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

NATION TAX MARKET

DIN: 20221064SW000000CE14

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/207/2021-APPEAL /4267 -72

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-49/2022-23**
दिनाँक Date : **25-10-2022** जारी करने की तारीख Date of Issue 31.10.2022

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

ग Arising out of Order-in-Original No. **CGST/A'bad North/Div-VII/ST/DC/12/2011-12** दिनाँक: **09.07.2021**, issued by Deputy Commissioner,Division-VII, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   The Deputy Commissioner,
   CGST, Division-VII, Ahmedabad North,
   4th Floor, Shajanand Arcade, Nr. Helmet Circle,
   Memnagar, Ahmedabad-380052

2. Respondent
   M/s. S & S Accounting Service, 401-402, Corporate House, B/H sales India, Ashram Road, Ahmedabad.

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.

आयुक्त, केन्द्रीय वस्तु एवं सेवाकर (अपील) अहमदाबाद OFFICE OF THE COMMISSIONER CENTRAL GST(APPEALS) AHMEDABAD

(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 सें 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 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."

OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्त कार्यालय

ORDER – IN – APPEAL

The present appeal has been filed by the Deputy Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North (hereinafter referred to as 'the department') in terms of Review Order No. 17/2021-22 dated 11.10.2021 passed by the Commissioner, CGST & Central Excise, Ahmedabad North under sub-section (2) of Section 35E of the Central Excise Act, 1994 read with Section 84(1) of the Finance Act, 1994, against Order–in–Original No.CGST/A'bad North/Div-VII/ST/DC/12/2011-12 dated 09.07.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST, Division-VII, Ahmedabad North (hereinafter referred to as the "adjudicating authority") in the case of M/s. S & S Accounting Service, 401-402, Corporate House, B/h Sales India, Ashram Road, Ahmedabad (hereinafter referred to as "the respondent").

2.1 The respondents were engaged in providing taxable services without taking registration. On the basis of the data received from the CBDT, it was noticed that the respondents have earned service income on which no service tax liability was discharged. Letters were issued to them to explain the reasons for non-payment of tax and to provide documents like ITR, Form 26AS, VAT/Sales Tax returns, Annual Bank Account, Contracts /Agreement entered for provision of service, Balance Sheet, P&L A/c, ST-3 returns, etc. However, neither any documents nor any reply was received. Therefore, the service tax liability was ascertained on the basis of the value of 'Sales of services under Sales/Gross Receipts from the services as provided by the CBDT for the F.Y. 2014-2015, 2015-16, 2016-17 to 2017-18 upto June, 2017.

2.2 A Show Cause Notice (SCN) No. CGST/AR-I/Div-VII/A'bad–North/60/S and S/2020-2021 dated 28.09.2020 was issued to the respondent proposing the recovery of service tax demand of Rs.44,44,517/ for the period F.Y. 2014-15 to F.Y. 2016-17 alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 77 & 78 of the Finance Act, 1994 was also proposed. The SCN also proposed demand for the F.Y. 2017-18 (upto June 2017), which was not quantified, under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 and penalty under Section 78 of the Act ibid.

2.3 The said SCN was adjudicated vide the impugned order, wherein the service tax demand was dropped on the grounds that the respondent vide their letter dated 03.11.2020 had stated that they were providing export of services and received payment in convertible foreign exchange hence, were not liable to pay tax.

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

- The respondent vide letter dated 3.11.2020 submitted that they were exporting services and that their turnover of taxable service is below Rs.10 lakhs hence were not required to collect or pay taxes. The adjudicating authority has only discussed export of services and not the benefit of Notification No.33/2012 pertaining to small scale service exemption as claimed.
- Adjudicating authority has not followed the instructions of the Board's Circular No.1053/2/2017-CX dated 10.03.2017, while dropping the demand involved in various clearances and only random few sample invoices were checked.
- Adjudicating authority should give a detailed discussion on the evidences in the adjudication order to justify the decision taken on the matter. If no reason/evidence is recorded then such order would be a non-speaking order hence needs to be remitted back for fresh adjudication after considering all the supporting documents which should be specifically recorded. They placed reliance in the case of Capgemini India Pvt. Ltd.- 2021 (44) GSTL 275.

4. Personal hearing in the matter was held on 20.10.2022. Mr. Dipesh Goplani, Chartered Accountant, appeared on behalf of the appellant. During the hearing, he made

a written submission as part of the cross-objection to the appeal and re-reiterated the submissions made therein.

4.1 In the cross objection dated 10.10.2022 filed on 20.10.2022, it was stated that the respondents were solely engaged in providing export services covered within the scope of Rule 6A of the Service Tax Rules, 1994 for the years under consideration. They provided consulting services to US based consulting firm, and other than the income earned from exports, no other income whatsoever has been earned. They were rendering zero taxable services hence were outside the purview of service tax. They, therefore, interpreted that as there was no taxable service they pulled the provision of Small Scale Service Exemption Notification No.33/2012, which was misconstrued as presence of taxable turnover during the respective years. They also submitted ITR-5, Form 26AS, Profit & Loss Account, Bank Statement for the disputed period, to support their above contention.

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 by the respondent at the time of personal hearing as well as in the cross-objection filed. The issue to be decided in the present case is as to whether the demand of Rs.44,44,517/- dropped 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. 2014-2015 to F.Y. 2017-2018 upto June, 2017.

6. On examining the SCN, it is observed that the service tax liability was ascertained on the basis of income mentioned in ITR returns and Form-26AS filed by the respondent with the Income Tax department. The total tax liability of Rs.44,44,517/- for the F.Y. 2014-15, F.Y. 2015-16 to F.Y.2016-17, was ascertained on the basis of the sales of services under Sales/Gross Receipts from Services (Value from ITR) or Value of TDS as provided by the Income Tax department. The service tax liability for the F.Y. 2017-18 (upto June 2017) was also proposed to be recovered, to be ascertained in future and the tax amount was not quantified in the SCN.

6.1 It is observed that the respondent vide letter dated 03.11.2020, made a submission before the adjudicating authority stating that since their turnover was less than Rs.10 lakhs, they were availing benefit of Notification No.33/2012 and that they were also exporting services, hence were not liable to pay tax. The adjudicating authority recorded that the respondent furnished advised copy, details for the F.Y. 2014-15 to F.Y. 2016-17 and also provided few random sample invoices, based on which, it was concluded that there is no service tax liability on the respondents.

7. The department is in appeal on the grounds that the adjudicating authority, while dropping the demand of Rs.44,44,517/-, did not examine the clearances other than exports, as no data was provided in the impugned order to corroborate the findings that the respondents were eligible for small scale exemption. Similarly, the export clearance was also not quantified so as to establish that on the total clearances, the respondents were not liable to pay on service tax. The entire demand was dropped merely on the findings that there is no service tax liability on the export clearances made by the respondent.

7.1 After considering the submissions made by the respondent and evaluating the documents, submitted by them during hearing, I find that the respondent is purely engaged in export of service. The ITR-5 return shows that income earned through sale of services was purely from the sale of services and apart from this no other income is reflected in the return. The Leger Account submitted by them also reflects that the income earned was towards the services rendered to the US based firm. The bank statement of ICICI Bank also showed that the income or remittance realized was in convertible foreign exchange, which proves that the service rendered were outside India hence not covered within the scope of the definition of taxable service. The respondent have also submitted the invoices for the year 2014-15 wherein it is mentioned that the

services rendered were as per the Agreement entered with the US based consulting firm M/s. S&S Consulting Services, LLC and the amount is received in dollar ($). The adjudicating authority has tabulated the amount realized towards export of service in support of which the respondent has submitted documents. I, therefore, find that the adjudicating authority has rightly held that the services were exported hence not chargeable to service tax.

7.2 Further, the department has contended that the respondent, before the adjudicating authority, had stated that their turnover was less than Rs.10 lakhs and were availing benefit of Notification No.33/2012, which was not examined by the adjudicating authority. The respondent has made the submission before me that they were rendering zero taxable services, hence, interpreted that in terms of Small Scale Service Exemption Notification No.33/2012, no taxable service was rendered. I find that such interpretation was misconstrued as having taxable turnover during the respective years. However, the ITR-5, Form 26AS, Profit & Loss Account, Bank Statement for the disputed period, establish the respondents claim that no taxable service was rendered. Even otherwise, department has failed to prove their contention that the taxable turnover of the respondent was more than Rs.10 lakhs hence not eligible for small scale service exemption.

7.3 Further, it is also noticed that for the period F.Y. 2017-18 (upto June), in the SCN though quantification of service tax was not done but even for said period, the respondent has submitted the data of the amount realized in convertible foreign exchange to the adjudicating authority, which clearly establish that they were rendering services to a foreign entity, which is not disputed.

7.4 In the instant case, I find that the entire demand 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, which in no way corroborate the allegation that the respondent was actually rendering taxable service. It is further observed that the Board, vide Instruction dated 26-10-2021, has specifically instructed the field formations that while analyzing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and 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 also instructed 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 notices based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. I find that the adjudicating authority, after verifying the documents and data submitted by the respondent, has held that there was no liability of service tax on the services rendered by the respondent, which I find is justifiable in the facts of the case.

7.5 Mere non-submission of documents at the stage of investigation shall not be ground for confirming the demand, when the respondent before the adjudicating authority has submitted the documents to establish their claim for export of services. Further, I find that the department has also not submitted any supporting evidence to validate their contention that the findings recorded by the adjudicating authority were illogical and unsustainable. If the onus of proof is on the respondent to prove that the services rendered were exported, and if he has submitted documents before adjudicating authority to rebut the allegations leveled in the SCN, then the burden of proof would be shifted from the respondent to the Department to controvert otherwise, which I find was not done by the department. Thus, I find that the onus of establishing the levy of Service Tax in terms of Section 66B of the Finance Act has not been discharged by the department. It is a trite law that the burden of proof of establishing the levy of tax lies on the revenue authorities and without discharging such onus, no recovery of tax could sustain. This finding is support by the judgment of Hon'ble Supreme Court in *Cooperative*

Company Ltd. v. *Commissioner of Trade Tax, U.P.* [(2007) 4 SCC 480], wherein it has been held that burden of proof of establishing the levy of tax lies on the revenue authorities.

7.6 In view of above discussion, I uphold the impugned order and reject the departmental appeal being devoid of merits.

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

(अखिलेश कुमार) 25 October 2022
आयुक्त (अपील्स)

Date: 10.2022

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

By RPAD/SPEED POST

To,

The Deputy Commissioner - **Appellant**
CGST, Division-VII,
Ahmedabad North
Ahmedabad

M/s. S & S Accounting Service,
401-402, Corporate House,
B/h Sales India, Ashram Road, - **Respondent**
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. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.