



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:20230364SW0000222D39

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1286/2022-APPEAL / 19870 - 71

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-202/2022-23
दिनांक Date : 17-03-2023 जारी करने की तारीख Date of Issue 27.03.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 23/AC/D/2021-22 दिनांक: 14.03.2022/15.03.2022,
issued by Assistant/Deputy Commissioner, Division-IV, CGST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Online Print and Pack Private Ltd.,
Block No.32, Near Baxter Pharmaceuticals,
Sarkhej Bavla Road, Village-Chhacharvadi Vasna,
Changodar, Ahmedabad-382213

2. Respondent

Assistant/Deputy Commissioner, CGST, Division-IV, Ahmedabad North , 2nd
Floor, Gokuldharm Arcade, Sarkhej-Sanand, Ahmedabad - 382210

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 :

i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल 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।

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 :

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.

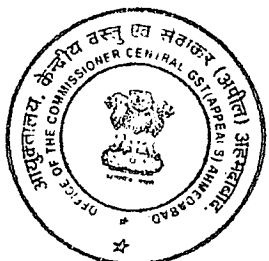
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 अनुसूचि-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.

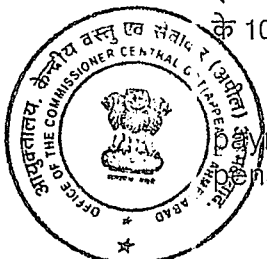
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Online Print and Pack Private Ltd., Block No.32, Near Baxter Pharmaceuticals, Sarkhej Bavl Road, Village-Chhacharvadi-Vasna, Changodar, Ahmedabad-382213 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.23/AC/D/2021-22 dated 14.3.2022/15.3.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that Central Excise EA-2000 Audit was conducted, by the officers of CGST, Circle-VI, Audit, Ahmedabad, on the records of the appellant pertaining to the period from March, 2015 to June, 2016. During the course of audit, various audit objections were raised vide FAR No. CE/ST-474/2020-21 dated 01.12.2020. In Revenue Para-3, it was observed that the salary of Directors indicated in the Balance Sheet differed from the amount indicated in Form-16 filed for F.Y. 2015-16 and F.Y. 2016-17 (upto June 2016). The details are furnished below:-

Name of Director (S/Shri)	F.Y.	Differential Income
Anand Kothawala	2015-16	5,31,200/-
	2016-17(upto June 2016)	68,425/-
Padmarag Kothawala	2015-16	5,19,940/-
	2016-17 (upto June 2016)	85,925/-

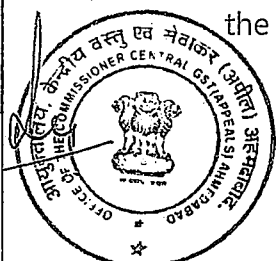
2.1. As the differential amount was not related to the salaries of the Directors, it appeared that the income earned by the Directors were for rendering taxable services to the Company. Therefore, under Reverse Charge Mechanism (RCM), the appellant was liable to pay service tax on such income, as laid down under Notification No.45/2012-ST dated 07.08.2012.

2.2 The appellant contested the audit para. Therefore, a Show Cause Notice No.VI/1(b)-106/IA/AP-39/Cir-VI/2019-2020 dated 30.12.2020 was issued, wherein the service tax amount of Rs.1,75,052/- was proposed to be demanded alongwith interest under Section 73 and Section 75 respectively. Penalty under Section 78 was also proposed.

2.3 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.1,75,052/- was confirmed alongwith interest. Penalty equivalent to demand confirmed was also imposed under Section 78.

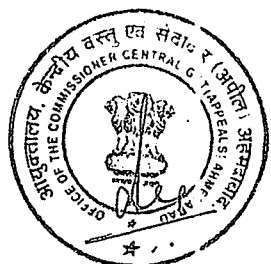
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:-

- The notice as well as the impugned order was passed without jurisdiction. With effect from 01.07.2017, the provisions of Chapter-V of the Finance Act, 1994 have been omitted vide Section 173 of the CGST Act, 2017. Further, Section 6 of the General Clauses Act, 1897 shall also not be applicable in view of the



judgment passed by Apex Court in the case of Rayala Corporation-1969 (2) SCC 412.

- The notice as well as the impugned order is silent on the nature of service rendered by the Directors to the Company. The adjudicating authority has jumped to the conclusion that the service is taxable without establishing whether the service rendered falls within the ambit of the term 'service' defined under Section 65B(44) of the F.A., 1994.
- The differential amount noticed by the auditor is a clerical mistake made by the accountant of the firm. The differential income was owing to the bonus and leave encashment paid to both the Directors, which inadvertently was not reflected in the Form 26AS. However, the TDS u/s 192 has been deducted on actual or entire payment given to the Directors, which was their salary. The differential income was not reflected in the Form 26AS at the first instance however, on noticing the mistake, Form 26AS was revised to the permissible limits allowed. Copy of these documents was submitted to the adjudicating authority.
- The amount paid by the appellant to the Directors in the nature reimbursement was salary which is paid in employee-employer relationship. Such activity is not covered under the ambit of Service defined under Section 65B(44) but was overlooked by the adjudicating authority.
- The onus is on revenue to establish that the services rendered are taxable. The SCN has been issued merely based on presumption that the amount is consideration towards the service. They placed reliance on following citations:-
 - Hindustan Coca Cola Beverages P Ltd- 2016(42) ELT 696 (T)
 - Coco Cola India Inc.- 2016 (42) STR 42 (T)
 - Purni Ads Pvt Ltd- 2010 (19) STR 242 (T)
- The due date for filing ST-3 for the period 01.04.2016 to 30.09.2016 was 25.10.2016. Therefore, the last date to issue SCN in terms of Section 73 would be 24.04.2019, whereas the demand notice covering period April, 2015 to June, 2016 was issued on 30.12.2020, hence entire notice is time barred.
- Invocation of extended period of limitation cannot be justified as there was no deliberate intention to withhold/ suppress information from the department. Reliance placed on the decision passed in the following cases
 - Anand Nishikawa Co. Ltd.- 2005(188) ELT 149 (SC)
 - Padmini Products Ltd- 1989 (43) ELT 195 (SC).
 - CCE Vs Chemphar Drugs & Liniments- 1989 (40) ELT 276 (SC)
 - Gopal Zarda Udyog- 2005 (188) ELT 251 (SC)
- When demand is not sustainable, recovery of interest may not arise. Reliance placed on Modi & Modi Constructions – 2021 (45) GSTL 398 (T).



- They were under the bonafide belief that the transactions in question are not liable to service tax. They placed reliance on the decision passed in the case of Hindustan Steel Ltd- AIR 1970 (SC) 253.

4. Personal hearing in the matter was held on 06.03.2023. Shri Ashish Kumar Jain, Consultant, appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum. He submitted a synopsis during hearing and also submitted reconciliation statement.

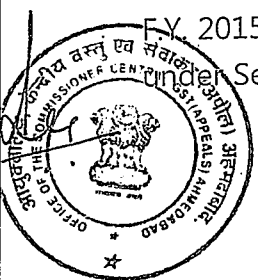
4.1 In the synopsis, they reiterated the grounds of appeal and in addition relied upon the O-I-A No.RAJ-EXCUS-000-APP-175-2019 dated 22.10.2019 passed by the Commissioner (Appeals) Rajkot, in the case of M/s. Falcon Pumps Pvt. Ltd.

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, submissions made at the time of personal hearing as well as in the synopsis submitted during hearing. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.1,75,052/- confirmed 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 & F.Y. 2016-17 (upto June, 2016).

6. The entire demand has been raised based on ITR data provided by Income Tax Department. The notice alleges that the salary paid to Shri Anand Kothawala and Shri Padmarg Kothawala and indicated in the Balance Sheet differed from the amount indicated in Form-16 filed by the Directors for the relevant period. Therefore, it was alleged that Directors have rendered taxable service to the appellant and under RCM, the appellant shall be liable to pay service tax in terms of Notification No.45/2012-ST dated 07.08.2012. In respect of Shri Anand Kothawala, the amount shown in Balance Sheet for the F.Y. 2015-16 & F.Y. 2016-17 as well as the income reflected in Form-16 of respective years showed the difference of Rs.5,31,200/- and Rs.68,425/- respectively. Similarly, in respect of Shri Padmarg Kothawala, the amount shown in Balance Sheet for the F.Y. 2015-16 & F.Y. 2016-17 as well as the income reflected in Form-16 of respective years showed the difference of Rs.5,19,940/- and Rs.85,925/- respectively.

6.1 The appellant, however, claimed that this difference was owing to the fact that the bonus and leave encashment paid to these Directors was inadvertently not reflected in the Form-26AS. The Form-26AS was subsequently revised to the permissible limits. They have claimed that TDS was, however, deducted on the entire remuneration given to these Directors. In support of their argument, they submitted Balance Sheet, Ledgers, Revised Form-26AS and ITR filed by both the Directors,

6.2 On going through the Balance Sheet, Ledgers, Revised Form-26AS filed by both the Directors as well as the calculation sheet submitted by the appellant, it is observed that the Shri Anand Kothawala has filed the revised Form-26AS, according to which the net salary of Shri Anand Kothawala is shown as Rs.17,81,200/- and Rs.4,88,425/- in the F.Y. 2015-16 & F.Y. 2016-17 (upto June, 2016) respectively, on which TDS was deducted under Section 192 of the I.T Act, 1961. Similarly, as per revised Form-26AS filed by Shri



Padmarg Kothawala, net salary is shown as Rs.22,60,740/- and Rs.5,25,000/- in the F.Y. 2015-16 & F.Y. 2016-17 (upto June, 2016) respectively, on which TDS was deducted under Section 192 of the I.T Act, 1961. The adjudicating authority has held that there is a difference in the income shown in Balance Sheet as well as Form-26 AS & ITR. On going through the ITR filed by the Directors, it is noticed that Shri Anand Kothawala has shown an income of Rs.15,00,000/- and Rs.19,53,700/- for the F.Y. 2015-16 & F.Y. 2016-17, under the head 'Salary'. Similarly, Shri Padmarg Kothawala has shown an income of Rs.22,77,540/- and Rs.24,43,700/- for the F.Y. 2015-16 & F.Y. 2016-17, under the head 'Salary'. So, I find that the income stated to have mentioned in the ITR (as per the SCN) does not tally with the income actually reflected in the ITR filed by Directors for respective period. So, to that extent, I find that the income arrived in the SCN is incorrect.

6.3 The appellant have claimed that this income is inclusive of Bonus & Leave Encashment received by the Directors on which income tax was deducted. I have also gone through the Balance Sheet of the appellant and I find that Shri Anand Kothawal and Shri Padmarag Kothwala have indeed received Bonus & Leave Encashment from the appellant for the period in dispute. Details are furnished below:-

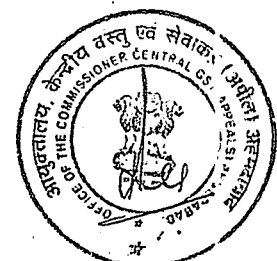
Name of Directors	F.Y. 2015-16		F.Y.2016-17	
	Bonus	Leave Encashment	Bonus	Leave Encashment
Padmarag Kothwala	1,59,940/-	2,00,000/-	1,33,700/-	1,40,000/-
Anand Kothawal	1,24,950/-	1,56,250/-	1,68,700/-	1,75,000/-

The appellant have also submitted an undertaking by Shri Anand Kothawal and Shri Padmarag Kothwala stating that they have received (Rs.1,33,700/- [Anand] + Rs.1,68700/-[Padmarag] towards bonus and (Rs.1,40,000/-[Aanad] & Rs.1,75,000/- [Padmarag] towards Leave Encashment) as reflected in their respective Ledgers of the appellant's Balance Sheet.

6.4 It is observed that Section 192 of the Income Tax Act, 1961, provides that any person responsible for payment of salary should deduct income tax on the amount of salary payable. The appellant in the present case have deducted income tax from the salary payable to the Directors and issued Form No. 16, for the same. In support of their contention, they also submitted copies of their Form-26AS issued to the respective Directors. Further, the Directors, while filing their income tax return, have shown their income earned from the appellant as 'Salary' under Section 192 of the I.T. Act. On going through the relevant documents, I find that the appellant have earned the differential income in the form of Bonus & Leave Encashment, on which TDS was deducted by the appellant. Therefore, the payment made by the appellant to their Directors was remuneration and not a consideration against any taxable service.

6.5 In the negative list service tax regime, brought into effect from 1-7-2012, service has been defined under Section 65B(44) read as follows: -

SECTION 65B. Interpretations. -



(44) "**service**" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include -

- (a) an activity which constitutes merely, -
- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

6.6 Since the relation between the appellant and the two Directors are in the nature of employer and employee, no Service Tax is payable by the appellant on the remuneration paid to these Directors, which is nothing but 'salary' being paid to an employee. Further, no contrary evidence has been brought on record by the adjudicating authority to show that the Directors, who were employee of the appellant, have received an amount other than salary. The Income Tax authorities have also assessed the remuneration paid to the said Directors as salary, which proves that the amount received was in lieu of their employment with the appellant company a fact which cannot be ignored.

6.7 Further, in the present case, the appellant have duly deducted tax under Section 192 of the Income-Tax Act, which is the applicable provision for TDS on payments to employees. This factual and legal position also fortifies the submission made by the appellant that the payments actually made to the Directors are in the nature of salaries inasmuch as there would be employer-employee relationships and in such case the levy of service tax cannot be sustained. It is observed that Hon'ble Tribunal in the case of Allied Blenders And Distillers Pvt. Ltd.- 2019 (24) G.S.T.L. 207 (Tri. - Mumbai) has taken a similar view and allowed the appeal of the appellant. The relevant text of the decision is re-produced below:-

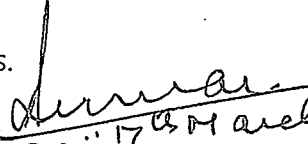
" Also, from the documents produced by the appellant it is crystal clear that the Directors who are concerned with the management of the company, were declared to all statutory authorities as employees of the company and complied with the provisions of the respective Acts, Rules and Regulations indicating the Director as an employee of the company. No contrary evidence has been brought on record by the Revenue to show that the Directors, who were employee of the appellant received amount which cannot be said as ' salary' but fees paid for being Director of the company. The Income Tax authorities also assessed the remuneration paid to the said directors as salary, a fact cannot be ignored. The judgments cited by the revenue cannot be applied to the present case as the facts are different and the finding of Income tax authorities accordingly also different in the said case."

7. In view of the above discussions and the settled legal judicial precedence and provisions contained in statutes referred to above, I find that the demand of service tax on remuneration paid to Directors is not sustained and is hence set aside. Since demand of service tax is set aside, penalty and interest are also not sustainable.



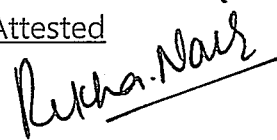
8. Accordingly, I find that the impugned order passed by the adjudicating authority is not legally sustainable on merits and is set aside. The appeal, therefore, is allowed.

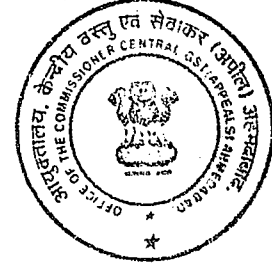
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


17.03.2023
(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 17.03.2023

Attested


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



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- **Appellant**

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

- **Respondent**

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
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