



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- टैलेफैक्स 07926305136



DIN: 20230164SW0000218312

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/145/2022-APPEAL *12/32-211*
 ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-125-130/2022-23
 दिनांक Date : 19-01-2023 जारी करने की तारीख Date of Issue 30.01.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-In-Original No:

GST-06/D-VI/O&A/62/ Subhash/AM/2021-22 dated 15.02.2022	GST-06/D-VI/O&A/63/ Pradeep/AM/2021-22 dated 15.02.2022	GST-06/D-VI/O&A/92/ Eonian/AM/2021-22 dated 22.02.2022
GST-06/D-VI/O&A/68/ Kalpana/AM/2021-22 dated 15.02.2022	GST-06/D-VI/O&A/89/ Hardikkumar/AM/2021-22 dated 22.02.2022	GST-06/D-VI/O&A/175/ Niraj/AM/2021-22 dated 28.03.2022

Issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant:
 The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
 North , 7th Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura,
 Ahmedabad - 380014

2. Respondent:

M/s. Subhash Bhagwan Swaroop Sharma,B-404, Paradise Plaza, Gala Gymkhana road, Bopal, Ahmedabad.	M/s. Pradeep Vinodprasad Mehta HUF, B-16, ShivamBunglows, Gala Gyhmkhana Road, Bopal, Ahmedabad	M/s. Eonian Softech Pvt. Ltd., G-1, Panchratna Apartments, Bhaikaka Nagar, Thaltej, Ahmedabad-380056
M/s. Kalpana Sangwan, 16, Basant behar-2, Nr. Homeopathy College, Ahmedabad	M/s. HardikkumarBharatbhai Thakkar, Off-110, Bhumi Complex, Opp. Relief Hotel Sarkhej Cross Road, Sarkhej, Ahmedabad	M/s. Niraj R. Govani, 16, Shreeji Bunglows, Nr. Harivilla Flats, Nr. Kargil Petrol Pump, Ahmedabad - 380061

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 अतः नीचे बताए गए नामों के बारे में पूर्वोक्त धारा को छप-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, 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डारगार या अन्य कारखाने में या किसी भण्डारगार से दूसरे भण्डारगार में माल ले जाते हुए मार्ग में, या किसी भण्डारगार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डारगार 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 को बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या ऋत के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के समूल में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(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 हो समय पर या बाद में दिनांक 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.

(ग) 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 हू, का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित की के भुगतान के रकम के साथ टीआर-8 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-8 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) विद्वान आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और वहाँ 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.

(i) 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) उपाह्वित परिच्छेद 2 (1) क में बतारा अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद - 380004



- (a) 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 in para-2(f) (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 चपसूता ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी 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 Appellate 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 निर्गमन प्रक्रिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.8.50 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.8.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन और 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 (फायरविधि) 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (शिरस्टेट) के प्रति अपीलों के मामलों 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) तिया गलत सेनवेट क्रेडिट की राशि;
- (iii) सेनवेट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

- यह पूर्व जमा 'तंबित 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.
- (iv)

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क का 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 below mentioned six appeals have been filed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad North on behalf of the Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as "the Appellant Department") in pursuance of the direction and authorization issued under Section 84 of the Finance Act, 1994 (hereinafter referred to as 'Act') against Orders-in-Original (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority") in the case of different assessee as detailed below (*hereinafter referred to as 'Respondents'*). The details of the appeals; the Orders-in-Original appealed against and name of the Respondent are given in table below. Since the issue involved in all these Six appeals are the same, they are being decided vide this OIA.

Sr. No.	Appeal No.	Order-in-Original No. & Date	Name & address of the Respondents
1	GAPPL/COM/STD /101/2022	GST-06/D-VI/O&A/62/ Subhash/AM/2021-22 dated 15.02.2022	1. M/s. Subhash Bhagwan Swaroop Sharma, B-404, Paradise Plaza, Gala Gymkhana road, Bopal, Ahmedabad.
2	GAPPL/COM/STD /102/2022	GST-06/D-VI/O&A/63/ Pradeep/AM/2021-22 dated 15.02.2022	2. M/s. Pradeep Vinodprasad Mehta HUF, B-16, Shivam Bunglows, Gala Gymkhana Road, Bopal, Ahmedabad.
3	GAPPL/COM/STD /97/2022	GST-06/D-VI/O&A/92/ Eonian/AM/2021-22 dated 22.02.2022	3. M/s. Eonian Softech Pvt. Ltd., G-1, Panchratna Apartments, Bhaikaka Nagar, Thaltej, Ahmedabad-380059
4	GAPPL/COM/STD /98/2022	GST-06/D-VI/O&A/68/ Kalpana/AM/2021-22 dated 15.02.2022	4. M/s. Kalpana Sangwan, 16, Basant behar-2, Nr. Homeopathy College, Ahmedabad
5	GAPPL/COM/STD /96/2022	GST-06/D-VI/O&A/89/ Hardikkumar/AM/2021-22 dated 22.02.2022	5. M/s. HardikkumarBharatbhai Thakkar, Off-110, Bhumi Complex, Opp. Relief Hotel Sarkhej Cross Road, Sarkhej, Ahmedabad.
6	GAPPL/COM/STD /145/2022	GST-06/D-VI/O&A/175/ Niraj/AM/2021-22 dated 28.03.2022	6. M/s. Niraj R. Govani, 16, Shreeji Bunglows, Nr. Harivilla Flats, Nr. Kargil Petrol Pump, Ahmedabad - 380061

2. The facts of the case, in brief, are that the Respondents were engaged in providing services. On scrutiny of information received from the Income Tax Department, it was found that the Respondents had earned income from providing various services, as detailed below.



However, the Respondents were not found registered with Service Tax Department. To ascertain whether the services provided by the Respondents were liable to service tax or not, the Respondents were asked to furnish relevant information / documents like Income Tax Return, Form 26AS, Annual financial accounts, contract/agreement etc. for the relevant period by the Jurisdiction Range Superintendent. Since, no response was received from the Respondents, service tax was determined on the basis of information received from the Income Tax Department.

Sr. No.	Name & address of the Respondents	Financial Year	"Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194-H, 194-J (as per Form 26AS)" (Amount in Rs.)
1	M/s. Subhash Bhagwan Swaroop Sharma, B-404, Paradise Plaza, Gala Gymkhana road, Bopal, Ahmedabad.	2014-15	1,14,30,819/-
2	M/s. Pradeep Vinodprasad Mehta HUF, B-16, ShivamBunglows, Gala Gymkhana Road, Bopal, Ahmedabad.	2014-15	1,07,70,537/-
3	M/s. Eonian Softech Pvt. Ltd., G-1, Panchratna Apartments, Bhaikaka Nagar, Thaltej, Ahmedabad-380059	2014-15	33,77,233/-
4	M/s. Kalpana Sangwan, 16, Basant bahar-2, Nr. Homeopathy College, Ahmedabad	2015-16 2016-17	42,74,030/- 53,10,778/-
5	M/s. HardikkumarBharatbhai Thakkar, Off-110, Bhumi Complex, Opp. Relief Hotel Sarkhej Cross Road, Sarkhej, Ahmedabad.	2014-15	2,56,76,639/-
6	M/s. Niraj R. Govani, 16, Shreeji Bunglows, Nr. Harivilla Flats, Nr. Kargil Petrol Pump, Ahmedabad - 380061	2014-15	20,85,065/-

2.1 The Show Cause Notices as per details given below, were issued to the Respondents for demand and recovery of service tax for the amount as mentioned against their name under proviso to Section 73(1) of the Act, along with interest under Section 75. It was also proposed for imposition of penalty under Sections 77 and 78 of the Act.



Sr. No.	Show Cause Notice No. & Date	Name of the Respondents	S.Tax. Demanded (Amount in Rs.)
1	GST-06/04-566/O&A/Subhash/2020-21 dated 28.09.2020	M/s. Subhash Bhagwan Swaroop Sharma	14,12,849/-
2	GST-06/04-567/O&A/Pradeep/2020-21 dated 28.09.2020	M/s. Pradeep Vinodprasad Mehta HUP	13,31,238/-
3	GST-06/04-451/O&A/Eonian/2020-21 dated 28.09.2020	M/s. Eonian Softech Pvt. Ltd.	4,17,424/-
4	GST-06/04-874/O&A/Kalpans/2020-21 dated 24.03.2021	M/s. Kalpans Sangwan	13,88,489/-
5	GST-06/04-561/O&A/Hardikkumar/2020-21 dated 28.09.2020	M/s. Hardikkumar Bharatbhai Thakkar	31,73,632/-
6	GST-06/04-685/O&A/Niraj/2020-21 dated 29.09.2020	M/s. Niraj R. Govani	2,57,714/-

2.2 The Respondents have neither submitted any defence reply to the said Show Cause Notices nor have attended any of the scheduled personal hearing given by the adjudicating authority. Therefore, the above Show Cause Notices were adjudicated ex-parte by the adjudicating authority vide impugned orders. The adjudicating authority has dropped all the demands based on a visit note of the premises address as mentioned in the third party data, wherein it is reported that the persons /firms are found to be non-existent at the given address. While the dropping the demands vide the impugned orders, the adjudicating authority observed as under:

"17. I find that the said assessee has neither submitted any defence reply nor has attended any of the scheduled personal hearing. I find that the personal hearing was fixed on however neither the said assessee nor any of its authorized representative attended the same. I find that the said letters of personal hearings have been returned by the postal authorities.

18. To ascertain factual position and to locate the whereabouts of the said assessee visit was undertaken by the officers of this office on I have gone through the visit note submitted to me which is as follow,

I find that the concerned officer has reported that they visited the address of the premises as appearing in the Show Cause Notice No. dated I further find that the Visit note has reported that the said assessee does not exist on the said premises. Visit Note has further reported that inspite of their best and sincere efforts they could not trace out the said assessee, as they were not available there.



Further efforts were also made to trace whereabouts of the said assessee from its adjoining premises, however nothing could be traced out in this regard

19. I find that inspite of sincere efforts the whereabouts of the said assessee could not be traced out. As such it is evident that the said assessee does not exist on the said premises. Further, the whereabouts of the said assessee is not known under the prevailing circumstances. In absence of relevant records like Balance sheet, profit and loss accounts, ITR, 26AS, ledgers, Bills/Invoices and Bank Statement for the period of Show cause notice, it is not possible to establish the taxability of the said amount shown as receipt of services in their ITR form the data which shared by the Income Tax authorities and the same appearing in the SCN. Further, I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of Mega exemption vide Notification No. 25/2012-ST dated 20.06.2012 as amended. In absence of any supporting documents available on record, it is hard to establish the actual nature of service provided by the assessee and its taxability thereof. It is also hard to establish whether the services, if any provided by the assessee falls under the list of negative list as specified under Section 66D of the Finance Act, 1994 or falls under the list of services exempted by virtue of Mega exemption vide Notification No. 25/2012-ST dated 20.06.2012 as amended.

20. It is also an onus cast upon me to verify and make an assessment on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company/ individual and based on that I have to examine its taxability. I, under the prevailing circumstances have no option to verify the information of nature of business / source of income to be taxable or otherwise as the same are not available on record. I am therefore not in a position to establish the taxability of the said amount under the Finance Act, 1994 as mentioned in the Notice.

21. From the SCN, I find that the demand of service tax has been proposed on the basis of the data received from CBDT only. The SCN does not contain the details of nature of service which would have been provided by the said assessee as declared in the data received from CBDT. Further, in absence of the details of nature of service, which could have been provided by the assessee, it is difficult to ascertain as to whether the same was taxable under the section 66B of the Finance Act, 1994 or not and the assessee is required to pay the service tax on



the value declared by them in their Income Tax Return/ Form 26AS in terms of section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 or otherwise. I therefore conclude that there are not material facts available in the instant Show cause Notice to establish the taxability of the difference pointed out in the said Notice. In other words, the said SCN does not contain details of the nature of service said to be provided or otherwise by the assessee and it is simply based on the data of income shared by the CBDT without due verification / investigation. Further I have gone through the case file and find that it is not on record as to whether the SCN in question has been served to the assessee or otherwise.

22. In this regard, I refer to para 3 of the letter no. 1/35447/2021 dated 26.10.2021 issued by CBIC, New Delhi on the subject of Indiscreet Show Cause Notices issued by Service Tax Authorities as under:

"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 notices."

23. As per the above letter no. 1/35447/2021 dated 26.10.2021 issued by CBIC, New Delhi on the subject of Indiscreet Show Cause Notices issued by Service Tax Authorities, I find that judicious approach has to be taken by the adjudicating authority in deciding the taxability in the current case.

24. In view of the above discussion and on perusal of SCN and non-availability of duly audited Balance sheet, profit and loss accounts, ITR, 26AS, ledgers, Bills/Invoices, Bank Statement and other relevant documents, I find that the service tax demand is not sustainable under the law."

3. The impugned orders were reviewed by the Appellant Department and appeals have been filed on the below mentioned grounds:



- The Order-in-Original is silent on date of serving of the show cause notice. Show Cause Notice is the first limb of the principle of adjudication. The amount quantified in show cause notice is a must to be intimated to a noticee. Section 37C of Central Excise Act, 1944 has laid down detailed procedure for delivery of show cause notice. There is nothing mentioned in findings in this regard by adjudicating authority, thus, it appears that the Order-in-Original is non-speaking order.
- It also appears that adjudicating authority has failed to appreciate the facts and circumstances of the case, which culminated into issuance of the present SCN. The issue in the instant case was initiated consequent upon receipt of data from the CBDT. The adjudicating authority did not take further help of the data base of income tax assessee, for tracking the assessee and ascertaining nature of services provided by the said assessee.
- It appears that the decision to drop the entire proceedings is not proper as the adjudicating authority has not critically analyzed the issues involved in detail. It further appears that the present OIO was not passed in accordance with the instruction contained in the CBEC Circular No. 1053/2/2017-CX dated 10.03.2017 issued from F.No. 96/1/2017-CX.I. For the sake of convenience, relevant paras of the said Circular is appended herein below:

14.5 Adjudication order: The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

14.6 Analysis of issues: The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.

14.7 Body of the order: The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the



operating order. At any cost, the findings and discussions should not go beyond the scope and grounds of the show cause notice."

- The adjudicating authority appeared to have ignored the above instruction and has passed a non-speaking order. The said authority has failed to discuss the case on merit, analyze the nature and scope of the services.
- It also appears that adjudicating authority failed to carry out proper and discreet inquiry on the location of the assessee. This could have been done with information and other details viz. Aadhar No., Bank details and TDS details of the notice, with help from CBDT field formations.

4. Cross Objections have not filed by any of the Respondents till date. Personal Hearing in the matter was granted on 02.12.2022, 14.12.2022 & 06.01.2023. However, neither any Respondents nor any representative on behalf of the Respondents appeared on any of the given dates. Therefore, I take up these cases for decision on the basis of the materials available on record.

5. I have carefully gone through the facts of the case, the impugned orders and appeal memorandum. The issue to be decided in the present appeal is whether the impugned orders passed by the adjudicating authority dropping the demands in all the six cases, in facts and circumstances of the case, is legal and proper or otherwise.

6. On perusal of the aforesaid SCNs and on verification of the impugned orders passed by the adjudicating authority, it is observed that the adjudicating authority had in the impugned orders, inter alia, held that "*Further I have gone through the case file and find that it is not on record as to whether the SCN in question has been served to the assessee or otherwise.*" The Appellant department have also not come forward with a documentary evidences that the Show Cause Notices issued in the case have been served, as laid down under Section 37C of Central Excise Act, 1944. The serving of Show Cause Notice to a noticee is the basic requirement for initiating any proceeding against a noticee, which appears to be not done in the present case, as have emerged from the records.

7. I also find that in the SCNs in question, the demand has been raised for the period FY 2014-15 in respect of Respondents No. 1, 2, 3, 5 and 6, and for the period FY 2015-16 to FY 2016-17 in respect of Respondent No. 4 based on the Income Tax Returns filed by the Respondents. 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 SCNs for raising the demand against the Respondents. It is also not



specified as to under which category of service, the non-levy of service tax is alleged against the Respondents. Merely because the Respondents had reported receipts of income from services, the same cannot form the basis for arriving at the conclusion that the Respondents were liable to pay service tax, which were not paid by them. In this regard, I find that CBIC 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 notices."

7.1 In the present case, I find that letters were issued to the Respondents seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCNs have 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. It is also pertinent to note that whether the SCNs were served to the Respondents or otherwise is also not available on records. This, in my considered view, is not a proper ground for raising of demand of service tax. Therefore, on this very ground, the demand raised vide the impugned SCNs are liable to be dropped.

7.2 A similar view has been taken by the Hon'ble High Court of Madras in the case of R.Ramdas Va. Joint Commissioner of Central Excise, Pudukcherry - 2021 (44) GSTL 258 (Mad.). The relevant parts of the said judgment are reproduced below :

"7. It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals.



11. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised. This is the basis of the fundamental Principles of Natural Justice. In cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given, for that particular demand for which a proposal has not been made.

12. Thus, as rightly pointed out by the Learned Counsel for the petitioner, the impugned adjudication order cannot be sustained, since it traverses beyond the scope of the show cause notice and is also vague and without any details. Accordingly, such an adjudication order without a proposal and made in pursuant of a vague show cause notice cannot be sustained."

8. I also find that while dropping the demand by the impugned orders the adjudicating authority observed as under:

"21. From the SCN, I find that the demand of service tax has been proposed on the basis of the data received from CBDT only. The SCN does not contain the details of nature of service which would have been provided by the said assessee as declared in the data received from CBDT. Further, in absence of the details of nature of service, which could have been provided by the assessee, it is difficult to ascertain as to whether the same was taxable under the section 66B of the Finance Act, 1994 or not and the assessee is required to pay the service tax on the value declared by them in their Income Tax Return/ Form 26AS in terms of section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 or otherwise. I therefore conclude that there are not material facts available in the instant Show cause Notice to establish the taxability of the difference pointed out in the said Notice. In other words, the said SCN does not contain details of the nature of service said to be provided or otherwise by the assessee and it is simply based on the data of income shared by the CBDT without due verification / investigation. Further I have gone through the case file and find that it is not on record as to whether the SCN in question has been served to the assessee or otherwise.

22. In this regard, I refer to para 3 of the letter no. 1/35447/2021 dated 26.10.2021 issued by CBIC, New Delhi on the subject of Indiscreet Show Cause Notices issued by Service Tax Authorities as under:



"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."

23. *As per the above letter no. 1/35447/2021 dated 26.10.2021 issued by CBIC, New Delhi on the subject of Indiscreet Show Cause Notices issued by Service Tax Authorities, I find that judicious approach has to be taken by the adjudicating authority in deciding the taxability in the current case.*

24. *In view of the above discussion and on perusal of SCN and non-availability of duly audited Balance sheet, profit and loss accounts, ITR, 26AS, ledgers, Bills/Invoices, Bank Statement and other relevant documents, I find that the service tax demand is not sustainable under the law."*

8.1. In my considered view, the adjudicating authority, being quasi-judicial authority, can not go beyond the scope of the show cause notices and is also bound by the instruction of the CBIC. When there was no documents for verification and the SCNs have 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, I find that the dropping of demand of Service Tax vide, the impugned orders by the adjudicating authority by referring Instruction of the CBIC vide letter No. 1/35447/2021 dated 26.10.2021, is proper and legal.

9. I also find that the Appellant Department have not come forward with any documents showing that the SCNs have been issued and served to the Respondents. As the adjudicating authority has already discussed in the impugned orders that the SCNs in question has been served to the Respondents or otherwise were not on records. Therefore, in absence of evidence of the serving of the SCNs in question, the demands raised therein cannot sustain, as the serving of the Show Cause Notices is the basic necessity, which were not fulfilled in the present case. Further, the contentions of the Appellant Department in the appeals are also not backed by any evidence and hence not sustainable. It would be relevant to refer to the judgment of the



Constitution Bench of the Hon'ble Supreme Court in the case of I.J. Rao, Assistant Collector of Customs Vs. Bibhuti Bhusan Bagh reported in 1989 (42) ELT 38 (SC) wherein it has held that:

"It is apparent that goods liable to confiscation may be seized by virtue of Section 110(f) but that those goods cannot be confiscated or penalty imposed without notice, opportunity to represent and to be heard to the owner of the goods or the person on whom penalty is proposed. This notice must be given within six months of the seizure of the goods, as envisaged by Section 110(2) of the Act, and if it is not, the goods must be returned to the person from whom the goods were seized. The proviso to Section 110(2) of the Act allows the period of six months to be extended by the Collector of Customs for a period not exceeding six months on sufficient cause being shown to him in that behalf."

9.1 In the present appeals, the Appellant Department has not produced any evidence showing that the SCNs have been served to the Respondents. In view thereof and by following the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of I.J. Rao, Assistant Collector of Customs Vs. Bibhuti Bhusan Bagh supra, I am of the considered view that the dropping of demands of Service Tax vide the impugned orders by the adjudicating authority, for this reason also, are proper and legal.

10. In view of the above discussion, I uphold the orders, as detailed below, passed by the adjudicating authority and reject the appeals filed by the Appellant Department.

Sr. No.	Order-in-Original No. & Date	Appeal No.	Name & address of the Respondents
1	GST-06/D-VI/O&A/62/ Subhash/AM/2021-22 dated 15.02.2022	GAPPL/COM/STD /101/2022	1. M/s. Subhash Bhagwan Swaroop Sharma, B-404, Paradise Plaza, Gala Gymkhana road, Bopal, Ahmedabad.
2	GST-06/D-VI/O&A/63/ Pradeep/AM/2021-22 dated 15.02.2022	GAPPL/COM/STD /102/2022	2. M/s. Pradeep Vinodprasad Mehta HUF, B-16, ShivamBunglows, Gala Gymkhana Road, Bopal, Ahmedabad.
3	GST-06/D-VI/O&A/92/ Eonlan/AM/2021-22 dated 22.02.2022	GAPPL/COM/STD /97/2022	3. M/s. Eonlan Softech Pvt. Ltd., G-1, Panchratna Apartments, Bhaikaka Nagar, Thaltej, Ahmedabad-380059
4	GST-06/D-VI/O&A/68/ Kalpana/AM/2021-22 dated 15.02.2022	GAPPL/COM/STD /98/2022	4. M/s. Kalpana Sangwan, 16, Basant bahar-2, Nr. Homeopathy College, Ahmedabad
5	GST-06/D-VI/O&A/89/ Hardikkumar/AM/2021-22 dated 22.02.2022	GAPPL/COM/STD /96/2022	5. M/s. HardikkumarBharatbhai Thakkar, Off-110, Bhumi Complex, Opp. Relief Hotel Sarkhej Cross Road,



			Sarkhej, Ahmedabad.
6	GST-06/D-VI/O&A/175/ Niraj/AM/2021-22 dated 28.03.2022	GAPPL/COM/STD /145/2022	6. M/s. Niraj R. Govani, 16, Shreeji Bungalows, Nr. Harivilla Flats, Nr. Kargil Petrol Pump, Ahmedabad - 380061

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

The appeals filed by the Appellant Department stands disposed of in above terms.

Akhilesh Kumar
(Akhilesh Kumar)
Commissioner (Appeals)

Attested

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

Date : 19.01.2023



By RPAD / SPEED POST

To,

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

Appellant

1. M/s. Subhash Bhagwan Swaroop Sharma,
B-404, Paradise Plaza,
Gala Gymkhana road, Bopal,
Ahmedabad

Respondents

2. M/s. Pradeep Vinodprasad Mehta HUF,
B-16, Shivam Bungalows,
Gala Gymkhana Road, Bopal,
Ahmedabad

3. M/s. Eonian Softech Pvt. Ltd.,
G-1, Panchratna Apartments,
Bhalkata Nagar, Thalhej,
Ahmedabad-380059

4. M/s. Kalpana Sangwan,
16, Basant bahar-2,
Nr. Homeopathy College,
Ahmedabad



5. M/s. HardikkumarBharatbhai Thakkar,
Off-110, Bhumi Complex,
Opp. Relief Hotel Sarkhej Cross Road,
Sarkhej, Ahmedabad

6. M/s. Niraj R. Govani,
16, Shreeji Bunglows,
Nr. Harivila Flats, Nr. Kargil Petrol Pump,
Ahmedabad -380061

Copy to :

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

(for uploading the OIA)

5) Guard File

6) PA file

