



सत्यमेव जयते

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



DIN:20230264SW000000BF82

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/144/2022-APPEAL / ६३७९ -६५
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-156/2022-23
 दिनांक Date : 14-02-2022 जारी करने की तारीख Date of Issue 16.02.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. 135/ADC/MR/2021-22 दिनांक: 31.03.2022, issued by
 Joint/Additional Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

The Deputy/ Assistant Commissioner, CGST, Division-I, Ahmedabad North
 ,Ground Floor, Jivabhai Mansion Building, Aashram Road, Ahmedabad -
 380052

2. Respondent

M/s. Payal Packaging Private Ltd.,
 71, Diamond Park, opposite Hitendra Nagar,
 Naroad Estate, Ahmedabad-382340

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित 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 वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 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(i) (a) above.



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

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित 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। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

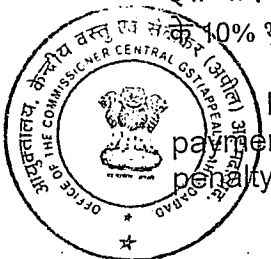
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क 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 the Assistant Commissioner, CGST, Division-I, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the appellant*') in pursuance of Review Order No.12/2022-23 dated 13.07.2022 issued under Section 84(1) of the Finance Act, 1994 by the Commissioner, Central GST, Ahmedabad North, against the Order-in Original No.135/ADC/MR/2021-22 dated 31.03.2022 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*') in the case of M/s. Payal Packaging Private Ltd., 71, Diamond Park, Opposite Hitender Nagar, Naroda Estate, Ahmedabad-382340 (hereinafter referred to as '*the respondent*').

2. The facts of the case, in brief, are that the respondent were providing "Manpower Recruitment/Supply Agency Services" and were holding Service Tax Registration No.AAICP075GSD001. Based on the scrutiny of data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, it was noticed that the 'Sales/Gross Receipts' from services declared in ITR/Form 26AS of the respondent were not tallying with the 'Gross Value of Service' declared in their ST-3 Returns. The respondent had declared less taxable value amounting to Rs.5,87,17,161/- in their ST-3 Return for the F.Y. 2015-16 & F.Y. 2016-17 as compared to the income declared in their Income Tax Return (ITR) / Form 26AS filed under the Income Tax Act. Letters were subsequently issued to the respondent to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16 & F.Y. 2016-17. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts.

2.1 A Show Cause Notice (SCN) No.STC/15-141/OA/2021-22 dated 23.04.2021 was, therefore, issued to the respondent proposing recovery of service tax demand of Rs.86,85,323/- not paid on the differential value of income received during the F.Y. 2015-16 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 77 and under Section 78 of the Finance Act, 1994 were also proposed.

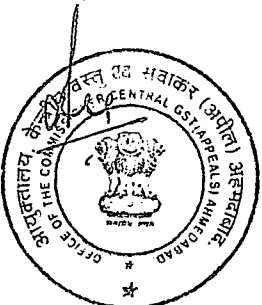
2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.86,85,323/- was dropped alongwith interest and penalties. The adjudicating authority has held that the respondent has provided Manpower Supply Service to only two clients namely M/s. GSP Crop Science Pvt. Ltd & M/s. Shreeji Pesticides Pvt. Ltd. On perusal of the Balance Sheet, Copies of Ledger Account, Profit and Loss Account, copy of ITR furnished by the respondent, the adjudicating authority



observed that as both the aforesaid service receivers fall under the category of body corporate, therefore, the liability to pay service tax falls on them in terms of Sr. No. 8 of Notification No.30/2012-ST dated 20.06.2012, amended vide Notification No. 07/2015-ST dated 01.03.2015, w.e.f. 01.03.2015.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

- The Adjudicating Authority has erred in finding that the respondent has provided Manpower Supply Service to two clients only, namely M/s. GSP Crop Science Pvt. Ltd & M/s. Shreeji Pesticides Pvt. Ltd. and that both these companies are business entity registered as body corporate and therefore entire (100%) Service Tax is payable by service receiver with effect from 01.04.2015 as per Sr. No. 8 of the Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015 w.e.f. 01.03.2015.
- In terms of the relevant provisions of Reverse Charge Mechanism(RCM) related to payment of Service Tax in respect of "Manpower Services" as per Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015 w.e.f. 01.03.2015, where the manpower services are provided "**only**" by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, 100% liability to pay Service Tax is on the service receiver as per Reverse Charge Mechanism (RCM). So, where the service provider is other than "any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons", 100% liability to pay Service Tax is on the service provider. So, if the manpower supply services are provided by Company or Body Corporate, the Service Tax is payable by service provider instead of service receiver.
- M/s. Payal Packaging Private Limited is a Private Limited Company and does not fall under the category of Individual, HUF, Proprietary firm, Partnership firm (registered or not) or Association of persons located in taxable territory. Thus, M/s Payal Packaging Private Limited is a Private Limited Company which falls under definition of "Body Corporate". From the website www.zaubacorp.com, it is observed that Payal Packaging Private Limited is a Private Company incorporated on 27 March 2015 and classified as Non-Govt. Company and is

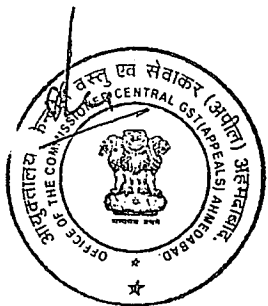


registered at Registrar of Companies, Ahmedabad. Its authorized share capital is Rs. 100,000 and its paid up capital is Rs. 100,000. Therefore, M/s Payal Packaging Private Limited is liable to pay Service Tax, being a service provider of Manpower Supply Services.

- Even after introduction of negative list with effect from 01.07.2012, "service" means any activity carried out by a person for another for consideration, and includes a declared service. The manpower supply services is not covered in negative list as defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), therefore, the activity carried out by the respondent i.e. Manpower Recruitment/Supply Agency Service falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List.

4. The respondent has filed a cross-objection contesting the grounds of appeal on following grounds:-

- There is no pending liability of service tax against the respondent. They have filed ST-3 Returns showing payment of tax, which were not verified by the department though were available to them. Thus, the SCN issued to the respondent was in complete vague manner.
- The SCN alleges that the respondent has not filed the ST-3 Returns for F.Y. 2016-17 to F.Y. 2016-17 and has reflected the income in the ITR filed for respective period which is not true. The respondent, in fact, has filed the ST-3 Returns and also discharged all the tax liabilities. Copy of challans evidencing the tax liabilities discharged for relevant period is submitted. For the F.Y. 2015-16 and F.Y. 2016-17, the respondent has paid the service tax of Rs.32,14,137/- & Rs. 50,368,331/- respectively.
- It is conclusively held by various judicial forums that the short payment of service tax liability cannot be alleged on the basis of accounting figures of the company's Balance Sheets or P &L Account unless there is a conclusive evidence of evasion of duty. They placed reliance on following case laws:-
 - Kush Constructions- 2019(24) GSTL 606
 - Go Bindas Entertainment Pvt. Ltd- 2019 (27) GSTL 397
 - Vijay Packaging Systems – 2010(262) ELT 832



- The demand is time barred as the entire tax liability was discharged in the ST-3 Returns filed in due course. Hence suppression cannot be invoked. Even otherwise the notice was issued under the wrong impression that the respondent has taken the benefit of Notification No.30/2012-ST which was never availed. Reliance is placed on the judgments passed in the case of Continental Foundation- 2007(216) ELT 177 (SC); Jaiprakash Industries Ltd-2002(146) ELT 481 (SC).
- Neither, the facts of the case, justify or warrant imposition of any penalty nor any specific allegations are made in the SCN for imposing the same. When there was no intent to evade the payment of tax hence penalty u/s 78 is not imposable.
- Interest is also not leviable since there is no short payment or non-payment of tax.

5. Personal hearing in the matter was held on 18.01.2023. Shri Sudhanshu Bissa, Advocate, appeared on behalf of the respondent. He reiterated the submissions made in the cross-objection filed against the appeal.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, the submission made by the respondent in the cross-objection as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.86,85,323/- dropped alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2015-2016 to F.Y. 2016-17.

7. On examination of the SCN, it is observed that the total service tax liability of Rs.86,85,323/- for the F.Y. 2015-16 to F.Y. 2016-17 was ascertained on reconciliation of the income shown in the ST-3 Returns filed by the respondent vis a vis the amount shown as 'Sales of Services' in their ITR filed with the Income Tax department. It is observed that the respondents are providing "Manpower Recruitment/Supply Agency Services". The demand has been dropped on the findings that the respondent has provided services to body corporate and in terms of Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015 w.e.f. 01.03.2015, the liability to pay the service tax under RCM shall be on the service receiver. The appellant are contesting the impugned order on the grounds that the



respondent is a Private Limited Company and fall under the definition of "Body Corporate", therefore, the liability to pay tax shall be on service provider i.e. on the respondent.

8. As per Notification No.30/2012, dated 20-06-2012, in respect of services provided or agreed to be provided supply of manpower service by the Individual/HUF/Firm/AOP to the companies/LLP the liability to pay service tax would be in ratio of 25 % and 75 % respectively. However, this proportion of service tax liability has been amended to substitute to Nil to 100% with effect from 01.04.2015 vide Notification No. 07/2015-ST dated 01.03.2015

Relevant Text of Notification No.30/2012-ST dated 20.06.2012,

(v) *provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;*

(B) *provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;*

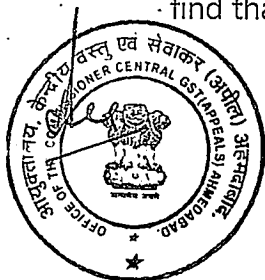
TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	<i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose</i>	25%	75 %

Relevant Text of Notification No. 07/2015-ST dated 01.03.2015

(iii) *against Sl. No. 8, in column (3) and column (4), for the existing entries, the entries "Nil" and "100%" shall respectively be substituted;*

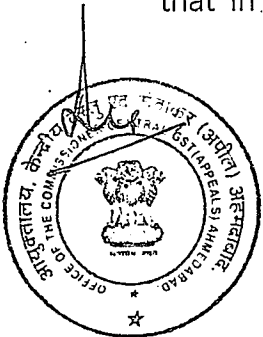
8.1 On going through the website of the respondent, I find that they are a Private Limited Company. The payment of service tax under reverse charge mechanism is not applicable to them under Notification No.30/2012-ST, as amended. Hence, the service tax liability for F.Y.2015-16 to F.Y. 2016-17 shall be on the respondent only. I, therefore, find that the demand dropped in the impugned order is not legally sustainable.



9. The respondent are contending that the allegation made in the SCN non-payment and non-filing of the ST-3 Returns for F.Y. 2015-16 to F.Y. 2016-17 is incorrect. They claim that they have filed the ST-3 Returns and also discharged entire tax liabilities for the relevant period hence the allegation is baseless. They produced copy of ST-3 Returns and challans evidencing the tax liabilities discharged for relevant period. On examining the documents, it is noticed that the respondent has filed the ST-3 returns for the F.Y. 2015-16 and F.Y. 2016-17 and have also paid the service tax for said period. I, therefore, find that the allegation made in the SCN regarding non-filing of the ST-3 Returns and non-payment of service tax is erroneous and has been made without proper verification of facts.

9.1 I find that the Board vide Instruction dated 26.10.2021 has directed the field formations that while analyzing ITR-TDS data received from Income Tax Department, a reconciliation statement has to be sought from the taxpayer for the difference and that whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. 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. The show cause notice based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. Where such notices have already been issued, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee.

9.2 I find that the demand in the instant case has been raised merely on the basis of the sales of the services under Sales/Gross Receipts from services (Value of ITR) or the Value of TDS. The fact that the respondent has made the payment of service tax and filed the ST-3 Returns for the F.Y. 2015-16 to F.Y. 2016-17 was not taken into consideration. The notice was issued indiscriminately based on the income reflected in the returns filed with the IT Department, which I find is not legally sustainable. Neither re-conciliation of financial statements nor proper appreciation of facts was done while issuing the notice. Further, in terms of Boards' Instruction dated 26.10.2021, the adjudicating authority is expected to pass a judicious order after proper appreciation of facts and submission of the appellant, which in this case was not followed and has led to violation of the principles of natural justice in so much as the instruction issued in Boards' above mentioned Circular was not followed in true spirit. I, therefore, find that in the interest of justice, it would be proper to remand the case back to the



adjudicating authority who shall decide the case afresh after taking into considering the discussions held supra.

10. Accordingly, the impugned order is set-aside and appeal filed by the appellant to above extent is allowed.

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

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

Akhil Kumar
14/05 February 2023
(अखिलेश कुमार)
आयुक्त (अपील्स)

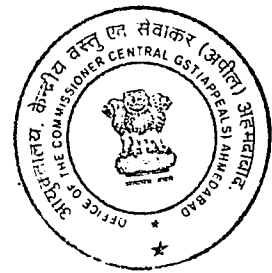
Date: 14.2.2023

Attested

Rekha Nair

(Rekha A. Nair)

Superintendent (Appeals)
CGST, Ahmedabad



Appellant

By RPAD/SPEED POST

To,

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

Respondent

M/s. Payal Packaging Private Ltd.,
71, Diamond Park, Opposite Hitender Nagar,
Naroda Estate,
Ahmedabad-382340

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.