# 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- टेलेफैक्स07926305136

DIN: 20221264SW000000F256

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/713/2022-APPEAL/ 6486 - 90

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-88/2022-23
दिनाँक Date : **20-12-2022** जारी करने की तारीख Date of Issue **23.12.2022**

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

ग Arising out of Order-in-Original No. **GST/D-VI/O&A/46/Kshitij/AM/2021-22** दिनाँक: **24.01.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   **M/s Kshitij Dilip Kumar Jain,**
   **A-903, Aryan City, Vandemataram ICON,**
   **Gota, Ahmedabad-380054**

2. Respondent
   **The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North , 7th Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura, Ahmedabad - 380014**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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 ड्यूटी 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.

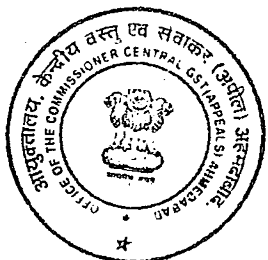
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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. 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.

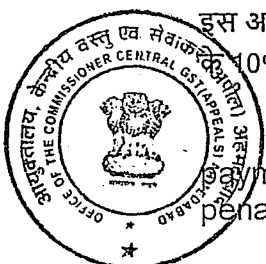
⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

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

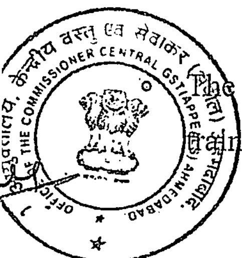
The present appeal has been filed by Shri Kshitij Dilip Kumar Jain, A-903, Aryan City, Vandematram Icon, Gota, Ahmedabad– 380054 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/46/Kshitij/AM/2021-22 dated 24.01.2022 (hereinafter referred to as "the impugned 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 are holding PAN No. AJVPJ9519R. On scrutiny of the data received from the CBDT for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 11,87,954/- during the FY 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit the copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the period FY 2015-16. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. GST-06/04-1087/O&A/KSHITIJ/2020-21 dated 24.03.2021 demanding Service Tax amounting to Rs. 1,65,758/- for the period FY 2015-16, under provision of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 2017-18 (up to Jun-17). The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994 and imposition of penalties under Section 76, Section 77 & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 27,253/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2015-16 after extending benefit of threshold limit of exemption under Notification No. 33/2012-ST dated 20.06.2012. Further (i) Penalty of Rs. 27,253/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to taking registration; and (iv) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing Service Tax returns.

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



- The appellant is sports coach in Football. He is providing a Football coaching or Football training to local students. The appellant trains students and also takes them to various

Football tournament held at State Level or District Level or Centre Level. The appellant takes all the responsibility of training and grooming in the sport so as to the students can pursue football as career.

- According to Entry No.8 of the Mega Exemption Notification No 25/2012- ST dated 20.06.2012 as amended, services by way of coaching in recreational activities relating to sports are exempted from whole of service tax. The said entry is reproduced for the sake of brevity, "Services by way of training or coaching in recreational activities relating to arts, culture or sports; "The terms "training", "coaching", "recreational activities" "arts" "culture" and "sports" are not specifically defined in this notification, therefore, these terms can be understood with Wikipedia or Dictionary meaning.

  - Training: Training is teaching, or developing in oneself or others, any skills and knowledge or fitness that relate to specific useful competencies. Training has specific goals of improving one's capability, capacity, productivity and performance.

  - Coaching: Coaching is a form of development in which an experienced person, called a coach, supports a learner or client in achieving a specific personal or professional goal by providing training and guidance.

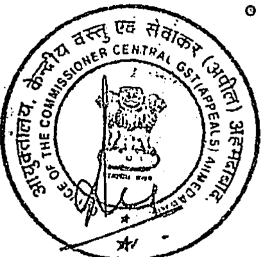
  - Recreational activities: Recreation is an activity of leisure, leisure being discretionary time. The "need to do something for recreation" is an essential element of human biology and psychology.[2] Recreational activities are often done for enjoyment, amusement, or pleasure and are considered to be "fun".

  - Art: Art is a diverse range of human activity, and resulting product, that involves creative or imaginative talent expressive of technical proficiency, beauty, emotional power, or conceptual ideas. There is no generally agreed definition of what constitutes art, and ideas have changed over time.

  - Culture: Culture is an umbrella term which encompasses the social behavior and norms found in human societies, as well as the knowledge, beliefs, arts, laws, customs, capabilities, and habits of the individuals in these groups

  - Sports: Sport pertains to any form of competitive physical activity or game that aims to use, maintain or improve physical ability and skills while providing enjoyment to participants and, in some cases, entertainment to spectators.

- On-going through the above terms/definition and entry 8 of the said exemption notification, it can be construed that the exemption is given to training or coaching service, the said training or coaching must be related to the arts or culture or sports. In this connection is to submit that the appellant is coach in football sport. He teaches to



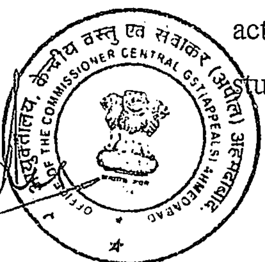
various students at various grounds in Ahmedabad. The appellant holds certificate in football and is renowned/ well-known/ certified coach in Ahmedabad. The appellant leads to overall skill development of children involved in the football sport. It is submitted that the appellant is a progressively leveled coach, wherein students in the age group of 5 to 18 years join in and take about training or coaching for 3-4 years to complete the coaching. They need to practice for about 2-5 hours at the ground.

- Further, the phrase used in the said mega exemption is Services by way of training or coaching in recreational activities relating to arts, culture or sports. On plain reading of the said exemption notification, it can be seen that there is no restriction imposed on the constitution. In other words, the said exemption notification is not limited to any constitution rather it extends to every person. Therefore, it can be seen that the said exemption is applicable every person irrespective of its constitution. It does not matter whether the appellant is individual or proprietor or partnership firm or body formed under any other law. The exemption applies to every person irrespective of its constitution. Therefore, it pretty much clear that the said services by the appellant is exempt under Sr. No. 8 of the mega exemption Notification No. 25/2012-ST.

- Without prejudice to the above submission, the appellant further submit that he is a coach and he takes students to various tournaments. These tournaments are occasionally held at various levels like state level, district level and center level. Further it is to submit that the appellant book train tickets and accommodation for every student who is supposed to accompany him. Appellant, as a coach, takes all students as a team and collects/reimburse all the expenses, from everyone. There is no profit involved as the said amount is reimbursed from the students "as it is" without adding any extra cost or commission. All the students reimburse their actual fare and other expenses to the appellant. Further, the other expenses of the tournament are concerned the amount is shared amongst the students jointly. Thus, it can be said that the appellant acts as "pure agent".

- Further, according to the Rule 5 of valuation Rules 2006- Inclusion in or exclusion from value of certain expenditure or costs - Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as "Service Tax Valuation Rules 2006"), the cost of expenditure incurred by the service provider as a pure agent, shall be excluded from the value of taxable service. Further, there are certain conditions, which need to be satisfied to exclude the cost incurred by the service provider as a pure agent from the value of the taxable service. The said conditions are as follows:

  (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; (in this case, the appellant act as pure agent and he is making payment for the services procured on behalf of students)



(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; (in appellant's case the services of railway, flight, hotel accommodation etc. enjoyed by each and every student individually)

(iii)the recipient of service is liable to make payment to the third party; (the students are liable to pay for flight/ railway/ accommodation services)

(iv)the recipient of service authorized the service provider to make payment on his behalf (the students give the authority to the appellant to make on behalf of them)

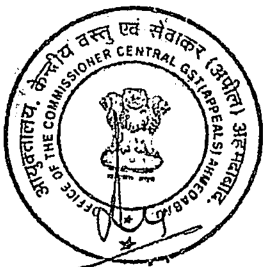
(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party; (the students know that they are going to enjoy all these services and these services are provided by railways/airways/hotel etc)

(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; (the appellant issues different invoice or voucher for the reimbursement from all the students)

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; (the appellant recovers amount only with respect to charges incurred by him for taking all the students in various tournaments )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. (the appellant is a coach and he takes students to various tournaments and these tournaments happen occasionally and the appellant is coach and that service is primary service)

- Thus, based on the above para, it can be seen that all the conditions specified in Rule 5 Service Tax Valuation Rules, 2006 are fulfilled in their case. The appellant submits that Service tax is not payable on reimbursable expenditure collected on actual basis from the students as a "pure agent". In the current case, the appellant has collected Rs.2,54,366/- towards cost of tickets and hotel accommodation charges which is paid by him on behalf of his students. Therefore, the amount which is reimbursed from the students shall not be included in the gross receipts/ taxable services. Hence, if the said amount of Rs. 2,54,366/- is deducted from the Gross receipts of Rs.11,87,954/-, the gross receipts shall fall below threshold limit.



- In support of their above contention, they relied on the following case laws:

  a. M/s. Tetra Pak India Private Limited reported at 2015 (12) TMI 883
  b. Intercontinental Consultants and Technocrats Private Limited, reported at 2018 (10) GSTL 401

- Thus, in view of the above discussion and without prejudice to the above submission, the amount received as a pure agent shall be reduced from the gross receipt, whereby the gross receipts being below 10 Lakhs eligible for basic exemption. Without prejudice to the above, the appellant submitted that Cum duty valuation benefit is available to the Appellant.

- In support of their above contention, they relied on the following case laws:

  i. Balaji Manpower-Service reported at 2019 (31) GSTL 418 (P&H)
  ii. M/s Honda Cars India Ltd. rep.orted at 201.8 (3) TMI 257
  iii. Hi-Line Pens Ltd 2017(5) GSTL 423 (Tri.-Del.)
  iv. M/s Hans Interiors reported at 2016-T1OL-1155-CESTAT-Chenai.
  v. Loop Mobile India Ltd. reported at 2016-TIOL-959-CESTAT-MUM
  vi. Polaris Software Lab Ltd, reported 2016-T1OL-427-CESTAT-MAD
  vii. M/s P C Construction, M/s Raj and Co. and vice-versa alongwith and M/s Saraswati traders vs. Commissioner of Central excise, Lucknow 2015-TIOL1569- CESTAT-ALL.

- The Appellant has not collected service tax from the service receivers as the Appellant was under a bona-fide belief that no service tax is payable. Explanation 2 to section 67 during the relevant time read as follows: *"Where the gross amount not charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged."*

- Even, if it is assumed that the Income recorded by the appellant is taxable, the appellant is eligible for the cum-tax benefit. The appellant has not charged and collected service tax on the amount charged from the service recipient. Therefore, under Section 67(2) of the Finance Act 1994 and in view of various judicial pronouncements as stated above, the appellant is eligible for the benefit of cum tax valuation.

- Without prejudice to the above written submissions, without admitting but assuming, the appellant submits that the show cause notice is erroneous in as much as it demands Service Tax by invoking extended period. It is to submit that major portion of demand in the Show Cause Notice is being hit by the bar of limitation. The adjudicating authority failed to establish willful suppression on the part of the appellant, just issued on the basis

of Third-party information from CBDT i.e., without any depth Investigation. Thus, SCN is issued arbitrarily and illegally. All the data is reflected in financial records and statements, even the same is filled with Income Tax Department. Hence, there is no suppression or malafied intention invoked on the part of the appellant. Therefore, a SCN is vague as it does not establish suppression on the part of the appellant refer to any particular facts therefore the SCN is issued without mentioning the logical reason is contrary to principles of natural justice and cannot be sustained.

- Since the demand of duty is not sustainable either on merit or on limitation, therefore there is no question of any interest and penalty as held by the Hon'ble Supreme Court of India in the case of M/s HMM Limited.

- It is settled law that penalty under Section 78 of the Finance Act, there has been fraud or willful mis statement or suppression of facts with intend to evade payment of service tax by the appellant, then and only then penalty under Section 78 could be imposed 1994 could be imposed only if demand of service tax could be sustained under proviso to Section 73(1) of the Finance Act 1994.

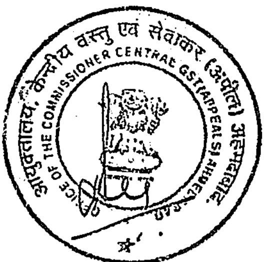
- The appellant wish to relied on following decision of the Hon'ble Supreme Court of India.

  a. M/s Uniworth Textile Limited - 2013 (288) E.L.T. 161(S.C.)
  b. M/s Rajasthan Spinning & Weaving Mills - 2009(238) E.L.T. 3 (S.C.)
  c. M/s Tamil Nadu Housing Board - 1994(74) E.L.T.9(S.C.)
  d. M/s Cosmic Dye Chemical - 1995(75) E.L.T.72(S.C.)

- Without prejudice to other contentions, it is to submit that no mens rea can be attributed to the appellant merely failure to pay Service Tax on account of interpretation of law. In absence of mens rea, merely for the venial breach of the provisions of law, penalty cannot be imposed. There is no element of fraud, willful mis-statement or suppression of facts with intent to evade payment of service tax, as all the income received by them were accounted for in the books of accounts. The appellant wish to rely upon decision of the Hon'ble Supreme Court of India in the case of Hindustan Steel Limited vs. State of Orissa - 1978 (2) E.L.T. J 159 (S.C.)

- The appellant further wants to submit that it is a well settled principle of law that if a dispute is arising out of interpretation of the provisions of statute or exemption notification, no penalty can be levied.

- The appellant place reliance on the following case laws in this regard:



i. Gujarat Guardian Limited 2016 (46) S.T.R. 737 (Tri. - Ahmd.)

ii. Fascel Limited 2017 (52) S.T.R. 434 (Tri. - Ahmd.)

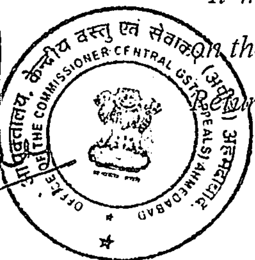
4. Personal hearing in the case was held on 14.12.2022. Shri Bishan Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He also stated that he would make additional submission enclosing relevant documents.

5. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum and documents available on record. The issues that are required to be decided in the present appeal are that (i) whether the service provided by the appellant is exempted under Sr. No. 8 of the Notification No. 25/2012-ST dated 20.06.2012 or otherwise; and (ii) whether the expense towards booking of train tickets and accommodation for every student carried out by the appellant and subsequently reimbursed by the students is required to be excluded from the gross value of service or otherwise. The appellant has also contended that the demand is hit by limitation and that they are also eligible for cum-duty benefit. The demand pertains to the period FY 2015-16.

6. I find that the main contentions of the appellant are that (i) they have provided coaching service by way of coaching students in the field of football and the said service is exempted from Service Tax as per Sr. No. 8 of the Notification No. 25/2012-ST dated 20.06.2012; and (ii) they have collected Rs.2,54,366/- towards cost of tickets and hotel accommodation charges, which were paid by him on behalf of his students and the said amount were reimbursed from the students and hence they shall not be included in the gross value of services and Service tax is not payable on reimbursable expenditure collected on actual basis from the students as a "pure agent" as per Rule 5 of the Service Tax (Determination of Value) Rules, 2006. Hence, if the said amount of Rs. 2,54,366/- is deducted from the Gross receipts of Rs.11,87,954/-, the gross receipts shall fall below threshold limit.

7. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*



*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*

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

8. On verification of the case records and the copy of Certificate (AFC 'C' Coaching Certificate) dated 15.08.2016 issued by the Asian Football Confederation, I find that the appellant is a sports coach in the field of Football and he is providing Football coaching or Football training to local students. I also find that main contention of the appellant is that he has provided Sport coaching service and the said service is exempted from Service Tax as per Sr. No. 8 of the Notification No. 25/2012-ST dated 20.06.2012. However, the adjudicating authority had confirmed the demand vide the impugned order denying exemption claim by the appellant stating that the appellant failed to submit any documentary proof like invoices, receipt etc. to establish that the income shown as sale of service is actually from sports event or otherwise and also denied the exclusion of the reimbursement income stating that the appellant failed to submit any documentary proof like invoices, ledgers of their clients to correlate the expenses incurred on their behalf vis-a-vis income received from them. In this regard, I am of the considered view that the adjudicating authority was required to give adequate and ample opportunity to the appellant for producing the documents in his favour in backdrop of the situation that SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service and it is only thereafter, the impugned order was required to be passed. I find that the appellant has, in their appeal memorandum taken plea that the cum tax benefit required to be extended to them and contended that major portion of demand in the Show Cause Notice is hit by the bar of limitation. I also find that these contentions were not raised earlier and were made during the appeal proceedings.

9. Therefore, I am of the considered view that it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submission of the appellant, made in the course of the present appeal, and after proper verification of the documents of the appellant and thereafter, adjudicate the matter.

10. In view of the above discussion, keeping all the issues open, I remand the matter back to the adjudicating authority to reconsider the issue afresh and pass a speaking order after following the principles of natural justice. The appellants are also directed to submit all the relevant documents to the adjudicating authority within 15 days of receipt of this order.

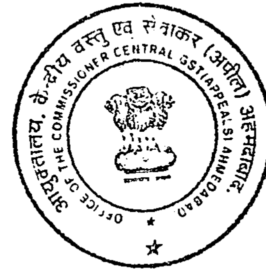
11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)

Date : 20.12.2022

Attested

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



**By RPAD / SPEED POST**

To,

Shri KshitijDilip Kumar Jain, — Appellant
A-903, Aryan City,
Vandematram Icon, Gota,
Ahmedabad – 380054

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

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file