



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
 टेलीफोन ०७९२६३०५०६५- टेलीफैक्स ०७९२६३०५१३६



DIN: 20230264SW0000333CCF

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COMSTP/1807/2022-APPEAL

/8021-25

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-143/2022-23
दिनांक Date : 02-02-2023 जारी करने की तारीख Date of Issue 03.02.2023आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/155/2021-22
दिनांक: 10.03.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII,
Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Narendrabhai karshandas patel,
D-67, Harsiddh Smruti Society,
Nr. GST Crossing, Ranip,
Ahmedabad-382480

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North, 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052कोई 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 :(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अन्तर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त
धारा को उप-धारा के प्रथम परनुक्त के अन्तर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त
मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी
चाहिए।(ii) 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 :(iii) 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 पाते
वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 रिफैंड के मामले 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 द्वारा एवं नियम के मुताबिक अनुकूल, अपील के द्वारा पारित के समय पर या बाद में वित्त अधिनियम (नं.2) 1998 द्वारा 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.

(d) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या डए-8 में दो प्रतियाँ में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ लघित आवेदन किया जाना चाहिए। उसके साथ खाता डू, का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित की के भुगतान के समूह के साथ टीआर-6 चालान 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) 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिसर 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, 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 ओयरा के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पड़ी 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 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 (डिस्ट्रेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हाताकि, 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 गतल सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा "तबित अपील" में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व जमा 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 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. Narendrabhai Karshandas Patel, D-67, Harsiddh Smruti Society, Nr. GST Crossing, Ranip, Ahmedabad - 382480 (hereinafter referred to as "the appellant") against Order-in-Original Number CGST/A^{bad-North}/Div-VII/ST/DC/155/2021-22 dated 10.03.2022 (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 fact of the case are that the appellant was holding PAN No. ATHPP7007L. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Years 2014-15 to 2016-17, it was noticed that the appellant had earned an income of Rs. 36,22,150/- during the FY 2014-15; an income of Rs. 26,55,820/- during the FY 2015-16 and an income of Rs. 13,18,630/- during the FY 2016-17, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194-C, 194I, 194H, 194J" provided 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 period from FY 2014-15 to 2017-18 (up to Jun-17). 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-V/Div-VII/A^{bad-North}/TPD UR/12/2020-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 10,30,587/- for the period FY 2014-15 to FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2017-18 (up to Jun-17). The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994 and imposition of penalties under Sections 77 and 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 10,30,587/- 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 to 2016-17. Further (i) Penalty of Rs. 10,30,587/- 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) of the Finance Act, 1994; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994 and (iv) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.



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

- Appellant is engaged in providing Tractor and JCB hiring services on contract basis at residential schemes approved by government development authorities and hence their services are exempted from Service Tax as per Para 12, 12A, 13 and 14 of Notification No.25/2012 dated 20.06.2012.
- Further, Service Tax is payable on RCM basis in case the consignor or consignee is covered in specified person as mentioned in Notification 35/2004 dated 03.12.2004 and accordingly service provider is not liable to pay service tax on charges collected for hiring of tractor for transportation and hence has not obtained Service Tax Registration.
- They submitted that Notification No. 35/2004-Service Tax, dated 3rd December, 2004 prescribes that the person making payment towards freight would be liable to pay the service tax, in case the consignor or the consignee of the goods transported in one of the specified seven categories.
- As appellant has provided tractor and JCB hiring services to residential schemes approved by Government which is exempted from levy of service tax as per the Mega Notification and charges collected for transportation of material through Tractor is covered under reverse charge mechanism, appellant has excluded the same and neither charged service tax nor paid service tax on the same.
- With such an interpretation service provider has decided-not to collect the service tax and to pay the same as the service is not taxable service under the main provision of the Act. Accordingly, requirement u/s 73 (1) are not satisfied. Hence, extended period of section 73 (1) could not be invoked in the given case.
- The adjudicating authority has erred in invoking extended period of limitation as appellant has neither charged service tax nor paid service tax on the tractor and JCB hiring services to residential schemes approved by Government for the reason that the same is exempted from levy of service tax as per the Mega Notification and Reverse charge mechanism is applicable on tractor charges for transportation of material
- The adjudicating authority has erred in ordering to pay the interest at appropriate rate under section 75 of the Act.
- The adjudicating authority has erred in imposing penalty of Rs.30,000/- under section 77 of the Act.



- The adjudicating authority has erred in imposing the penalty of Rs. 10,30,587/- under section 78 of the Act.

4. Further, on going through the appeal memorandum, it is noticed that the impugned order was issued on 10.03.2022 and received by the appellant on 28.03.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 21.06.2022, i.e. after a delay of 25 days. The appellant have along with appeal memorandum also filed a Miscellaneous Application seeking condonation of delay stating that in the preamble of the impugned order, the time period mentioned to file the appeal is 3 months from the date of communication of order, therefore, the appellant was of view that the last day for filing the appeal would be 28.06.2022. Subsequently, the appellant got to know that the actual period of limitation for filing appeal is 2 months and not 3 months. Further, they were unregistered person and had to complete various formalities for payment of pre-deposit. Thus, it resulted in delay of 25 days, which was unintentional and was due to miscommunication / misunderstanding.

4.1 Personal hearing in the matter of Miscellaneous Application for condonation of delay was held on 25.11.2022. Shri Hardik V. Vora, Advocate, appeared on behalf of the appellant. He stated that the appellant was unregistered. He had to pay pre-deposit under GST as well as under ACES, which caused delay, as he had to go to Range office for generating challan and complete formalities.

4.2 Before taking up the issue on merits, I proceed to decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the dates of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 25 days and take up the appeal for decision on merits.

5. Personal hearing in the case was held on 17.01.2023. Shri Hardik V. Vora, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He stated that the services provided by the appellant are covered under reverse charge mechanism. He further stated that he would make additional written submission containing the relevant documents for assessment.

5.1 The appellant have vide their additional written submission dated 20.01.2023, inter alia, reiterated the submission made in the appeal memorandum and made further submissions as under :



- As per the provisions of Section 66D(p) of the Finance Act, 1994, services provided by way of transportation of goods by road is covered under negative list. In the present case, appellant has provided tractor hiring services at construction site for transportation of materials i.e. cement, sand, gravels, stones, etc. As services by transportation of goods is covered under Section 66D i.e. negative list, the appellant is not liable to charge service tax on income earned by providing tractor hiring services. With such an interpretation, service provider has decided not to collect the service tax and to pay the same as the service is not taxable service under the main provision of the Act.
- Alternatively and without prejudice to above submission, as per sub-section (50B) to Section 65 of the Finance Act, 1994, Goods Transport Agency is defined as "*any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called*", in the present case, work order is received by the appellant for particular site and hence, instead of issuing consignment note on daily basis, cumulative invoice is issued on monthly basis in the name of the principal contractor for each site. And it is clearly stated in the definition that person can issue consignment note by whatever name called. Hence, if the appellant is considered as GTA (Goods Transport Agency), then as per Notification No. 30/2012-ST dated 20.06.2012, the same are covered under reverse charge mechanism and 100% of the tax is payable by the recipient of services. In the present case, the appellant has provided sub-contracting services as tractor hiring for transportation of materials used in construction through principal contractors, which are covered under the list of specified persons. Hence, the same is covered under Reverse Charge Mechanism and the appellant is not liable to pay service tax on the same.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; additional written submission 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 from FY 2014-15 to 2016-17.

7. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 to FY 2016-17 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 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 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.

8. I find that main contentions of the appellant is that (i) they are engaged in providing Tractor and JCB hiring services on contract basis at residential schemes approved by government development authorities and hence their services are exempted from Service Tax as per Para 12, 12A, 13 and 14 of Notification No. 25/2012 dated 20.06.2012; (ii) they have provided transport of goods by road services for transport of material viz. cement, sand, gravels, stones, etc., and their service is not chargeable to service tax as the same is falling under negative list as per Section 66D(p) of the Finance Act, 1994 and (iii) they transported material and issue cumulative invoice for charges collected for transportation of material through Tractor and they falls under the definition of Goods Transport Agency and thus their service covered under Reverse Charge Mechanism as per Notification No. 30/2012 dated 20.06.2012 and accordingly service provider is not liable to pay service tax on charges collected for hiring of tractor for transportation.

9. It is further observed that the adjudicating authority while confirming service tax held that the activity undertaken by the appellant were classifiable under the category of "Supply of Tangible goods for use" defined under Section 65(105)(zzzzj) of the Finance Act, 1994. However, I find that the provisions under Section 65(105) of the Finance Act, 1994 has been replaced by negative list based service tax regime vide Notification No. 20/2012-ST dated 05.06.2012, made applicable w.e.f. 01.07.2012. Hence, the adjudicating authority has confirmed the demand under the provisions prevalent before 01.07.2012, which are not in assistance for the period of demand pertaining to FY 2014-15 to 2016-17. Thus, I find that the



impugned order has been issued by the adjudicating authority without proper appreciation of the facts on records and without applying correct provisions of the law. Hence, they are legally unsustainable.

9.1 In this regard, I also find that the CBIC had, vide instruction dated 26.10.2021, as enumerated above, clearly directed that *"in all such cases where the notices have already been issued, adjudicating authority are expected to pass a judicious order after proper appreciation of facts and submission of the notices."* However, I find that in the present case, the adjudicating authority, without verifying the documents of the service provided, confirmed the service tax demand. Therefore, 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. I also find that the appellant have submitted copies of invoices for the relevant period to this office as part of additional submission and the said documents were not submitted by the appellant before the adjudicating authority. I am of the considered view that the appellant can not seek to establish their eligibility to exemption at the appellate stage, for the first time. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption.

11. 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 submitted by the appellant, pass a speaking order.

12. 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.

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.



Akhilesh Kumar
24 Feb 2022
(Akhilesh Kumar)
Commissioner (Appeals)

Attested

Date : 02.02.2023



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

By RPAD / SPEED POST

To,

M/s. Narendrabhai Karshandas Patel,
D-67, Harsiddh Smruti Society,
Nr. GST Crossing, Ranip,
Ahmedabad - 382480

Appellant

The Deputy Commissioner,
CGST, Division-VII, 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 VII, Ahmedabad North
 - 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
- (for uploading the OIA)

5) Guard File

- 6) PA file

