



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
07926305065- टेलिफैक्स 07926305136



DIN: 20230164SW000081868F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1804/2022-APPEAL / 7431 - 35
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-113/2022-23  
दिनांक Date : 13-01-2023 जारी करने की तारीख Date of Issue 19.01.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/RAJ/100/2022-23 दिनांक: 29.04.2022,  
issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Neelaben Nileshbhai Khiroya,  
Penorama Complex, Opp. Navjivan Press,  
Ashram Road, Ahmedabad

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad  
North, 4<sup>th</sup> Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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 :

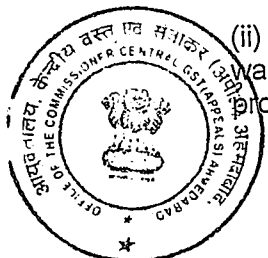
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(ii) 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.



(क) 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 हैं।

(A) 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.

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

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

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।

(c) 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.

(1) 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 मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो 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.

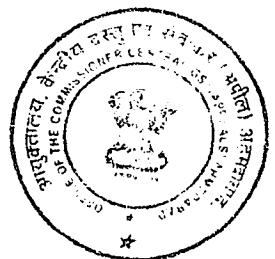
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 हैं।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

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."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Neelaben Nileshbhai Khiroya, Penorama Complex, Opp. Navjivan Press, Ashram Road, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/RAJ/100/2022-23 dated 29.04.2022. (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. AJXPK4332R. On scrutiny of the data received from the CBDT for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 14,57,002/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period, however, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST/AR-I/Div-VII/A'bad North/39/Neelaben/2020-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 1,80,085/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2015-16 to FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated ex-parte, vide the impugned order, by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,80,085/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further (i) Penalty of Rs. 1,80,085/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) & Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for not submitting documents to the department, when called for.

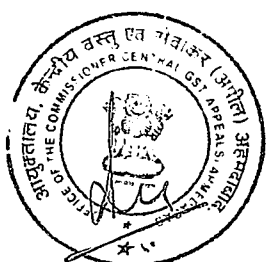
3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

The appellant is mainly engaged Multilevel Marketing for a company viz. Oriflame India Private Limited. Besides, the appellant is also engaged as an Agent for Life Insurance



Corporation and also earning some Brokerage, as sub broker with KIFS Securities Private Limited as well.

- o The show cause notice was issued only on assumption and presumption basis and accordingly uphold by the adjudicating authority. The show cause notice was issued merely on the details obtained from the Income tax department and without going in to the facts of the activities carried out by the appellant. While issuing the show cause notice it was presumed by the departments that the income declared by the appellant in his Income Tax Returns were towards rendering of taxable service and service tax not paid was computed straight way on the Income declared by the appellant in his Income Tax Return filed for Financial Year 2014-15.
- o In this regard, the appellant submit that due to wide spread Covid-19 across state of Gujarat, their entire family has suffered from corona and he being not well verse with Service Tax laws, and he could not pursue the hiring of consultant for the necessary compliance to the show cause notice. Further letter dated 07.04.2022 communicating three dates of hearing fixed on 19.04.2022, 21.04.2022 and 25.04.2022 was not received by the appellant and could not remained present either himself nor through his representative. Under the circumstances the appellant contend that the impugned order is issued in gross violation of principal of natural justice. There are plethora of decisions delivered by various appellate forum and various courts of across India. The appellant would like to rely upon few of them as under.
  - i. Reema Gases (P) Ltd Vs Commissioner of Central Excise reported at 2014 (307) ELT 129 (Tri-Kolkata)
  - ii. Hetro Labs Ltd Vs Assistant Commissioner of Customs (Group 7), Chennai reported at 2019 (370) ELT 234 (Telangana)
  - iii. Reliance Infrastructure Ltd. Vs Commissioner of Customs, Chennai-IV reported at 2017 (357) ELT 865 (Tri. - Chennai)
  - iv. Ashesh Goradia Vs Commissioner of Central Excise, Mumbai III reported at 2013 (295) ELT 547 (Tri. - Mumbai)
  - v. Urvashi Enterprises Vs Commissioner of Central Excise, Meerut reported at 2002 (150) ELT 1005 (Tri. - Del.)
- o One Consolidated letter notice fixing three dates of hearing is suffers from a legal infirmity-Section 33A of the Central Excise Act, 1944 applicable to Service tax matter vide Section 83 of the Finance Act,1994. It is on record and mentioned in the impugned order that notice scheduling three dates of hearing was issued in single letter dated 07.04.2022. This is not correct in view of Section 33A of the Central Excise Act, 1944 applicable to service tax matter vide section 83 of the Finance Act, 1994.

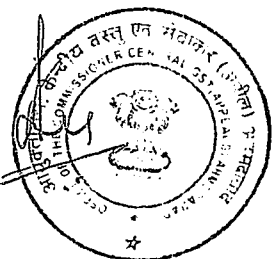


- The appellant submits that during the period 2013-14 and 2014-15 the appellant was engaged as a Distributor for Oriflam India Private Limited, a Multilevel Marketing Company, and simultaneously also engaged in provision of Business Auxiliary Service in the capacity of Agent and Sub-Broker and the same are Taxable Service. The appellant hereby tabulated year wise and head wise income as under.

(Amount in Rs.)

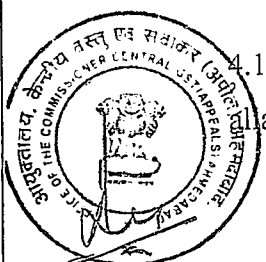
Year	Brokerage from KIFS	LIC Commission	Multilevel Marketing	Interest	Total
2013-14	50197	38964	833435	248012	1170607
2014-15	135660	35553	1285781	241898	1698891

- Evidencing head wise, Income the appellant submitted Profit & Loss account for FY 2013-14 & FY 2014-15 and Specimen Invoices under which service was rendered
- The Brokerage Income earned from KIFS Security Private Limited is on account of sale and purchase of shares on behalf of various clients as a sub broker of KIFS Security Private Limited, who is Authorized Stock Broker/Recognised Member of Bombay Stock Exchange. The activities in the capacity of sub-broker is exempted vide Sr. No. 29 of Notification No. 25/2012-ST as amended from time to time.
- The appellant has earned Commission as an agent of Life Corporation of India and is classified under Business Auxiliary Service. However, the said income is liable to service tax in the hands of service recipient i.e. in this case Life Corporation of India in terms of Sr. No. 1 of Notification 30/2012-ST as amended from time to time.
- Commission earned from Multilevel Marketing company is in fact Trade Discount and is not liable to service tax. The appellant is also working as distributor for selling of Beauty care goods of Oriflam India Private Limited. There exists no Principal-Agent relationship between Oriflam India Private Limited and the appellant. However, as the goods being purchased and sold by the appellant is on Principal to Principal basis. The goods purchased by the appellant at particular price which is discounted at certain percentage and the appellant is selling the said goods at price fixed by Oriflam India Private limited, however it does not exceed the MRP fixed by Oriflam India Private Limited.
- On fulfilling various criteria with regard to performance by the appellant, Oriflam India Private Limited is giving "Trade Discount" to the appellant which is referred to as "Commission" by the appellant in their profit and loss account. The Oriflam India Private Limited used to release Trade Discount from time to time vide letter and crediting to the appellant. One specimen of such letter is submitted by them.



- Thus so called "Commission" is in fact is Trade Discount and the same is the profit of the appellant, and could not be considered as income in the capacity of Principal-Agent Relationship and hence is not liable to service tax as the same is additional profit earned in the form of Trade Discount for selling goods on principal to principal, basis i.e. Trading activities is falls under Clause (e) of Negative list as specified in section 66D of the Finance Act, 1994.
  - Assuming without admitting, that Trade Discount is Commission, the appellant submit that demand of service tax of Rs.1,80,085/- is not correct and is in excess as submitted as under. Looking to the head wise income and its taxability, the only income earned from Oriflame India Private Limited is liable to service tax. From the table above, the income from Oriflame in the year 2013-14 was Rs. 8,33,435/-, though the same is not part of show cause notice, however the appellant would like to consider the said year to determine the value based exemption for the year 2014-15.
  - It could be seen that the income liable to service tax in the year 2013-14, however the same is well below Rs.10 Lakhs, the appellant is entitled to exemption of Rs.10 Lakhs for the year 2014-15. Accordingly the service tax payable on Rs.12,85,781/- (-) Rs.10,00,000/- = Rs.2,85,781/-. Therefore, service tax of Rs.35,323/- @ 12.36% applicable in the year 2014-15 is recoverable from the appellant for the year 2014-15.
  - The appellant further submit that they have not collected service tax from their client and therefore, the value of Rs. 2,85,781/- computed above has to be considered inclusive of service tax i.e. cum tax value in terms of Section 67 of the Finance Act,1994. The assessable value for the year 2014-15 has to be derived to compute actual service tax liability. Accordingly the assessable value for the purpose of charging service tax would have been Rs.2,54,344/- [derived from  $285781 * 100/112.36$ ] on which service tax@12.36% would be Rs.31,436/In view of above submission the appellant humbly submit the set aside and modify the impugned order of learned adjudicating authority to the extent mentioned above.
  - On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.
4. Personal hearing in the case was held on 06.01.2023. Shri Vijay N. Thakkar, Authorized person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He also submitted a written submission during hearing.

4.1 The appellant, in their additional submission produced during the course of hearing, inter alia, reiterated the ground already submitted in appeal memorandum.



5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBEC had, vide Instruction dated 26.10.2021, directed that:

*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

*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."*

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a proper ground for raising of demand of service tax. I also find that the adjudicating authority decided the SCN ex-parte, vide impugned order and confirmed the demand of Service Tax along with interest and penalties.

7. As regard the contention of the appellant that one consolidated letter fixing three dates of hearing suffers from a legal infirmity, I find that the adjudicating authority has scheduled personal hearing by specifying 3 (three) different dates i.e. 19.04.2022, 21.04.2022 and





25.04.2022 in the single letter / notice dated 07.04.2022. In this regard, I find that the adjudicating authority given three dates of personal hearing in one notice and has considered the same as three opportunities. I also find that there is no mention about any adjournment sought by the appellant.

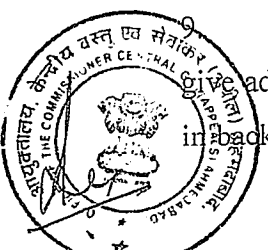
7.1 As per Section 33A(2) of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such case, the adjudicating authority may grant time and adjourn the personal hearing by recording the reason in writing. Not more than three such adjournments can be granted. Since such adjournments are limited to three, the hearing would be required to be fixed on each such occasion and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another date. However, the adjudicating authority is required to give one date a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case.

7.2 It is further observed that by giving single notice for personal hearing on three dates and absence of the appellant on those dates appears to have considered as grant of three adjournments by the adjudicating authority. In this regard, I find that the Section 33A(2) of the Central Excise Act, 1944 provides for grant of not more than 3 adjournments, which would envisage four dates of personal hearing and not three dates. The similar view has been taken by the Hon'ble High Court of Gujarat in the case of Regent Overseas Private Limited and others Vs. Union of India and others reported in 2017 (3) TMI 557 – Gujarat High Court.

7.3 In view of the above, I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and it is only thereafter, the impugned order was required to be passed. Thus, it is held that the impugned order have been passed by the adjudicating authority clearly in breach of the principles of natural justice.

8. I also find that the contention of the appellant that their brokerage income from KIFS Securities Private Limited was exempted from Service Tax vide Sr. No. 29(a) of the Notification No. 25/2012-ST dated 20.06.2012; their commission income from Life Insurance Corporation Ltd. attracts RCM in terms of Sr. No. 1 of Notification No. 30/2012-ST dated 20.06.2012; they also eligible for threshold limit of exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15; etc. These contentions were not raised earlier and were made during the appeal proceedings. I also find that the appellant has, in their appeal memorandum taken plea that the cum tax benefit required to be extended to them.

In this regard, I am of the considered view that the adjudicating authority was required to give adequate and ample opportunity to the appellant for producing the documents in his favour in backdrop of the situation that SCN has been issued only on the basis of details received from



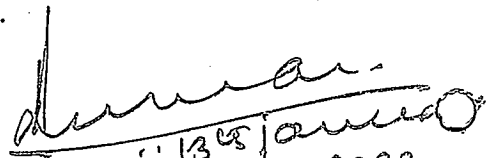
the Income Tax department, without even specifying the category of service and it is only thereafter, the impugned order was required to be passed.

10. Therefore, I am of the considered view that it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submission of the appellant, made in the course of the present appeal, and after proper verification of the documents of the appellant and thereafter, adjudicate the matter.

11. In view of the above discussion, keeping all the issues open, I remand the matter back to the adjudicating authority to reconsider the issue afresh and pass a speaking order after following the principles of natural justice. The appellants are also directed to submit all the relevant documents to the adjudicating authority within 15 days of receipt of this order.

12. अपील कर्ता 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.

  
(Akhilesh Kumar) 13 January 2023..  
Commissioner (Appeals)

Date : 13.01.2023



Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

To,

M/s. Neelaben Nileshbhai Khiraya,  
Penorama Complex,  
Opp. Navjivan Press, Ashram Road,  
Ahmedabad

Appellant

The Deputy Commissioner,  
CGST, Division-VI,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

25) Guard File

6) PA file