



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240564SW0000777CC7

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1809/2024-APPEAL/6022-26
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-027/2024-25 and 30.05.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.05.2024
(ङ)	Arising out of Order-In-Original No. PLN-AC-ADJ-STX-142/2022-23 dated 23.09.2023 passed by Assistant Commissioner, Central GST, Division: Palanpur, Commissionerate: Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Guru G Education Network Pvt. Ltd., C/o Angel School, Mahalaxmi Society, Patan Road, Deesa - 385535

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

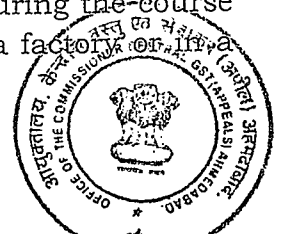
Revision application to Government of India:

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

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 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 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 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any 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 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 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

M/s Guru G Education Network Pvt. Ltd., C/o Angel School, Mahalaxmi Society, Patan Road, Deesa – 385535 [*hereinafter referred to as the appellant*] have filed the present appeal against Order-in-Original No. PLN-AC-ADJ-STX-142/2022-23 dated 23.09.2023 [*hereinafter referred to as the impugned order*] passed by Assistant Commissioner, Central GST, Division-Palanpur, Gandhinagar Commissionerate [*hereinafter referred to as the adjudicating authority*].

2. The appellant were not registered under Service Tax and were holding PAN No.AADCG0696A. On the basis of the information received from the Income Tax Department, it was observed that during the period F.Y. 2016-17, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, letters & emails were issued to the appellant calling for the details of services provided during the period, but they failed to submit any reply. Therefore, the Service Tax liability for the F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

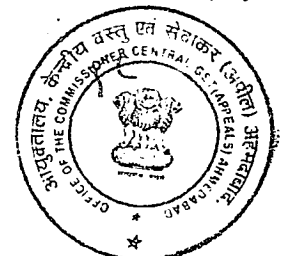
Period (F.Y.)	Gross Income in ITR	Rate of Service Tax incl. Cess	Service Tax
2016-17	51,50,000/-	15%	7,72,500/-

2.1 A Show Cause Notice F.No. GEXCOM/SCN/ST/9708/2021-CGST-DIV-PLN-COMMRTE-GANDHINAGAR dated 19.10.2021 (SCN in short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs.7,72,500/- for the period F.Y. 2016-17 under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was proposed under Sections 77(1)(a), 77(1)(b), 77(1)(c)(i), 77(1)(c)(ii), 77(2) and 78 of the Finance Act, 1994.

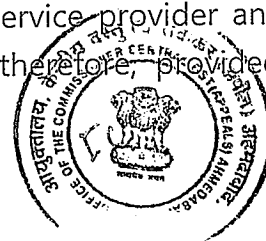
3. The SCN was adjudicated *ex-parte* vide the impugned order wherein the demand for Rs.7,72,500/- for the period F.Y. 2016-17 was confirmed alongwith interest. Penalty of Rs.7,72,500/- was imposed under Section 78; Penalties of Rs.10,000/- each were imposed under Sections 77(1)(a), 77(1)(b), 77(1)(c)(i) & 77(1)(c)(ii), 77(2) of the Finance Act, 1994.

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

- The appellant claim that they are engaged in providing services by way of pre-school education and education up to higher secondary school in the name of "Angels English Medium School" and pre-primary section in the name of "Little Angels English Medium School". The said services are exempted by virtue of Entry 9 of Mega Exemption Notification No. 25/2012-ST, hence, they were not required to registered with the service tax department and were also not liable to pay service tax.



- The appellant company was incorporated in the year 2007 having CIN: U80212GJ2007PTC052075 with the main objective to set up & run all kinds of Educational Institutes such as Pre-primary, Primary, High schools & Colleges. Copy of Memorandum of Association and certificate of incorporation Certificate submitted.
- Vidhya Vihar Trust, a Public charitable trust having its main object of establishing educational institutions for junior and senior level. Since, both the parties, i.e., the appellant and Vidhya Vihar Trust, a Public charitable trust, having common objects of establishing and running the educational institutions have entered into MOU to record in writing common understanding on certain terms and conditions like appellant has to do arrangement of transport facility of the students and Infrastructure facility for the school while Vidhya Vihar Trust has to obtain necessary permission for establishing educational institution and carrying all activities requiring the legal formalities and other related matter for establishing and running the educational institute for all levels.
- All incomes including school fees, donation or any receipts of any kind by Angels English Medium School shall be shared and divided amongst Guru-G Education Network Pvt. Ltd. (i.e., the appellant) and Vidhya Vihar Trust in the ratio of 40:60. Both the parties will meet with all expenses including the interest on borrowed capital, salaries, stationeries, electricity, repairs and maintenance, telephone and other establishment expenses out of their shared individual incomes.
- The appellant got Rs.51,50,000/- as its share of revenue from school fees which was declared in the Income Tax Return as sale of services and based on that impugned order has been passed by confirming demand on school fees income which is exempted by way of mega exemption notification no. 25/2012-ST. Audit Report of Vidhya Vihar Trust in that it clearly shows that Revenue sharing with the appellant of Rs.51,50,000/- out of the school fees income.
- Further, necessary approvals taken from the Government for running primary schools (Angels English Medium School & Angels Gujarati Medium School) are also produced.
- They stated that from the above evidences, it is absolutely clear that amount received by the appellant during the F.Y. 2016-17 is nothing but revenue share of school fees collected from pre-primary and primary students which are exempted by virtue of mega exemption notification no. 25/2012-ST.
- A perusal of the MOU between the appellant and Vidhya Vihar Trust reveals that the appellant is entitled to 40% of the revenue amount received towards the fees collected from the students. This arrangement is a typical revenue sharing model arrangement. The appellant is not to receive fixed amount per annum or per month from Vidhya Vihar Trust but only a certain percentage of the net revenue. In such a situation, it cannot be said that the appellant was a service provider and Vidhya Vihar Trust was a service recipient. No service was, therefore, provided by the



appellant to Vidhya Vihar Trust. They placed reliance on decision passed by Hon'ble CESTAT in the case of Mormugao Port Trust- 2017 (48) STR 69 (Tri-Mumbai).

5. Personal hearing in the case was held on 20.05.2024. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the appellant for hearing. He informed that the client was providing educational service to students (Entry no. 9 of the Notification No. 25/2012) in revenue sharing model with Vidhya Vihar Trust.

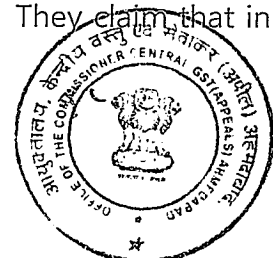
6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submission made during the personal hearing and materials available on records. The issue before me for decision is whether the Service Tax demand amounting to Rs.7,72,500/- confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.

6.1 On going through the MOA (Memorandum of Association) of the appellant, I find that their objective is to set-up & run all kinds of educational institutes, vocational training institutes & professional training institute, computer training & coaching classes, universities, provide infrastructure and services to all kinds of educations institutes, to provide all kinds of consultancy and advisory services to institutes or individuals in respect of education.

6.2 As per the MOU dated 04.05.2009 entered between the appellant and Vidhya Vihar Trust (a public charitable trust), both the parties shall jointly establish "Angle English Medium School", its Pre-primary section is called "Little Angle English Medium School". In terms of **clause-2** of the MOU, the appellant shall contribute its professional skill and management of establishing infrastructure including constructing buildings for coaching and residential accommodation for the students, staff and other amenities. They shall also arrange for suitable land either by purchasing or by hiring the same at different location and shall purchase the same from their own funds borrowed from the financial institutions or any other parties. **Clause-5** of the MOU, states that the appellant shall be responsible for establishing and constructing required buildings, amenities & utilities for the entire educational institute and its maintenance. Whereas Vidhya Vihar Trust shall be responsible for providing and carrying on all the activities relating to coaching and all day to day educational activities. In terms of **Clause-7** of the MOU, both the parties will maintain separate books of accounts and all incomes including fees, donation or any receipts of any kind by Angle English Medium School shall be shared and divided amongst the appellant & Vidhya Vihar Trust in the ratio of 40:60. Both the parties will meet all the expenses out of their shared individual incomes.

6.3 In the P&L Account the appellant has shown the income of Rs. 51,50,000/- from sale of service whereas Vidhya Vihar Trust has shown the income of Rs.1,59,80,480/- from school fees of '*Angels English Medium School*' and income of Rs.29,69,418/- as school fess from '*Little Angles English Medium School*' plus other miscellaneous income.

6.4 The appellant have claimed that the income of Rs.51,50,000/- is not taxable as the same pertains to services provided to an educational institution. They claim that in terms



of Sr.No.09 of Notification No.25/20125-ST dated 20.6.2012, such services are exempted. To examine their claim, relevant entry is reproduced below;

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

- (a) auxiliary educational services; or
(b) renting of immovable property;

Further, para-2 clause (f) of the notification defines, auxiliary educational services as;

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

6.5 It is observed that as per the MOU entered with Vidhya Vihar Trust, the appellant was responsible for establishing and constructing required buildings, amenities & utilities for the aforementioned educational institute and its maintenance. Whereas all the activities relating to coaching and day to day educational activities would be carried out by Vidhya Vihar Trust. From the nature of the service rendered by the appellant, I find that the appellant was not providing any auxiliary education service nor were they providing renting of immovable property as prescribed at entry no. 09 above. As all the auxiliary education service were provided by Vidhya Vihar Trust, I find that the appellant shall not be eligible for the exemption claimed under said Sr.No.09 of Notification No.25/2012-ST dated 20.6.2012.

6.6 Another contention of the appellant is that the MOU between them and Vidhya Vihar Trust on revenue sharing basis i.e. 40% of the revenue amount received towards the fees collected from the students. They are not receiving fixed amount per annum or per month from Vidhya Vihar Trust but receive a certain percentage of the net revenue. Thus, no service was rendered to Vidhya Vihar Trust who is the partner in the said business. They also relied on decision passed by Hon'ble CESTAT in the case of Mormugao Port Trust-2017 (48) STR 69 (Tri-Mumbai) in support of their argument. I find merit in their contention. The entire business of running an education institution was a joint venture where both appellant and Vidhya Vihar Trust are partners. I find that the activity undertaken by a co-venturer (partner) for the furtherance of the joint venture (partnership) cannot be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership) as there is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. I place my reliance on the decision passed by Hon'ble CESTAT in the case of **Cadila Healthcare Ltd- 2021 (50) G.S.T.L. 205 (Tri. - Ahmd.)** wherein it was held that;

"4.4 In a partnership firm, partner's capital can be in the form of cash/asset. It can also be in the form of contribution of skill and labour alone without contribution in cash. This issue has been considered by Hon'ble Supreme Court in the case of Chandrakant Manilal Shah (supra). In the said case, the issue for deciding was the validity of the partnership between the Karta of a Hindu undivided family and one of his sons. The son had not brought any cash/asset as his capital contribution to the partnership but was contributing only his skill and labour. In this context, the Hon'ble Supreme Court observed as follows :

"The nature of consideration will depend on the nature of the contract between the two individuals. As is well known, the aim of business is earning of profit. When an individual contributes cash/asset to become partner of a partnership firm in consideration of a share in the profits of the firm, such contribution helps and at any rate is



calculated to help the achievement of the purpose of the firm namely to earn profit. The same purpose is, undoubtedly, achieved also when an individual in place of cash asset contributes his skill and labour in consideration of a share in the profits of the firm. Just like a cash asset, the mental and physical capacity generated by the skill and labour of an individual is possessed by or is a possession of such individual. Indeed, skill and labour are by themselves possessions. "Any possession" is one of the dictionary meanings of the word "property". In its wider connotation, therefore, the mental and physical capacity generated by skill and labour of an individual and indeed the skill and labour by themselves would be the property of the individual possessing them. They are certainly assets of that individual and there seems to be no reason why they cannot be contributed as a consideration for earning profit in the business of a partnership firm."

From the above observation of the Hon'ble Supreme Court it follows that remuneration received by a partner by employing his skill and labour as per partnership deed is also a profit. The profit in such circumstances can be a special share in the profit. In the present case also, the appellant is a partner performing some duties for which he has an expertise, skill in the marketing and distribution of the goods manufactured by partnership firm M/s. Zydus Healthcare. And as a remuneration, the appellant have been received the amount which is nothing else but a special share in the profit. Identical issue has been considered by this CESTAT in the case of Mormugao Port Trust (supra) which was approved by the Hon'ble Supreme Court. The relevant portion of the judgment is reproduced below :

"13. Sometimes, the contracting parties, may conduct such joint venture in the name of a separate legal entity, while at times, such a joint venture is carried out under the individual names of the parties. Such informal arrangements are called by different names either as a consortium, collaboration, joint undertaking, etc. Regardless of the legal form or name that is given to such a Joint Venture, the same are arrangements in the nature of partnership but without the liabilities being joint and several."

From the above judgment it can be seen that there was a joint venture and in the said joint venture, one of the partner provided services to a joint venture. Revenue's case was that the partner in the joint venture has provided services to the joint venture which amounts to service and liable to service tax. The Tribunal has held that any activity performed by the partner of the joint venture would not amount to service and not liable to Service Tax.

4.5 It is also observed that the impugned activities of the appellant are undisputedly its obligation as a partner as per partnership deed. There is no separate contract of services between the appellant and the partnership firm. Therefore, the remuneration received by the appellant is merely a special share of profits in terms of the partnership deed. Therefore, such remuneration cannot be considered as consideration towards any services between two persons, and, hence, not liable to Service Tax."


The above decision was upheld by Hon'ble High Court of Gujarat at Ahmedabad as reported at **2022 (66) G.S.T.L. 99 (Guj.)**.

6.7 Thus, applying the ratio of above decisions, I find that the disputed income of Rs.51,50,000/- is not taxable. Hence, the demand of Rs.7,72,500/- on merits is not legally sustainable. When the demand is not legally sustainable, question of recovering interest and imposing penalty also does not arise.

7. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of **Rs.7,72,500/-** alongwith interest and penalties.

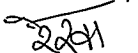
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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


जानचंद जैन

आयुक्त (अपील्स)

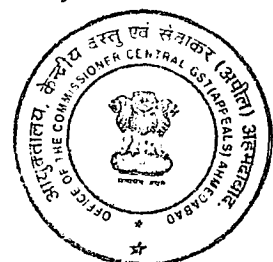
सत्यापित/Attested :


(रेखा नायर)

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

Dated: 30th May, 2024



By REGD/SPEED POST A/D

To,

M/s Guru G Education Network Pvt. Ltd.,
C/o Angel School, Mahalaxmi Society,
Patan Road, Deesa – 385535

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Appellant

The Assistant Commissioner,
Central GST & Central Excise,
Division-Palanpur
Gnadhinagar Commissionerate.

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Respondent

Copy to:

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.



