



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:20230364SW0000434191

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1835/2022-APPEAL / 9665-69
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-174/2022-23
 दिनांक Date : 27-02-2023 जारी करने की तारीख Date of Issue 02.03.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-06/D-VI/O&A/233/Jigar/AM/2021-22 दिनांक: 18.04.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Jigar Nalinbhai Shah,
B-206,Aawash Apartment,
Bhaikakanagar, Thaltej,
Ahmedabad-380054

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
North , 7th 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 :

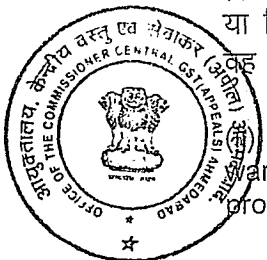
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 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 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 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(Appel) 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 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 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.

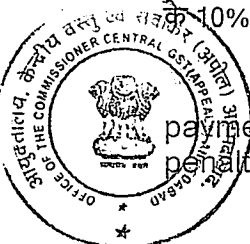
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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."



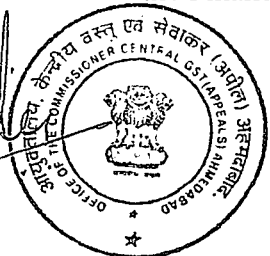
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Jigar Nalinbhai Shah, B-206, Aawash Apartment, Bhaikakanagar, Thaltej, Ahmedabad – 380054 (hereinafter referred to as “the appellant”) against Order-in-Original No. GST-06/D-VI/O&A/233/Jigar/AM/2021-22 dated 18.04.2022 (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. BFNPS2142J. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 25,45,657/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” 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 Account, Income Tax Return, 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. GST-06/04-458/O&A/Jigar/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 3,14,641/- 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 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 78,661/- 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. The adjudicating authority has dropped the remaining demand of Service Tax. Further (i) Penalty of Rs. 78,661/- 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; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.



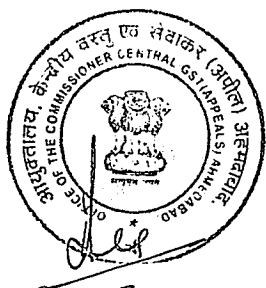
3. Being aggrieved with the impugned order, the appellant have preferred the present appeal on the following grounds:

- The appellant are engaged in providing "Manpower Recruitment or supply agency service" to body corporate.
- Section 73(6)(i)(a) and 73(6)(i)(b) are applicable to the person who has taken registration and who is required to file returns. Depending on the situation whether return is filed or not, the relevant date is applicable. However, in the present case appellant has neither taken registration nor filed return therefore both the sub-sections are not applicable to him. Therefore, the residual subsection 73(6)(i)(c) is applicable to the appellant, which states that "in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder. Therefore, the relevant date in appellant's case would be, Service tax required to be paid i.e. 6th of next month or quarter. Further, in appellant's case the turnover is less than 50 lakhs, hence quarterly payment shall be applicable. Therefore, it is to submit that the demand for the period April 2014 to December 2014 is time barred. They relied upon the following case laws in support of their contention:

- (i) Span Commercial Co. Vs. CCE Ahmedabad-I. Final Order No. A/10185/2020 dated 14.01.2020
- (ii) Suzica Color Laboratory Vs. Commissioner of Central Excise and Service Tax, Patna [2020-TIOL-1176-CESTAT-KOL]
- (iii) Guala Closure (India) Pvt. Ltd Vs. CCE , Ahmedabad-II, Final Order No. A/12117/2018 dated 23.08.2018
- (iv) M/s. Concept Motors Pvt. Ltd. Vs. CST, Ahmedabad. Final Order No. A /11717/ 2018 dated 07.08.2018
- (v) M/s. Truvision Colour Lab. Vs. Commissioner of Central Excise, Indore [2017(51)STR 267 (Tri.-Del.)]

- The appellant has not charged and collected service tax from the service receivers as the appellant was under a bona-fide belief that no service tax is payable. Therefore, under Section 67(2) of the Finance Act 1994 and in view of various judicial pronouncements as stated above, the appellant is eligible for the benefit of cum tax valuation.

a. Balaji Manpower Service reported at 2019 (31) GSTL 418 (P&H)



b. M/s. Honda Cars India Ltd. reported at 2018 (3) TMI 257 (CESTAT NEW DELHI)

c. Hi-Line Pens Ltd. reported at 2017 (5) GSTL 423 (Tri.-Del.)

d. M/s. Hans Interiors reported at 2016-TIOL-1155-CESTAT-Chennai.

e. Loop Mobile India Ltd. reported at 2016-TIOL-959-CESTAT-MUM.

f. Polaris Software Lab Ltd. reported at 2016-TIOL-427-CESTAT-MAD

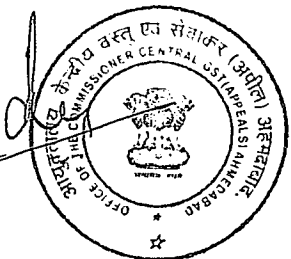
g. M/s. PC Construction, M/s. Raj and Co. reported at 2015-TIOL-1569-CESTAT-ALL.

- The appellant is mainly into housekeeping service. It is submitted that as per facts it is clear that the appellant uses material for providing house keeping service. The same has not been verified from the records by the adjudicating authority. The appellant further urges that in view of the fact, wherein they have used material, the value of the same shall be deducted. The appellant submits that the value of material in providing such service includes Rs. 4,56,000/- therefore after deducting the said value, the amount shall fall below the exemption limit and therefore shall not be liable for Service tax.
- The appellant further submitted that even in show cause notice, for any year under dispute they have not crossed amount of Rs.50 lakhs in previous financial year. Thus, according to Rule 6 of the Service Tax Rules, 1994, they were liable to pay Service Tax only when they had received the payment of services provided by them. Merely because an amount is specified in invoice did not made them liable to make payment of Service Tax. Therefore, it is to submit that while arriving at the demand, all the details have been clubbed and the actual receipts are not considered.
- The appellant submits that he is eligible for SSI exemption.
- Figures from 26AS cannot be used for determining service tax liability unless there is conclusive evidence as to the said is on account of providing taxable service. For the same the appellant relied upon on below mentioned cases:

a) Indus Motor Company Vs CCE, Cochin 2007-TIOL-1855-CESTAT-Bang: 2008 (9) STR (Tri. Ban.)

b) Synergy Audio Visual Workshop Pvt. Ltd. Vs CST Bangalore, 2008-TIOL-809-CESTAT-BANG

c) Kush Constructions Vs CGST NACIN reported at 2019 (34) GSTL 606



d) M/s. Quest Engineers & Consultant Pvt. Ltd. reported at 2021 (10) TMI 96

- o It is necessary that there must be suppression of facts or willful mis-statement with intent to evade payment of tax for invoking extended period of limitation. Therefore, demand confirmed vide impugned order invoking proviso to Section 73 is erroneous.
- o An extended period of limitation can be invoked only in a case where service tax has not been paid on account of fraud, collusion, and wilful misstatement, suppression of facts with an intention to evade tax. In other words, to invoke an extended period of limitation, there has to be an allegation to that effect and in case of failure of allegation, an extended period of limitation cannot be invoked.
- o The appellant is not liable to pay any service tax. Thus, the question of paying interest under Section 75 of the Finance Act, 1994 does not arise. Therefore, demand of interest raised by the adjudicating authority is not tenable and no liability under Section 75 arises. It is a well-settled principle of law that where there is no demand of duty, interest and penalty cannot be imposed. Penalty cannot be imposed mechanically since the essential ingredients for the levy of penalty are missing.
- o Without prejudice to the above, the appellant also submitted that in the absence of "mens rea", the question of levy of penalty under section 78 does not arise. It is to further submit that the existence of "mens rea" is important for the levy of the penalty and in cases where the mens rea is absent, no penalty can be levied. As stated above, suppression of facts is not there in the subject case of the appellant. Therefore, the proviso to Section 73(1) is not applicable. Since, proviso to Section 73(1) is not applicable, penalty under Section 78 is not imposable. When suppression of facts or fraud or collusion or willful misstatement with the intent to evade payment of service tax is not proved in terms of Section 73(1) of the Finance Act, 1994, penalty under Section 78 cannot be imposed.

4. Personal hearing in the case was held on 15.02.2023. Shri Bishan Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He stated that the demand is barred by limitation even by invoking extended period of limitation.



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 amounting to Rs. 78,661/- against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

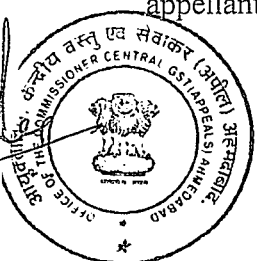
6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification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

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

6.2 The adjudicating authority while passing the impugned order has, inter alia, held that the appellant have provided Manpower Supply Services to the Body corporate and as per



Notification No. 30/2012-ST dated 20.06.2012, the liability to pay service tax by the service provider was fixed at 25% and that of service recipient was fixed at 75% during the FY 2014-15. Therefore, total service tax liability of the appellant for the FY 2014-15 is Rs. 78,661/- on the taxable value of Rs. 6,36,414/- (25% of total income of Rs. 19,09,243/-).

7. I also find that the appellant have, apart from merits of the case, also contested the demand on limitation. They have also contended that the demand is barred by limitation even by invoking extended period of limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14th November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). Therefore, considering the last date of which such return was to be filed, I find that the demand for the period April, 2014 to September, 2014 is time barred as the notice was issued on 28.09.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant to that extent that even if the suppression is invoked, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014 as, the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

7.1 For the remaining period from October, 2014 to March, 2015, the due date of filing ST-3 Return was 25th April, 2015. However, due to COVID pandemic, in terms of relaxation provision of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government had extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the period from 20th March, 2020 to 29th September, 2020, the same shall stand extended to 31st March, 2021. In the instant case, the due date for issuing SCN was 24th April, 2020, but the same was issued on 28th September 2020. Considering the relaxation provided vide above Ordinance in the time limit for issuance of SCN, I find that the notice covering the period from October, 2014 to March, 2015 was issued well within extended period of limitation of five years and is legally sustainable under proviso to Section 73(1) of the Finance Act, 1994.

7.2 In view of the above, as the demand for the period April, 2014 to September-2014 is held to be time barred, the remaining demand for the period October-2014 to March-2015 needs to be quantified a fresh.

8. Further, the adjudicating authority in the remand proceeding should also consider other contentions of the appellant viz. (i) they have not crossed amount of Rs.50 lakhs in

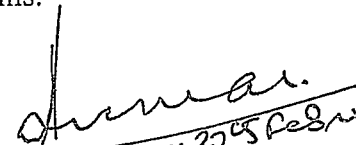


previous financial year, thus, according to Rule 6 of the Service Tax Rules, 1994, they were liable to pay Service Tax only when they had received the payment of services provided by them; (ii) they have not charged service tax from the service receivers and therefore provision of Section 67(2) will be applicable and benefit of cum duty valuation is admissible to them; (iii) they were eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 during the FY 2014-15; and (iv) they have used material for providing house keeping service and the value of the same shall be deducted, while recomputed the Service Tax liability, if applicable. These contentions have been made for the first time in appeal proceedings. Hence, it is also directed to adjudicating authority to check the eligibility of the same and give appropriate finding on the same while passing the order. The appellant is also directed to produce the relevant documents in support of their claim before the adjudicating authority for verification within 15 days of receipt of this order.

9. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh in light of the above direction and pass a speaking order after following the principles of natural justice.


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

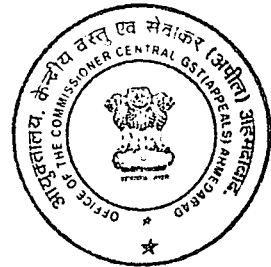
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date : 27.02.2023

Attested


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



By RPAD / SPEED POST

To,
M/s. Jigar Nalinbhai Shah,
B-206, Aawas Apartment,
Bhaikakanagar, Thaltej,
Ahmedabad – 380054

Appellant

The Assistant Commissioner,

Respondent

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)

~~5) Guard File~~

6) PA file



