Original No. PLN-AC-STX-75/2022-23 dated 30.06.2022 passed by the Deputy Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate |   |
| (च) | अपीलकर्ता का नाम और पता /<br>Name and Address of the Appellant  | M/s Farmanali Hasinahmed Syed, Bava Sahebs Haveli,<br>Virbai Gate, Khara Vas, Palanpur, Gujarat-385001. |

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:**

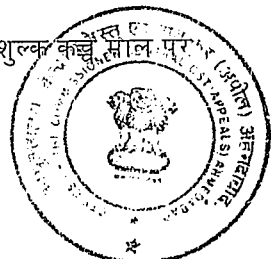
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 कटौती माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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

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

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

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

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

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

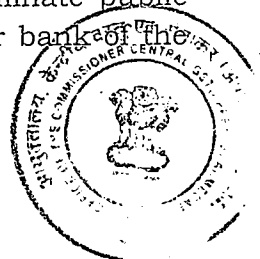
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (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 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 राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

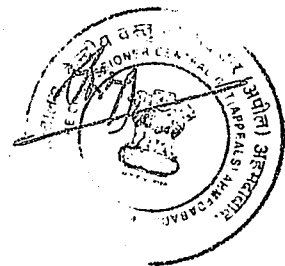
This Order arises out of an appeal filed by M/s Farmanali Hasinahmed Syed, Bava Sahebs Haveli, Virbai Gate, Khara Vas, Palanpur, Gujarat-385001 [hereinafter referred to as the appellant] against OIO No. PLN-AC-STX-75/2022-23 dated 30.06.2022 [hereinafter referred to as the impugned order] passed by Assistant 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 were holding Service Tax Registration No. ATGPS7456RST001 and were 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) and details of Form 26 AS for the period F.Y. 2015-16 & F.Y. 2016-17. In order to verify, letters dated 17.05.2020 & 06.06.2020 were issued to the appellant calling for the details of services provided during the said period. 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. 2015-16 & 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. 2015-16<br>@ 14.50% | F.Y. 2016-17<br>@ 15% |
|-------|---------------------------------------|--------------------------|-----------------------|
| 1     | Taxable value as per Income Tax ITR-5 | 18,56,200/-              | 19,49,200/-           |
| 2     | Taxable Value declared in ST-3 Return | 00/-                     | 00/-                  |
| 3     | Differential Taxable Value (S.No-1-2) | 18,56,200/-              | 19,49,200/-           |
| 4     | Amount of Service Tax including cess  | 2,69,149/-               | 2,92,380/-            |
| 5     | Total Service Tax payable             | 5,61,529/-               |                       |

2.1 Show Cause Notice F.No. GEXCOM/SCN/ST/927/2020-CGST-DIV-PLN-COMMRTE-GANDHINAGAR dated 16.10.2020 (SCN in short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 5,61,529/- for the period F.Y. 2015-16 & 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), 77(1) C and Section 78 of the Finance Act, 1994.



3. The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs. 5,61,529/- (considering the differential taxable value of Rs. 38,05,400/-) was confirmed along with interest. 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. Penalty amounting to Rs.80,000/- was imposed for non-filing of half yearly return under Section 70(1) of the Finance Act, 1994. Penalty amounting to Rs. 5,61,529/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty in terms of proviso to clause (ii).

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

- The appellant are engaged in running Farmaan's Academy of Spoken English and was registered under the Finance Act, 1994 as a service provider and obtained registration No. ATGPS7456RST001 when the threshold exemption limit was upto 8 lakhs. Thereafter, when the exemption limit was enhanced to 10 lakhs the aforesaid registration certificate was surrendered and cancelled. During the dispute period i.e. F.Y. 2015-16 and 2016-17, the taxable turnover was less than 10 lakhs, hence no registration was obtained.
- The appellant is running Spoken English & Soft Skills Classes in the name of 'Farmaan's Academy of Spoken English' and has expertise in the area of education. In the month of December, 2014, Vidyamandir Trust, Palanpur approached the Appellant and entered into an understanding dated 16.12.2014, and appointed Appellant as Consultant Advisor, for English medium Section, Vidyamandir Trust, Palanpur. They submitted Copy of the Agreement dated 16.12.2014.
- The income from the tuition fee is the income from the Farmaan's Academy of the spoken English run by the appellant and the income related to admission is towards admission related worked done as a consultant adviser to the Vidyamandir Trust, Palanpur. For the year 2015-16 and 2016-17, the copies of Balance sheet, Profit & Loss account, Form 26AS, Computation of income and ITR income tax return filed by the Appellant for the disputed period were enclosed.
- On the basis of the information received from the income tax Department, information and explanation was called for the F.Y. 2015-16 and F.Y. 2016-17.



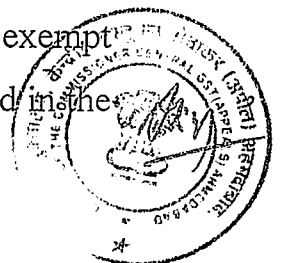
17, under letter dated 17.05.2020 and 06.06.2020. In response to the said letters, vide letter dtd. 09.08.2020, appellant supplied all the information for the year 2015-16 and 2016-17, such as the copies of Balance sheet, Profit & Loss account, Form 26AS, Computation of income and ITR income tax return filed by the Appellant for the disputed period and explanation to the department. The adjudicating authority has incorrectly recorded his findings in para 3 of the impugned OIO that the assessee has fail to submit the required details to the department.

➤ Appellant filed their defense reply dtd.29.10.2020, wherein claimed benefit of Notification No.25/2012-ST as amended and submitted that appellant is running Spoken English & Soft Skill classes in Name of Farmaan's Academy of spoken English since last many years, so he was appointed as consultant Advisor at Vidyamandir Trust, Palanpur, mainly to increase admission in English medium but the payment during this period 01.04.2014 to 31.3.2016 was received for admission of students. The emoluments were fixed monthly Rs. 80,000/- during 01.4.2014 to 30.04.2016 and the same continued in F. Y. 2016-17. that it was more in nature of salary and the employer employee relationship exist but due to their system additional appointment of such staff they had shown the same as Professional Services and deducted TDS under 194J of Income Tax Act. Copy of the reply to the SCN dtd. 29.10.20 was submitted.

➤ During the period under dispute i.e. F.Y. 2015-16 and F.Y. 2016-17, the Appellant had received income of as under:

| Particulars of income         | F.Y. 2015-16 | F.Y. 2016-17 |
|-------------------------------|--------------|--------------|
| Income from tuition Fee       | 8,96,200     | 9,89,200     |
| Services related to admission | 9,60,000     | 9,60,000     |
| Total income                  | 18,56,200    | 19,49,200    |

Appellant submitted that the income from tuition fee is Rs. 8,96,200/- & Rs. 9,89,200/- as per the provisions of the finance Act, 1994, the said income is taxable and chargeable to Service tax. Income from services related to admission is exempt income as per Sr.No.9 of Notification 25/2012-ST as amended as the same is provided to the educational institutions i.e. Vidyamandir Trust, Palanpur. Appellant submitted that a small service provider whose value of taxable services did not exceed ten lakhs is exempt from the service tax. The threshold exemption provisions are prescribed in the



Notification No. 33/2012-ST. Therefore, from the total income for the respective years after excluding the income of service related to Admission, which is an exempt income, the taxable income i.e. income from tuition fees for the respective years comes to Rs. 8,96,200/- and Rs.9,89,200/-. Which is well within the threshold exemption Limit of ten lakhs and therefore, during the period 2015-16 and 2016-17, there was no service tax liability to be discharged by the appellant and hence question of not taking the registration and non- payment of service tax and violation of various provision of Finance Act as alleged by the department does not arise.

- They further stated that it is settle principal of law that the service tax cannot be demanded on the basis of income declare under the income tax Act. The Income tax is a Direct tax and chargeable on income. Whereas, the Service tax is an indirect tax and chargeable on any service activities performed by a person for another person for consideration. In support of they relies on following decisions:

2017 (47) STR 110 9T-All)- Jubilant Industries Ltd

2019 (24) GSTL 606 (T-All)- Kush constructions

2019 (27) GSTL 397 (Tri-All)- Go Bindas Entertainment Pvt. Ltd

2007 (5) STR 312 (Tri. Bang.)- Tempest Advertising

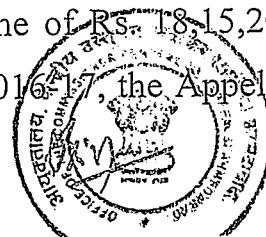
2022 (58) GSTL 324 (T. All)- Ganapati Mega Builders (I) Pvt. Ltd

2022 (58) GSTL 345 (Tri. All)- Quest Engineers & Consultant Pvt. Ltd

2011 (24) STR 287 (kar)- ALP Management Consultants P Ltd

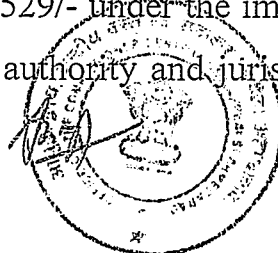
- They submitted that CBIC has also issued instruction dtd. 01.04.2021 issued from file No.137/47/2020-ST, wherein it is clarified that Show cause notice based in the difference in ITR-TDS data and service tax returns to be issued only after proper verification. Ratio of the above cited decisions are squarely applicable in the facts of the present case and the instruction issued by the Board (CBIC) is also applicable in the present case. Therefore, the Confirmation of entire demand of Service tax on the grounds of data in the income tax return and TDS statement 26AS is wholly illegal, incorrect and not sustainable in law and the demand under the order is required to be quashed and set-aside.

- They submitted that out of the total income of Rs. 18,15,200/- for the year 2015-16 and Rs.19,49,200/- for the year 2016-17, the Appellant has received



Rs. 9,60,000/- and 9,60,000/- respectively consultancy charges under the appointment as consultant advisor in the English Medium section, Vidyamandir Trust, Palanpur. The Vidya Mandir Trust is engaged in the field of education and runs the pre- primary, secondary Schools and therefore, qualifies as an "educational institution" as defined under notification No. 25/2012-ST.

- As per the terms and conditions of the agreement, it is very clear that the Appellant was appointed as a consultant and was responsible for day to day affair of the trust, not only that he was required to assist the office of the trust in various aspects of pre- primary and secondary education and his daily timing was also fixed, he was required to follow the HR policies of the Trust on force from time to time. Therefore, he was an employee of the Vidyamandir trust and an employee employer relationship do exist between them. Therefore, the provision of service by the appellant as an employee to the employer (Vidyamandir trust) was in the course of his employment and Thus, the provisions of services by him are outside the ambit of 'service' carried out by a person for another person for a consideration as defined under clause (44) of section 65B of the Finance Act. Once the provision of service by the appellant is outside the ambit of services, the charge of service tax cannot be created under the finance Act and so the question to pay service tax does not arise. Therefore, the allegation made in the SCN and findings recorded in the OIO that service tax has not been paid and the provisions of the finance Act are violated are incorrect and illegal and contrary to the provisions made under the Finance Act and thus could not be upheld and are not sustainable and therefore, the impugned order is liable to be quashed and set aside.
- As regard to the Amount of Rs. 8,96,200/- for the year 2015-16 and Rs.9,89,200/- for the year 2016-17, this amount pertains to the tuition fees and Appellant submits that the said amount is taxable. However, from the total income of the respective years, after deducting the exempt income relating to admission, the taxable income towards tuition fees is below the threshold limit of 10 Lakhs during each financial year and thus the same is not taxable under service tax.
- From all the above submissions your honor will be fully satisfied that on merits entire service tax demand of Rs.5,61,529/- ~~under the impugned Order-~~ in-Original is incorrect, illegal and without authority and jurisdiction and so





bad in law and contrary to the provisions of Finance Act and therefore, demand cannot be sustained and therefore, the impugned order is required to be set aside and appeal is required to be allowed.

- Appellant submitted that the confirmation of demand of **Rs. 5,61,529/-** on account of differential taxable value for the **period 2015-16 and 2016-17** is not sustainable on limitation. The show cause notice has been issued on **16.10.2020** demanding the service tax for the period **2015-2016 and 2016-17** by invoking the extended period of limitation under the proviso to section 73(1) of the Finance Act, 1994. For justification of invocation of longer period the provisions are mechanically quoted and un-substantiated allegations are made in the Show Cause notice without any documentary evidences proving the charges of fraud, collusion, suppression of facts with intend to evade the payment of tax.

- In support of the views Appellant rely on following decisions: -

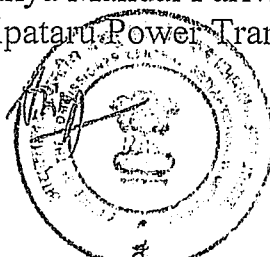
Reliance Industries Ltd- 2015 (325) ELT 223 (SC)  
 Pushpam Pharma Co. - 1995 (78) ELT 401 (SC)  
 Padmini Products - 1989 (43) ELT 195 (SC)  
 Chemphar Drugs & Liniments -d 1989 (40) ELT 276 (SC)  
 Continental Foundation Jt. Venture - 2007 (216) ELT 177 (SC)  
 Anand Nishikawa Co. Ltd - 2005 (188) ELT 149 (SC)  
 Uniworth Textiles Ltd - 2013 (288) ELT 161 (SC).

- Appellant submit that charges of suppression without any evidence of willful mis-statement or misdeclaration are not sustainable and so the extended period could not be invoked in the present proceedings. In support of our views, Appellant rely upon following decisions:

Sun pharmaceuticals Industries- 2015 (317) E.L.T. 144 (Tri. -Ahmd.)  
 Flextronics Technologies (I) P. Ltd – 2014 (314) ELT 664 (Tri. -Bang.)  
 Flextronics Technologies (India) Pvt. Ltd- 2015 (323) E.L.T. 273 (Kar.)

- They further relied on following decisions

2017 (47) STR 93 (T-Del)- South eastern Coal Fields Ltd  
 2017 (4) GSTL 340 (T-Del)- Shree Ranie Gums & Chemicals Pvt. Ltd  
 2019 (27) GSTL 685- (T-All)- Anjuman Islahul Muslimin  
 2020 (43) GSTL 249 (T-Bang) – Vodafon Essar South Ltd.  
 2021 (44) GSTL 280 (T-Mum) Chanakya Mandal Pariwar  
 2021 (48) GSTL 354 (T-Ahmd) – Kalpataru Power Transmission Ltd,



From the above submissions your honour will be fully satisfied that the entire demand in the impugned OIO is not sustainable on limitation and required to be quashed and set aside.

- As regards to interest liability u/s 75 of the Finance Act it is submitted that as stated above when the confirmed demand itself is not sustainable and so the question to pay the interest does not arise.
- The assessee has not disclosed their correct value realized towards rendering services in the ST-3 returns and failed to file the return and so liable for penalty u/s 77(2) of the finance Act; that the assessee has failed to furnish information in accordance with the provisions of the Act and rules and so liable for penalty under section 77(1)(c) of the Finance Act.
- As regard to the imposition of penalty for Rs.10,000/- u/s 77 (2), it is submitted that there is no contravention of the provisions of Finance Act 1994. As explained in the forgoing paragraph. Therefore question of imposition of penalty does not arise and therefore penalty imposed is required to be quashed and set aside.
- As regards to penalty of Rs.200 per day or Rs.10,000/- whichever is higher u/s 77(1), and imposition of penalty of Rs.80,000/- u/s 70 (1) for non-filing of half yearly ST-3 return, it is submitted that there is no failure to furnish information in accordance with the provisions of the Act, and Rules made there under in as much as that the information was duly recorded in the books of accounts and also disclosed in the income tax return and since admission related services were exempted and the taxable turnover being less than threshold exemption of Rs.10 lacs hence registration was not taken no service tax was paid and returns were not filed. Therefore, the imposition of penalty is illegal, incorrect and required to be quashed and set aside.
- As regards to imposition of penalty of Rs.5,61,529/- under section 78 of the Finance Act. it is submitted that for imposition of penalty under section 78, it is mandatory on part of Department to prove the charges of fraud, collusion, mis-declaration and suppression of fact with intent to evade payment of tax, with positive documentary evidence proving the mala-fide on part of the Appellant.



4. Personal hearing in the case was held on 07.08.2023. Shri Shiv Kumar Gupta, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that the income taken from ITR included salary income, the appellant received from Vaidya Mandir Trust, Palanpur. In this regard, a copy of appointment letter is enclosed. After excluding salary income, the remaining income is less than Rs. 10 Lakhs and being below threshold limit, the same is exempted. Therefore, he requested to set aside the impugned order.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submission & additional submission 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.5,61,529/- confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

!

6. It is observed from the case records that the appellant are registered under Service Tax and they were engaged in running Spoken English & Soft Skills Classes in the name of Farmann's Academy of Spoken English. 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.

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,*

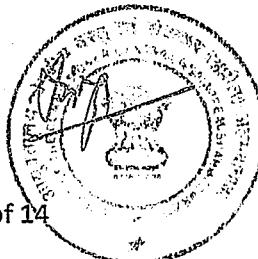
*Dated- 21<sup>st</sup> October, 2021*

*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 mechanically and is vague, issued in clear violation of the instructions of the CBIC discussed above.

8. It is further observed that the appellants had applied for cancellation of their Service Tax registration vide their letter dated 18.11.2008. Thereafter in the subsequent correspondences they have intimated the department that From the F.Y. 2007-08 to F.Y. 2013-14 their turnover have never crossed the threshold limit. Considering their submissions, their issue was decided by the jurisdictional officer in favour of the appellant vide Order-in Original dated 06.07.2015. From the above it is apparent that the appellant had surrendered their Service Tax registration and during the period F.Y. 2015-16 and F.Y. 2016-17 they were not liable for filing of Service Tax Returns (ST-3) as they did not possess any registration under Service Tax.

9. From the documents submitted by the appellant, it is further observed that the appellant is engaged in running Spoken English & Soft Skills Classes in the name and style of 'Farmann's Academy of Spoken English'. During the period November, 2014 they entered into an agreement with 'Vidyamandir Trust' Palanpur to give services as "Consultant Advisor-English Medium" at a monthly fixed remuneration of Rs. 80,000/-. The agreement also had some terms and conditions which were agreed upon by both the participating entities. Further, as per the Form-26AS submitted by the appellant it is confirmed that during the period F.Y. 2015-16 and F.Y. 2016-17 they have received an amount of Rs. 9,60,000/- per annum from 'Vidyamandir Trust' Palanpur under Section 194J of the Income Tax Act, 1961. This implies that the amount received by the appellant from 'Vidyamandir Trust' Palanpur pertains to 'Fees from Professional or Technical Services'.

9.1 The appellant have contended that the amounts received from 'Vidyamandir Trust' Palanpur during the period F.Y. 2015-16 and F.Y. 2016-17 merits



exemption from Service Tax levy in terms of Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012. In order to have a better understanding the relevant portion of the notification is reproduced below :

Government of India  
Ministry of Finance  
(Department of Revenue)  
**Notification No. 25/2012-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 12/2012- 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. 210 (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 following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

9. Services provided,-

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

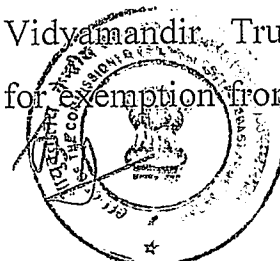
(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution::

9.2 Examining the above legal provisions with the facts of the case I find that the Appellants have claimed exemption in terms of Sr. No. 9(b)(iv) of the above notification. In other words *"the above exemption would be applicable to services provided to an educational institution relating to admission or conduct of examination by such educational institution"*. Once again referring the documents submitted by the appellant I find that the appellant was hired by 'Vidyamandir Trust' Palanpur as a "Consultant Advisor – English Medium Section". I further find that the duties and responsibilities of the appellant were defined by the following points, reproduced verbatim :

- You shall be responsible for up-gradation and implementation of the syllabi of EMS, training of Staff and assist in recruitment as and when required.
- You shall visit all EMS campuses regularly, hold meetings at regular intervals with the Staff of the concerned EMS Institutes and SHIVAM Committee members.
- You shall do an analysis of the feedback received after each such meeting and project vision, plans and challenges faced by the Trust and ensure smooth and flawless functioning of the EMS.

9.3 Upon perusal of the above it is confirmed that the work profile of appellant entrusted by 'Vidyamandir Trust' Palanpur do not include any work related to admissions or conduct of examination by 'Vidyamandir Trust' Palanpur. Therefore, I find that the appellant is not eligible for exemption from Service Tax



in terms of Sr. No. 9(b)(iv) Notification No. 25/2012-ST dated 20.06.2012, as amended vide Notification No. 06/2014-ST dated 11.07.2014.

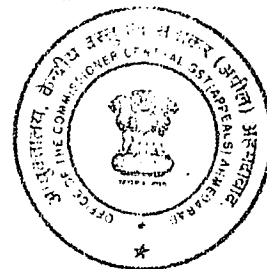
10. In view of the above, the appellant is liable for payment of Service Tax at leviable rates as confirmed vide the impugned order. However, I find that as per the documents submitted by them, the appellants have not exceeded the limit of Rs.10 Lakhs during the period F.Y. 2014-15. Therefore, they are eligible for threshold exemption of Rs.10 Lakhs in terms of Notification No. 33/2012-ST dated 20.06.2012 for the period F.Y. 2015-16. However, the entire demand raised vide the impugned order is required to be recalculated alongwith the consequential liabilities.

11. In view of the above discussions, the impugned order is remanded back to the adjudicating authority for the purpose of recalculation of the demand of Service Tax and consequential liabilities to penalty in terms of the discussions at para 9 and 10 above.

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

(Shiv Pratap Singh)

Commissioner (Appeals)  
Dated: 22, September, 2023



सत्यापित / Attested:

(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.  
BY RPAD / SPEED POST

To,  
M/s Farmanali Hasinahmeda Syed  
Bava Sahebs Haveli, Virbai Gate, Khara Vas,  
Palanpur, Gujarat-385001.

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner, CGST & Central Excise, Division : Palanpur, Commissionerate : Gandhinagar.

4. The Superintendent (Systems), CGST Appeals ,Ahmedabad (for uploading the OIA on website).
5. Guard File.
6. P.A. File.



