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
सत्यमेव जयते
07926305065- टेलेफैक्स07926305136

DIN:20230364SW0000318834

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1853/2022-APPEAL /9488-92

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-192/2022-23**
दिनाँक Date : **13-03-2023** जारी करने की तारीख Date of Issue 15.03.2023

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/206/Rakesh A Oza/AM/2021-22** दिनाँक: **30.03.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Rakesh A Oza,
   48, Hari Om Villa, Near Lal Gebi Ashram,
   Next to Iscon Flower, Bopal-Guma,
   Ahmedabad-380058

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 पूवोक्त 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।

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

(क) भारत 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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.

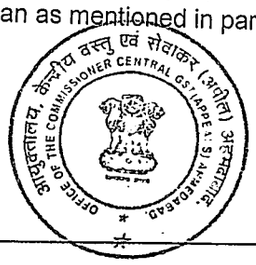
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश 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 हैं।

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 रू.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 in 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 अपीलो 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

M/s. Rakesh A Oza, 48, Hari Om Villa, Near Lal Gebi Ashram, Next to Iskon Flower, Bopal-Guma, Ahmedabad-380058 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.GST-06/D-VI/O&A/206/Rakesh A Oza/AM/2021-22 dated 30.03.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant are having Service Tax Registration No. AABPO8451ESD001.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and F.Y. 2016-17, it was noticed that the appellant had earned substantial income by providing taxable services. They had earned income of Rs.15,75,435/- & Rs.46,49,282/- (totalling to Rs.62,24,717/-) during the F.Y. 2015-16 & F.Y. 2016-17 respectively, which they 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, 1961, on which no tax was paid. Letters were, therefore, issued to the appellant 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. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the income of Rs.62,24,717/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs.9,13,321/- for said period was accordingly worked out.

2.1 Thereafter, a Show Cause Notice (SCN) No. CGST-06/04-695/O&A/Rakesh A Oza/ 2020-21 dated 22.10.2020 was issued to the appellant proposing recovery of service tax amount of Rs.9,13,321/- not paid on the value of income received during the F.Y. 2015-16 and F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 76, Section 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.6,43,414/- was confirmed alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77(1)(a) and penalty of Rs.6,43,414/- was also imposed under Section 78. The demand of service tax on income of Rs.10,19,103/- was however dropped as the same was received by the services provided to SEZ unit and hence not taxable.

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

- The demand was confirmed without conducting proper examination of facts and inquiry. The value of receipted charges were to be excluded from the value of taxable services in terms of Section 67 of the Act read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006. The income was reimbursement of expenses incurred in capacity of pure agent.

- The value of taxable services determined under self-assessment was never challenged by the revenue. Thus, now such value cannot be questioned by issuing a notice based on third party data.
- The notice is barred by limitation of normal period hence extended period cannot be invoked.
- When the demand is not justifiable, interest and penalties are also not sustainable.

4. Personal hearing in the matter was held on 06.03.2023. Shri Rahul Patel, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also stated that he would submit a paper book as additional written submission containing relevant documents.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. As no additional written submission has been made till date, I proceed to decide the case based on the available documents and the submissions made in the appeal memorandum. The issue to be decided in the present case is as to whether the service tax demand of Rs.6,43,414/- confirmed 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. 2015-16 and F.Y. 2016-17

6. The appellant have stated that they are a proprietorship firm and are providing services of Custom House Agent. They have claimed that the differential income earned was reimbursement of expenses incurred in capacity of pure agent, which in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 are excluded from the value of the taxable service. The adjudicating authority has confirmed the demand on the findings that the appellant have not produced any contractual agreement entered with their client/service recipient to prove that they were acting as pure agent; they also failed to provide documents to establish that the expenditure/costs were incurred in the course of providing taxable service and that they have not collected any excess amount in guise of reimbursement expenses.

6.1 The provisions relating to determination of the value of taxable services contained in Service Tax (Determination of Value) Rules, 2006 are clear and unambiguous. Relevant text of Rule 5 of Service Tax (Determination of Value) Rules, 2006 is reproduced below:

> ***RULE 5. Inclusion in or exclusion from value of certain expenditure or costs.*** *— (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*
>
> *[**Explanation.**- For the removal of doubts, it is hereby clarified that for the [the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided].]*
>
> *(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-*
>
> *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. *- For the purposes of sub-rule (2), "pure agent" means a person who -*

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. *- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.*

As per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in the course of providing service, all such expenditure or costs shall be included in the value for the purpose of charging Service Tax on said service. However, Rule 5(2) ibid, *inter alia,* envisages that the expenditure or costs incurred by the service provider as a pure agent of recipient of service shall be excluded from the value of taxable service, if all the conditions mentioned therein are satisfied.

6.2 The appellant have produced two debit notes issued in the name of M/s. Niyam Industries and M/s. Astral Sterlitech Pvt. Ltd. In the debit notes, they have split the charges as taxable & non-taxable. The expenses incurred on EDI charges, Customs duty, IATA D.O. Fees, Handling/ Demurrage/Warehousing charges are shown as non-taxable expenses and B/E or S/B Charges, Examination charges, Sealing & Packaging charges, Agency charges are reflected under taxable expenses, on which they have charged service tax at the rate of 14%. From the debit note, it is clear that the appellant were rendering a taxable service as Custom House Agent Service and were collecting Agency Charges separately. In terms of Section 67 of the Finance Act, 1994 read with Rule 5(1) of Service Tax (Determination of Value) Rules, 2006, the expenditure or costs incurred in the course of providing service, shall be included in the value for the purpose of charging Service Tax

on said service. The non-taxable expenses as well as the taxable expenses like EDI charges, Customs duty, IATA D.O. Fees, Handling/ Demurrage/Warehousing charges, B/E or S/B Charges, Sealing & Packaging charges, Examination Charges, Loading/ un-loading charges, Sundry expenses etc incurred by the appellant were towards the activities related to the service provided in relation to the import or export of goods, which a Custom House Agent generally incurs. Some of these charges / expenses though are in the nature of reimbursable expenses but cannot be considered as expenses incurred as "Pure Agent". The costs for inputs services and inputs used in rendering services cannot be treated as reimbursable costs which the CHA has to incur to render their output service.

6.3 After the introduction of Service Tax (Determination of Value) Rules, 2006, the CBEC vide Circular No. 119/13/2009-S.T., dated 21-12-2009 made following clarification on the issue whether the charges, which are said to be paid by the CHAs and later recovered from the customers (i.e. reimbursable charges) should be added to the value for charging service tax from CHAs;

"6. With a view to resolve the disputes and to bring it clarity, the issue has been examined. The divergent practices followed at different places and lack of consistency in the manner of maintaining records and issuance of documents by the CHAs, make it impossible to lay down any specific guidelines or issue any specific directions. In the circumstances, it is clarified that ***essentially, the exclusion should be allowed to such charges from the taxable value of CHA services, where all the following conditions are satisfied, -***

(a) ***The activity/service for which a charge is made, should be in addition to provision of CHA service*** *(as mentioned in paragraph 1);*

(b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to (i) arrange for such activities/services for the customer; and (ii) make payments to other service providers on his behalf;

(c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;

(d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin. In case of CHA includes any mark-up or profit margin on any service, then the entire charge (and not the mark-up alone) for that particular activity/service shall be included in the taxable value;

(e) CHA should provide evidence to prove nexus between the other (than CHA) services provided and the reimbursable amounts. It is not necessary such evidence should bear the name or address of the customer. Any other evidence like BE No./Container No./BL No./ packing lists is acceptable for the establishment of such nexus. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like;

(f) ***Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice (showing the charges against each entry separately) issued by the CHA to his customer. In the latter case, if certain entries do not satisfy the conditions mentioned herein, the charges against those entries alone should be added back to the taxable value;***

(g) Any other miscellaneous or out of pocket expenses charged by the CHA would be includable in the taxable value for the purposes of charging tax on CHA services."

6.4 Though the Circular covers the period prior to negative list regime, but the analogy of the circular can be made applicable in the present case also. The principal job of a CHA is to get the import or export consignments cleared through customs, at times they also arrange service's for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). These services are provided by different agencies such as Port Trust,

Steamer Agents, Cargo Handlers, Warehouse keepers, Packers, Goods Transport Agents. Normally, the CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges CHAs. Similar arrangement can occur for payment of statutory levies like Custom Duties, Port charges, Cesses etc. leviable on the said goods. The exclusion should be allowed to such charges from the taxable value of CHA services, where all the conditions specified in the Service Tax (Determination of Value) Rules, 2006, are satisfied.

6.5 I have gone through the documents like debit notes and corresponding invoices submitted by the appellant. I find that the expenses like EDI charges, Customs duty, IATA D.O. Fees, Handling/ Demurrage/Warehousing charges, B/E or S/B Charges are statutory levies made by them on behalf of their client. All such expenses were initially incurred by the appellant on behalf of the client and were subsequently recovered by raising a Debit Notes to the said client. Thus, such expenses which were incurred on behalf of the client and were subsequently reimbursed to the appellant shall not be included in the taxable value as these are expenses which the CHAs initially pay to these agencies and later recover these charges from the customer along with their own CHA charges. Thus, I find that all such expenses incurred by the appellant on statutory levies or charges are not to be included in the taxable value for computing the service tax, in terms of Section 67 of Finance Act, 1994.

6.6 It is observed that the Hon'ble CESTAT, South Zonal Bench, Bangalore in the case of International Shippers & Traders P. Ltd. 2016 (45) S.T.R. 460 (Tri. - Bang.) vide Final Order No. 21255/2015, dated 26-5-2015, held that in providing Customs House Agents service, reimbursible expenses incurred by CHA for handling, clearing and delivering import cargo at importer's premises being actual are not includible in gross value of services in terms of settled law on this issue. This decision was appealed before Hon'ble Supreme Court. The Apex Court on 16-7-2018 **dismissed** the Civil Appeal No. 8439 of 2016 filed by Commissioner of Central Excise, Customs and Service Tax against the CESTAT Final Order No. 21255/2015, dated 26-5-2015. While dismissing the appeal, the Supreme Court passed the following order;

> *"The appeal is dismissed in terms of the judgment dated 7-3-2018 passed in C.A. No. 2013 of 2014 and other connected matters titled as "Union of India & Anr. v. M/s. Intercontinental Consultants & Technocrats Pvt. Ltd."*

6.7 Thus, applying the ratio of above decision, I find that charges like EDI charges, Customs duty, IATA D.O. Fees, Handling/ Demurrage/Warehousing charges, B/E or S/B Charges are statutory levies made by the CHA on behalf of their client and all such statutory expenses incurred by them are not to be included in the for computing the service tax, in terms of Section 67 of Finance Act, 1994.

7. Further, I also find that the appellant has submitted only few sample invoices & debit notes. On the basis of such sample invoices & debit notes, I cannot grant a comprehensive benefit to the appellant. I therefore, in the interest of justice, remand back the case to the adjudicating authority to decide the case afresh after examining whether the expenses incurred by the appellant were made as a pure agent of the recipient of service and were in addition to the services he provides on his own account. The

appellant is also directed to submit all the relevant documents and details to the adjudicating authority, in support of their contentions, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice. Consequently, I remand back the matter back to the adjudicating authority, who shall pass the order after examination of the documents and verification of the claim of the appellant.

8. In light of above discussion, I set-aside the impugned order confirming the service tax demand of Rs.6,43,414/- alongwith interest and penalties and allow the appeal filed by the appellant by way of remand.

9. 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.

(अखिलेश कुमार) 10 March, 2023..
आयुक्त(अपील्स)

Date: .03.2023

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Rakesh A Oza, - **Appellant**
48, Hari Om Villa, Near Lal Gebi Ashram,
Next to Iskon Flower, Bopal-Guma,
Ahmedabad-380058

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

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. ~~4.~~ Guard File.