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
टेलेफैक्स07926305136 07926305065-

DIN: 20221264SW000000F887

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/811/2022-APPEAL/6188 - 92

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-87/2022-23**
दिनाँक Date : **19-12-2022** जारी करने की तारीख Date of Issue 20.12.2022

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

ग Arising out of Order-in-Original No. **GST-06/D-VI/O&A/85/RS/AM/2021-22** दिनाँक: **22.02.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s R. S. Solution,
(Proprietor Mrs. Reena Singh)
B-6/41, Shri Drive In park Appt. Co. Op. Ho. Society Ltd.,
Thaltej, Ahmedabad-380052

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

The present appeal has been filed by M/s. R. S. Solution, Proprietor Mrs. Reena Singh, B-6/41, Shri Drive in Park Appt. Co. Op. Ho. Society Ltd., Thaltej, Ahmedabad – 380052 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/85/RS/ AM/2021-22 dated 22.02.2022 (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 was holding Service Tax Registration No. CJMPS5882BSD001. On scrutiny of the data received from the CBDT for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 12,51,646/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax returns filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant was called upon to submit clarification for difference along with supporting documents, 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. CGST-06/04-809/O&A/RS/2020-21 dated 23.12.2020 demanding Service Tax amounting to Rs. 1,74,645/- for FY 2015-16, under proviso to Section 73(1) 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 70, Section 76, Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority whereas the demand of Service Tax amounting to Rs. 57,491/- 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 FY 2015-16 and the demand for remaining amount was dropped. Further, Penalty of Rs. 57,491/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77 of the Finance Act, 1994 for failure to furnish information and produce documents called for by the department.

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

- The appellant is engaged in the business of providing "commission service" to telecommunication service providers i.e. Tata Teleservices, Vodafone Idea, etc. and registered with the Service Tax Department having Service Tax Registration No. CJMPS5882BSD001.

- During the F.Y. 2015-2016, appellant has provided commission service for which, appellant has received commission charges and reported total gross income, on accrual basis, from sale of services of Rs. 23,06,163/-, in income tax return filed for the Financial Year 2015-2016.

- Since, the aggregate value of taxable service of the appellant in previous financial year i.e. FY 2014-15 is Rs. 1,89,405 and is less than fifty lakh rupees, appellant has availed the benefit of third proviso to Rule 6 of Service Tax Rules, 1994 for payment of service tax, and, therefore, has discharged the service tax liability on the basis of receipt of payment for service provided. Further, appellant has also availed the benefit of Small Service Provider (SSP) in terms of Notification No. 33/2012-STdated 20.06.2012, since the aggregate turnover in any financial year of appellant does not exceeds Rs. 10 Lakhs, and therefore, availed the benefit of basic exemption limit of Rs. 10 Lakh during the period in question.

- In the instant case, appellant has earned a total income from provision of service amounting to Rs. 23,06,163/- during the FY 2015-16, and said income has been reported in income-tax return of the FY 2015-16, on accrual basis.

- However, out of such total income of the appellant, reported on accrual basis in ITR, amount of Rs. 2,51,646/- has been received by appellant during next financial year i.e. in April-2016 (2016-2017), for which invoice was raised in FY 2015-16. Therefore, such receipt of Rs. 2,51,646/- would be considered as aggregate value of taxable service for the month of April-2016. They submitted copy of Bank Statement for the month of April-2016 reflecting the receipt of above mentioned payment.

- Considering the above actual aggregate value of taxable service, in terms of provision of service tax law, appellant has duly filed its Service Tax Return in Form ST-3 and duly discharged the service tax liability of Rs. 1,55,953/- on value of taxable service of Rs. 10,54,517/-, on receipt basis, vide BSR Code 0510247, Challan No. 50884, dated 22.04.2016. Copy of Service Tax Return and Challan of service tax payment, as mentioned above, also submitted by them.

- Present Show Cause Notice issued is "vague" and is not justifiable in the eyes of law, in terms of instructions issued by CBIC dated 26 October, 2021. Department should not issue demand notices indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in service tax returns. Department should conduct the proper verification of facts before issuance of any demand notices. Further, no reconciliation has been worked out by the department as department is actually not aware about the engagement of the appellant. SCNs based on the difference in ITR-TDS data and service tax returns to be issued only after proper verification. Impugned Show Cause

Notice is issued without looking into the facts, legal provisions and provision of services, thus it is issued in violation of principal of natural justice.

- The impugned SCN was issued by solely placing reliance on the figures as appearing in the Audited Financial Statements and Income Tax Returns of the appellant. The entire proceedings have been initiated in the impugned SCN on the basis of Income Tax Returns of the appellant, which the authorities compared with the service tax returns to find the difference in figures of turnover. The adjudicating authority should have verified the same in terms of Section 71 of the Finance Act, 1994 to find out if there was any short payment of tax. The demand raised merely on the basis of Income Tax Returns cannot allege fraud or suppression in as much as the data is shared by income tax department and then compared with service tax returns, whether filed or not, and mere nomenclature in accounts cannot determine the levy of tax on the services / receipts of appellant.

- In support of their aforesaid view the appellant has relied upon the following case laws:

  - Faquir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. – 2008 (12) S.TR. 401 (S.C.)
  - Kush Constructions Vs. CGST NACIN –2019 (24) GSTL 606 (Tri - All)
  - Deltax Enterprises Vs. CCE, Delhi –2018(10) GSTL 392 (Tri - Del)
  - Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise and Ors. – (2015) 8 SCC 519

- Differential amount of Sale/Gross Receipts from sale of service of Rs. 3,96,489/- for FY 2015-16, as per Income Tax Return and as per Service Tax Returns should not be considered as "Taxable Services" under Section 65B read with Section 66B of Finance Act, 1994 and therefore, Service Tax amounting to Rs. 57,491 /- is not liable to be paid.

- Further, in the instant case, appellant has availed the benefit of Third Proviso to Rule 6 of Service Tax Rules, 1994 for payment of service tax, and therefore has discharged the service tax liability on the basis of receipt of payment for service provided. They have received the payment of Rs. 2,51,646/- for service provided in FY 2016-17. Therefore the said receipt is not taxable in FY 2015-2016. The said facts were also submitted by the appellant vide letter dated 02.02.2022. The said contention of appellant was also not considered by the department before confirming the demand in the impugned order. On this ground only, the impugned order is liable to be set-aside, and the impugned demand is liable to be dropped.

- Therefore, from the above legal position, it has been cleared that the differential amount of Sale/Gross Receipts of Rs. 3,96,489/- for FY 2015-16 as per Income Tax Return and as per Service Tax Returns, should not be considered as "Taxable Services" under

Section 65B read with Section 66B of Finance Act, 1994 and therefore the demand confirmed vide order in original is factually wrong and legally incorrect, and therefore, impugned order in original is liable to be quashed.

- The appellant is bonafide and has not contravened any provisions of the Finance Act, 1994, for service tax.

- The appellant has not suppressed any material fact or information from the department and not mis-reported any facts in the service tax returns filed by the appellant. The appellant is in possession of all the related documents for the amount received for service provided. All such documents are already submitted by the appellant vide different letters. There is no act of omission of facts on the part of the appellant. The appellant has also not contravened any provisions of the act with respect to disclosure of correct taxable value and discharge of correct service tax liability. The appellant has correctly assessed its service tax liability and filed correct service tax returns. Since, the appellant is not liable to discharge any service tax liability as mentioned in the impugned demand notice, penalty under Section 77 of Finance Act, 1994 is not imposable in present case.

- There being no suppression, penalty under Section 78 is not applicable as none of the five conditions for imposition of penalty under Section 78 are applicable. There is no fraud; collusion; willful mis-statement; suppression; or contravention of the provisions of Finance Act, 1994 with an intent to evade payment of duty in the present case. Further, the appellant have clearly stated that there is no suppression in the present case and also that there is no contravention of the provisions of Finance Act, 1994 with an intent to evade payment of duty. Extended period of limitation is not invocable, in the present case, in terms of Section 73(1) of Finance Act, 1994, and therefore, demand is not sustainable.

- In this regard, the appellant relied upon the following case laws:

  - Pahwa Chemicals Vs. CCE - 2005 (189) ELT 257 (SC)
  - Ispat Industries Ltd Vs. CCE - 2006 (199) ELT 509 (T)

- On the basis of above grounds, the appellant requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 14.12.2022. Shri Sourabh Singhal, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.

5. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present case is whether the impugned order passed by the adjudicating authority, confirming of demand of Service Tax of Rs. 57,491/- for the FY 2015-16 along with interest and penalties, is legal, proper and correct or otherwise.

6. I find that the main contention of the appellant is that they have availed the benefit of Third Proviso to Rule 6 of Service Tax Rules, 1994 for payment of service tax, and, therefore, have discharged the service tax liability on the basis of receipt of payment for service provided. They have received the payment of Rs. 2,51,646/- for service provided in FY 2015-16 in the month of April-2016. Therefore, the said receipt is not taxable in FY 2015-2016. The said facts were also submitted by the appellant vide letter dated 02.02.2022 to the adjudicating authority, however, the said contention of appellant was not considered by him before confirming the demand in the impugned order.

7. In order to examine the matter in proper perspective, reproduce the Third Proviso to Rule 6 of Service Tax Rules, 1994, as stood during the FY 2015-16, which is as under:

> ***Third proviso of Rule 6 of Service Tax Rules, 1994 upto 31.03.2016***
>
> *"Provided also that in case of such individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received."*

7.1 I find that the adjudicating authority also has not denied the facts that the aggregate value of taxable services provided by the appellant has not exceeded Rs. 10 lakhs in the FY 2014-15 and has allowed the benefit of threshold exemption in the FY 2015-16. In view of the above, I find that the appellant is also eligible to pay service tax on receipt basis upto a value of Rs. 50 lakh during the FY 2015-16, as per the third proviso to Rule 6 of the Service Tax Rules, 1994, as their aggregate value of taxable services is less than fifty lakh rupees in the previous financial year i.e. FY 2014-15.

7.2 I also find that the appellant has submitted the said details to the adjudicating authority vide letter dated 02.02.2022 and received by them on the same date as showing in the receipt stamp of the office of the adjudicating authority, however, while passing the impugned order, the adjudicating authority has not discussed the said letter. I also find that in Para 28 of the impugned order, the adjudicating authority has also noted the appellant submission that as they are having turnover below Rs. 50 lakhs, the service tax needed to be paid on receipt basis. However, in the impugned order, the adjudicating authority has not discussed the contention of

the appellant and calculated and confirmed the demand of Service Tax on accrual basis. I also find that the adjudicating authority also not calculated the basic threshold limit of Rs. 10 lakh correctly and given the benefit of exemption only on Rs. 9,01,058/- on wrongly interpretation of the definition of the "aggregate value" given in the Notification No. 33/2012-ST dated 20.06.2012. I also find that after calculating exempted value of Rs. 9,01,058/-, the adjudicating authority has again wrongly taken amount of taxable value as Rs. 14,51,005/- instead of Rs. 14,05,105/-. I also find that the SCN is question issued on the basis of the difference between the ITR-TDS value as provided by the CBDT and the taxable value in service tax returns without even specifying the category of service in respect of which service tax is sought to be levied and collected and without proper verification of facts. Hence, such SCN which are vague is also not sustainable in the eyes of law, in terms of instructions issued by CBIC dated 26 October, 2021. In view of the above discussion, I also find that the impugned order has been issued to the appellant without appreciation of facts available on record and without application of mind and without correct calculation of demand of service tax.

8. The appellant is registered with service tax department and has filed ST-3 Returns for the period October, 2015 to March, 2016 in time and their eligibility for threshold exemption in FY 2015-16 is not disputed. On the basis of the records available, I find that the total income earned by the appellant on accrual basis was Rs. 23,06,163/- for the FY 2015-16 and out of the same, Rs. 2,51,646/- was received by the appellant in April-2016. Thus the appellant had received total amount of Rs. 20,54,517/- as service income, on which they were required to pay service tax as per the third proviso to Rule 6 of the Service Tax Rules, 1994. The appellant have availed basic threshold limit of exemption of Rs. 10,00,000/- and paid the applicable service tax on the remaining amount of Rs. 10,54,516/- and duly discharged the service tax liability of Rs. 1,55,953/- on the said value of taxable service. The same are also reflected in their ST-3 returns. In view of the above, I find that the appellant have discharged the service tax liability properly and they are not required to pay any service tax as demanded and confirmed in the impugned order. Therefore, I hold that the impugned order passed by the adjudicating authority is not legal and correct and required to be set aside.

9. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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.

19th December 2022

(Akhilesh Kumar)
Commissioner (Appeals)

Date : 19.12.2022

Attested

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

By RPAD / SPEED POST

To,

M/s. R. S. Solution,
Proprietor Reena Singh,
B-6/41/ Shri Drive in Park Appt.
Co. Op. Ho. Society Ltd.,
Thaltej, Ahmedabad – 380052

Appellant

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

Respondent

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