



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  
 फोन 07926305065- टैलेफैक्स 07926305136



DIN: 20230264SW00000818668

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2224/2022-APPEAL / 798K-68
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-133/2022-23  
 दिनांक Date : 30-01-2023 जारी करने की तारीख Date of Issue 01.02.2023  
 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/17-18/Saurabh/AM/2022-23  
 दिनांक: 18.05.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI,  
 Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

**1. Appellant**

M/s Saurabh Shrimohan Khandelwal,  
 G/101, Orange Avenue, Maple County-1,  
 Behind Ornate Park, Sindhu Bhavan Road,  
 Thaltej, Ahmedabad-380069

**2. Respondent**

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

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 अन्तर्गत नीचे बताए गए मामलों के बारे में प्रत्येक  
 धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन स्थित, 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 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  
 किसी कारखाने में या किसी भण्डारगार में हो माल की प्रकिया के दौरान हुई हो।

(iii) 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 निर्धारित मूल्य 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का मुग्तान 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 मुग्तान 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 चुकें पर या बाद में विलत अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(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 प्रथम 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 निर्यात की के मुग्तान के समूह के साथ टीआर-8 चलान की प्रती 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) शिथिल आवेदन के साथ जहाँ संलग्न एकल एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस मुग्तान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस मुग्तान 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिचय क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> मंजला, 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, Giridhar 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 धीरा का भुगतान संपर्कित ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पत्री 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर ₹.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 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 (कार्याधिकि) 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 (सिस्टेट) के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हलांकि, 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) चंड 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 Cervat Credit taken;
- (iii) amount payable under Rule 6 of the Cervat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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. Saurabh Shrimohan Khandelwal, G/101, Orange Avenue, Maple County-I, Behind Ornate Park, Sindhu Bhavan Road, Thaltej, Ahmedabad - 380059 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/17-18/Saurabh/AM/2022-23 dated 18.05.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, 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. ACWPK8808N. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 & FY 2015-16, it was noticed that the appellant had earned an income of Rs. 20,48,590/- during the FY 2014-15 and Rs. 18,75,000/- during the FY 2015-16, 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)" of the Income Tax Act. 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 Account, 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-06/04-465/O&A/Saurabh/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 2,53,204/- 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 76, Section 77 & 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 Subsequently, the appellant was issued another Show Cause Notice No. CGST-06/04-1107/O&A/Saurabh/2020-21 dated 24.03.2021 demanding Service Tax amounting to Rs. 2,60,909/- for the period FY 2015-16, 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 76, Section 77 & Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 to FY 2017-18 (up to June-17).

2.3 Both the Show Cause Notices were adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 5,14,113/- 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 & FY 2015-16. (1) Penalty of Rs. 5,14,113/- 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 of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii) Penalty of Rs. 80,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for not furnishing service tax returns.

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

- The impugned order passed by the adjudicating authority is bad in law, wrong on facts, violation of principle of natural justice and against the judicial discipline and the intent of legislation, hence deserves to be set aside.
- The appellant is working as a Director of the company namely Kiran Global Chem Limited and Sumangal Glass Private Limited and the consideration shown in Form 26AS was only on the account of salary, on which the company has deducted TDS while crediting the salary of the appellant, which is reflected in Form 26AS. In support of his claim that he was on the pay roll of the company and was appointed as Director and working as employee, the appellant submitted copy of appointment letter and salary slips of three months.
- The appellant was appointed as Director for which he received salary / remuneration for providing service to the company. As per Section 65B(44)(b) of the Finance Act, 1994, "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include a provision of service by an employee to the employer in the course of or in relation to his employment. Therefore, no service tax was payable during the relevant period on amount of salary paid to Director who are full time employee of the company, hence, the appellant in no way was liable to pay Service Tax.
- The Show Cause Notice issued for the FY 2014-15 has shown the total gross receipt as Rs. 20,48,590/-, whereas the salary income received by the appellant in the FY 2014-15 was only Rs. 14,80,900/-, the department has taken wrong amount of Rs. 20,48,590/- and demand of Service Tax on the said amount confirmed is not correct.
- The appellant further submitted that in light of the Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 45/2012-ST dated 07.08.2012, the Service Tax on the amount received by the Director from the company for the services provided to the company, is payable by the recipient of the service i.e. company on Reverse Charge Mechanism. Therefore, in the present case, the service recipient i.e. Kiran Global Chem Limited and Sumangal Glass Private Limited were responsible for paying the Service Tax, on amount received by the appellant, if applicable, on RCM basis.



- The department has raised the demand simply on the basis of third party data without making any inquiry in the matter which is not sustainable and deserves to be dropped. These facts proves the bonafide on the part of the appellant, and therefore, the provision of extended period are not invocable in the case. These facts proves that the appellant has not suppressed any fact from the department and did not have any ill intent to evade payment of service tax. Hence, the demand of service tax beyond normal period cannot not be raised hence deserves to be dropped.
- There was no ill intent on the part of appellant and no fact was suppressed from the department, the appellant was not liable for penalty under Section 70(1), Section 77 and Section 78(1) of the Finance Act, 1994, but the adjudicating authority has imposed the penalty under this Section without appreciating the facts which are clearly available on records. Hence the appellant requests for quashing the penalty under Section 70(1), Section 77 and Section 78(1) of the Act.
- 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 17.01.2023 through virtual mode. Shri Chandresh Nagora, Authorized person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He also stated that the amount was received by the appellant as salary for being Director of firm.

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 of Service Tax 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 & 2015-16.

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 they were liable to pay service tax, which was 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."*

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.

7. I find that the adjudicating authority while confirming the demand held / discussed as under:

*"20. The assessee has contended that the income received from M/s. Kiran Global Chem Limited is salary income which is exempted from payment of service tax as it do not falls under the definition of services as enumerated in section 65B(44) of the Finance Act, 1994 and not the income for rendering professional service. I find it necessary to reproduce the excerpt of Section 66B of the Finance Act, 1994 which is the charging section of Service Tax:*

.....

*Further "services" is defined under Section 65B(44) of the Finance Act, 1994 which is reproduced as below:*

.....

*On perusal of the Section 66B and the definition of services contained in Section 65B(44), I find that any service other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another is chargeable for service tax under Section 66B of the Finance Act. I find that as per sub-section 44(b) of Section 65 B of Finance Act, 1994, a provision of service by an employee to the employer in the course of or in relation to his employment does not comes under the definition of service. It is therefore necessary to look in to the specific condition to ascertain an employee-employer relationship. Employee-Employer relation is established*



from the fact that under which Section of the Income Tax Act, 1961, the TDS is being deducted by the Company on payments made to their Employees. The TDS on Income under the Head of "Salaries" is deducted under Section 192 of the Income Tax Act, 1961. If the TDS on payments made to their Employees by a Company has been deducted under Section 192 of the Income Tax Act, 1961, then only the said payment made by the Company to their Employees are not chargeable to Service Tax as the same establishes "Employer-Employees Relationship" and thus no Service Tax is applicable under Finance Act, 1994. However, in the present case the TDS has been deducted under section 194J of the Income Tax Act, 1961 under the head "Professional Income" than the said payment made by M/s. Kiran Global Chem Limited can not be termed as "Salary" and hence chargeable to Service Tax.

21. Further, on perusal of the Form 26AS for the F.Y. 2014-15, I find that the assessee has received income by rendering professional service to M/s. Kiran Global Chem Limited to the tune of Rs. 3,75,000/-. However, the assessee has not submitted any explanation for the differential income of Rs. 16,73,590/- out of the total income of Rs. 20,48,590/-.

22. Further, on perusal of the list of services in negative list as enumerated in Section 66D and Mega exemption notification No. 25/2012-ST dated 20.06.2012, I find the services provided by the assessee is neither mentioned in the above negative list nor exempted vide notification No. 25/2012-ST dated 20.06.2012, as amended.

23. I find that the assessee has failed to discharge their service tax liability on the income received by providing professional service and I find that they are liable to pay service tax on the above income as discussed in the SCN."

8. I find that the main contentions of the appellant are that they are working as Director of the Company namely M/s. Kiran Global Chem Limited and M/s. Sumangal Glass Private Limited and the income shown in ITR was towards salary received from their firms. It was contended that the salary received from the company does not fall under the definition of the "taxable service". Further, even if the income is considered towards professional fees, they have provided services to company on which the Service Tax was payable by the company, under Reverse Charge Basis as per Notification No. 30/2012-ST dated 20.06.2012.

9. It is observed that the definition of 'service' under Section 65B(44) of the Finance Act, 1994 specifically excludes a provision of service by an employee to the employer in the course of or in relation to employment. Further, for ease of reference, I reproduce the relevant provision for reverse charge mechanism contained under Notification No. 30/2012-ST dated 20.06.2012, as amended, which reads as under:





Notification No. 30/2012-Service Tax dated 20.6.2012, as amended vide Notification No. 45/2012-ST dated 07.08.2012

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
5A.	in respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate	NIL	100%

9.1 It is observed that the appellant have during F.Y. 2014-15, received an amount of Rs.3,00,000/- from M/s. Sumangal Glass Private Limited and TDS on this income was deducted under Section 192 of the Income Tax Act, 1961. Further, an amount of Rs.3,75,000/- was received from M/ Kiran Global Chem Ltd. TDS on this amount was deducted under Section 194J of the Income Tax Act, 1961. Further, the appellant had, during F.Y.2015-16, received an amount of Rs.18,75,000/- from M/s. Kiran Global Chem Limited, TDS on this amount was deducted under Section 194J of the Income Tax Act, 1961. In view of the specific exclusion under Section 65B(44) of the F.A.,1994, the appellant is not liable to pay service tax on amount of Rs.3,00,000/- received from M/s. Sumangal Glass Private Limited, which is in the nature of salary, on which TDS was deducted under Section 192 of the Income Tax Act, 1961.

9.2 Further, in view of the legal provision under the Notification No. 30/2012-ST dated 20.06.2012, as amended, and from verification of the Appointment Letter dated 17.01.2013 issued by M/s. Kiran Global Chem Limited, I find that the appellant is also not liable to pay service tax on income of Rs.3,75,000/- received from M/s. Kiran Global Chem Limited in the FY 2014-15 and Rs. 18,75,000/- received in the FY 2015-16, as reflected in Form 26AS for the relevant FY and on which the TDS under Section 194J has been deducted, as the service tax on the said amounts is payable by the service recipient i.e. Kiran Global Chem Limited, on RCM basis.

10. I also find that the appellant have contended that the department has taken wrong amount of Rs.20,48,590/- instead of Rs.14,80,900/- with respect of FY 2014-15. In this regard, I find that as per computation of Income and Income tax Return (ITR-4) filed by the appellant and submitted with appeal memorandum, the total income is shown as Rs.16,80,900/- (Rs. 3,00,000/- from Salary and Rs.13,80,900/- from Business or Profession). I also find that as per Form 26AS & Statement of Bank Account submitted by the appellant, they have received Rs.3,00,000/- from M/s. Sumangal Glass Private Limited as salary; received Rs.7,66,500/- from M/s. Kiran Global Chem Limited (as Salary and as Professional Fees). Thus, I find that the appellant have received total income of Rs.10,66,500/- from M/s. Sumangal Glass Private Limited and M/s. Kiran Global Chem Limited and for the said amount the appellant is not liable for payment of Service Tax



being Salary and Director remuneration, as discussed above. For remaining amount Rs.6,14,400/-, the appellant have submitted that the said amount received from other services rendered to various other entity. The appellant also contended that the said income is below the threshold limit of Rs.10,00,00/- and thus exempted from Service Tax. Further, there is no evidence in the SCN or in the impugned order as to how the remaining amount is liable to be service tax.

11. I also find that gross income of the appellant for the FY 2013-14 was Rs. 18,00,000/- and the same is from the Salary as held in OIA No. 119(SM)/ST/JPR/2021 dated 05.03.2021 passed by the Commissioner (Appeals), CGST, Jaipur. Therefore, the appellant is also eligible for the benefit of exemption up to Rs. 10,00,000/- as per Notification No. 33/2012-ST dated 20.06.2012 in the FY 2014-15 and the appellant is not liable for payment of Service Tax on the remaining amount of Rs. 6,14,400/- also even if that is considered as taxable income. However, I do not find anything available on record to consider the said income received as consideration for provision of taxable service.

12. In view of the above discussion, I set aside the impugned order being not sustainable on facts as well as on merits and allow the appeal filed by the appellant.

13. 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.

  
(Akhlesh Kumar)  
Commissioner (Appeals) 2023..

Date : 30.01.2023

Attested

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



Appellant

Respondent

**By RPAD / SPEED POST**

To,  
M/s. Saurabh Shrimohan Khandelwal,  
G/101, Orange Avenue, Maple County,  
Behind Ornate Park, Sindhu Bhavan Road,  
Thaltej, Ahmedabad - 380059

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

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)

Guard File

6) PA file



