



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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DIN-20220864SW0000222EAD

स्पीड पोस्ट

2992 - 2916

- क फाइल संख्या : File No : GAPPL/COM/STP/2244/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-20/2022-23**
दिनांक Date : **08.08.2022** जारी करने की तारीख Date of Issue : **12.08.2022**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original Nos. **62/JC/MT/2020-21 dated 17.03.2021**, passed by the Joint Commissioner, Central GST & Central Excise, Ahmedabad-North.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. 3rd Eye Solutions, 54, Shree Sadguru Arvind Nagar, Opp. Sabarmati School, Chandkheda, Ahmedabad-380019.

Respondent- The Joint Commissioner, Central GST & Central Excise, Ahmedabad-Norh.

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 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।

(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 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 अनुसूची-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.

- (6) 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।

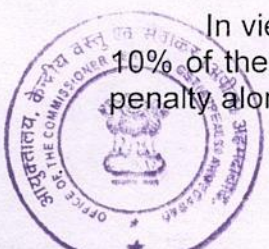
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. 3rd Eye Solutions, 54, Shree Sadguru Arvind Nagar, Opposite Sabarmati School, Chandkheda, Ahmedabad-38 019 (hereinafter referred to as "the appellant") against Order – in – Original No. 62/JC/MT/2020-21 dated 17.03.2021/22.03.2021 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST and Central Excise, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant is engaged in providing taxable services as defined under Section 65B (44) of the Finance Act, 1994 under the category of 'Photography/Videography Studio or Agency Service' and was holding Service Tax Registration Number AILPK8454DSD002.

2. Facts of the case, in brief, are that the officers of Central GST, Ahmedabad North had conducted search at the office premises of M/s. Saunak Films, 31, Rajami Complex, Near Sardar Patel Crossing, Naranpura Vistar, Ahmedabad on 14.09.2018 to ascertain whether they were discharging their tax liability properly. During the search proceedings, it was noticed by the officers that M/s 3rd Eye Solutions, i.e. the appellant, was also operating from the office premises of M/s Saunak Films and providing the taxable service of "Photography/Videography Services" mainly to the Police Department. During the panchnama proceedings, Shri Tusharsinh Dineshsinh Rajput, Proprietor of M/s Saunak Films, informed that M/s 3rd Eye Solutions was also working from their premises and administration activities, i.e., accounting, documentation, business transactions, issuance of sale invoices etc. were being maintained from the office premises of M/s Saunak Films. It was further informed that they were filing Nil Service Tax returns during the period from F.Y. 2015-16 onwards. However, it is noticed by the officers that they were charging Service tax on the invoices issued by them.

2.1 Statement of Shri Tusharsinh Dineshsinh Rajput, Proprietor of M/s. Saunak Films, was recorded on 14.09.2018, wherein he admitted to the facts narrated in Panchnama dated 14.09.2018. He further stated that they were providing videography services to Election Commissioner, Gujarat Police and other Govt. agencies. He further stated that among the other videography firms, M/s 3rd Eye Solutions was also working from their premises, even though their registered premise was different. He further stated that they used to avail the service of Videography from M/s 3rd Eye Solutions in case they (Saunak Films) face shortage of staff. He further stated that his brother-in-law, Shri Hitesh Kantilal Kotak was the Proprietor of M/s 3rd Eye Solution (appellant firm).

3. Since the appellant was found to be providing taxable service of Videography/photography but were filing Nil ST-3 returns during the period, the departmental officers issued a letter F.No. V/18-25/3rd Eye/Gr.III/Prev./2018-19 dated 14.02.2019 to the appellant to pay up their service tax liability and to produce further details such as financial accounts, payment receipt details etc. which was followed by a reminder dated 10.04.2019. As the appellant did not respond to the letters, they were issued Summons dated 30.05.2019, 28.06.2019 and 11.07.2019 to appear before the Superintendent (Preventive), GST & Central Excise, Ahmedabad-North. However, the appellant did not appear before the department. Subsequently, the departmental



officers prepared a worksheet determining the service tax liability of the appellant based on the records, i.e. invoices, collected during the Panchnama proceedings from the premises of M/s Saunak Films, for the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017). Their tax liability was ascertained at Rs.77,21,999/- for the period from 01.04.2014 to 30.06.2017.

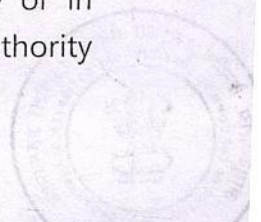
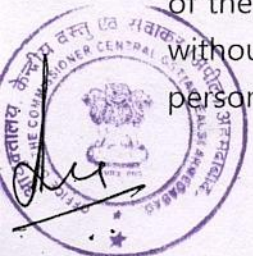
4. The appellant was issued a Show Cause Notice bearing F. No. STC/15-49/OA/2019/1661 dated 15.10.2019, demanding service tax amounting to Rs.77,21,999/- (inclusive of Cess) by invoking extended period of limitation under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty on the appellant under sub-Sections (1) and (2) of Section 77 of the Finance Act, 1994 and Section 78 of the Finance Act, 1994.

5. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein the proposals made in the SCN were confirmed.

6. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred appeal on grounds which are elaborated in subsequent paragraphs.

6.1 The said order was received by them on 25th March 2021. The Honorable Supreme Court vide Order dated 27th April, 2021 restored Order Dt. 23rd March 2020. The Honorable Supreme Court has mentioned in Order Dt. 27th April, 2021 that for computing period of limitation for institution of any proceedings under any law the period from 14th March, 2021 till further Order of Honorable Supreme Court shall stand extended. Hence, for filing appeal before Commissioner (Appeal) against the Impugned OIO Dt. 22-03-2021, for computing 60 days from the date of Impugned OIO, the period from 22-03-2021 till the further order of The Honorable Supreme Court shall stand excluded. Hence the appeal is being filed within prescribed time limit as extended by the Honorable Supreme Court Order Dt. 27-04-2021.

6.2 The learned adjudicating authority in the impugned order has discussed the date of personal hearing given to the appellants. The appellants have already stated that they had not received any show cause notice from the department so they could not file any defense reply and the hearing notices have also not been received by the appellants. Search was carried out on 14.09.2018, and show cause notice was issued on 15.10.2019 which is almost after one year. Letters of personal hearing were not received by appellants due to closure of business premises due to pandemic of COVID-19 and the impugned order has been passed on 22.03.2021. It will kindly be appreciated that the world was facing the challenges of COVID-19 and several hardships were being faced in day to day life by everybody. In such a situation, when the department had issued show cause notice on 15.10.2019, they had secured their time limit and protected the revenue of the Government. Thereafter, there was no need to adjudicate the show cause notice without waiting for defense reply of the appellants or hearing them virtually or in person. This clearly shows sheer negligence on the part of the adjudicating authority



and casual approach to show that he has completed the procedure of natural justice and fixed huge liability on the appellants. They place reliance on the judgment of the Honorable Mumbai High Court in the case of Shashank Bhalchandra reported in 2003 (151) ELT 0486 (Bom), wherein it was held that "The concept needs to be understood in its right perspective as well as, as per the spirit of the Constitution. An opportunity of being heard, before passing the impugned order, is not an empty formality, but is a valuable right of an individual and is also requirement of law, particularly, when the order has civil consequences. This is a valuable right and violation thereof, would not only deprive the person concerned, to put forth his claim before the competent authority, but also causes total prejudice and results in miscarriage of justice."

6.3 They also refer to and rely upon Supplementary Instructions Part I of Part II of Chapter 13 providing guidelines for adjudication. They would draw kind attention of the Honorable Tribunal to its decision in the case of Afloat Textiles (P) Limited reported in 2007 (215) ELT 0198 (T).

6.4 The demand is even otherwise not sustainable as the same has been confirmed against incorrect Service Tax Registration. The service tax registration shown in the show cause notice and the impugned order is AILPK8454DSD002, which is PAN number, taken by Shri Hitesh Kantilal Kotak in his individual capacity. They submitted copy of ITR filed by Shri Hitesh K. Kotak as individual. The appellant firm M/s 3rd Eye Solutions is owned by Shri Hitesh Kantilal Kotak in the capacity as Karta of Shri Hitesh Kantilal Kotak, HUF. Copy of ITR filed by Shri Hitesh Kantilal Kotak, HUF and Audit Reports of 3rd Eye Solutions were annexed to appeal memorandum. It is a well-established legal position that the HUF and Individual are separate legal entities.

6.5 They further submitted that the appellant firm M/s 3rd Eye Solutions was not at all registered with the service tax department. This simple fact could have been checked by the department. The reason for not taking registration is that the said firm was providing service which was being provided directly to sovereign authority Election Commissioner and Police department and the appellant was under the bonafide belief that service tax is not applicable on services provided by them to Election Commissioner and Police Department.

6.6 Shri Hitesh Kantilal Kotak was having Income of Salary and Interest which are not liable to service tax. This fact is evident from documents attached with appeal memorandum.

6.7 The department has not recorded statement of Hitesh Kantilal Kotak or any person in this case who is related to M/s 3rd Eye Solutions. The records have been withdrawn from third party premises and the same have not been verified by the department from the concerned person of appellant firm. The department cannot shift their burden on the appellants by saying that summons was issued but the appellants did not turn up. The department has sovereign powers and if the departmental officers would have made sincere efforts they could have properly investigated the case and came to the logical conclusion instead the departmental officers have worked half-



heartedly and tried to remain in the good books of their bosses by issuing half cooked show cause notice and thereafter completing empty formalities by issuing the impugned order and confirming huge liability of service tax.

6.8 The appellants would like to draw kind attention to the Contract Agreement with the Election Commissioner where the Contract/Agreement clearly shows in Clause 11 that the services provided to the Government are not taxable to service tax and Service tax will not be accessed in the bill as the same is not payable. Now when the statutory authority itself stated in the agreement that service was not taxable, the appellants were under the bonafide belief that the service tax was not payable, so they neither took service tax registration nor paid service tax nor collected the service tax. Specimen copies of Invoices issued to Police department and Election Commission are enclosed for ready reference. From the perusal of the invoices issued to Election Commission also, it would be evident that the invoices itself mention that service provided directly to Government, hence, service tax not charged in the bill. If the departmental officers who withdrew the invoices could have examined the invoices thoroughly they would have come to know that the service tax is neither collected nor paid by the appellants, so obviously there is no question of any suppression of facts with intent to evade payment of service tax. Contracts and Invoices were recovered by the department under panchnama from the premises of M/s Saunak Films, which have been used by the department only to fulfill their obligations of issuing demand notice. They have not shown fairness that the tax was neither collected nor paid by the appellants. Therefore, the finding of the adjudicating authority that there was malafide intention on the part of the appellants in suppressing the taxable value provided from the department with intention to evade payment of service tax is totally illogical and therefore the show cause notice issued invoking the larger period is not sustainable.

6.9 It is a proven admitted fact that Election Commission has not paid service tax to the appellants. Now if the appellants are asked to pay the service tax, it is a very heavy burden on them as the amount is not a small amount. It is a fundamental principle of indirect taxation that the assessee is only a collecting medium for the Government the registered assessee collects service tax and deposits it with the Government exchequer, if he has not collected it, and he is not bound to pay it as well. Assuming without admitting that there has been a case of evasion of service tax, it is coming on record that the service receiver i.e. Election Commission has not paid service tax to the appellants and it is also not shown in the standard invoices raised by the appellants for recovery of their fees/income from Election Commission that any tax has been collected by the appellants. The department believes that the appellants have collected service tax which is included in the value of money received by the appellants from service receiver. Thus, the value is ought to be considered as value including tax amount i.e. cum-tax value and it is a trite of law that tax is not to be paid on the tax, that is there cannot be double taxation, therefore, the tax amount is required to be deducted from the value on which the department has worked out service tax. After arriving at such value the service tax demand is required to be re-worked out. They would like to place reliance on the decision of the **Honorable Tribunal in the case of MGF Event Management reported in 2020 (37) GSTL 338 (Tri-Del)** wherein the cum-tax benefit was allowed on the value



shown in the balance sheet and also it was held that the petitioner would be eligible for the CENVAT credit if they have availed input services of any agency for providing output services.

6.10 They also rely on the judgment of the **Honorable Punjab & Haryana High Court in the case of Balaji Manpower Services reported in 2019 (31) GSTL 418 (P&H)**. The CESTAT, as reported in BCCI v/s Commissioner reported in 2019 (21) GSTL J83 (Tri-Mum), has also allowed the benefit of cum Tax value in view of the Tribunal's decision rendered in the case of Commissioner v. Advantage Media Consultant [2008 (10) S.T.R. 449 (Tri.-Kol.)] which has been maintained by the Apex Court as reported in 2009 (14) S.T.R. J49 (S.C.). There are endless quasi judicial and judicial decisions on this issue and hence, this benefit is required to be extended to the appellants and service tax demand is required to be re-worked out.

7. Opportunities for personal hearing were granted on 07.06.2022 and 25.07.2022 in virtual mode. Ms. Sneha Mehta, Chartered Accountant, appeared on behalf of the appellant on 25.07.2022. She reiterated submissions made in appeal memorandum. She further stated that they are also eligible for cum duty benefit as no service tax was charged on the invoice.

8. I have carefully gone through the case records, the impugned order, and the submissions made by the appellant, both oral as well as written. The issue to be decided in the present case is as to whether 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. 2014-15 to F.Y. 2017-18 (up to June, 2017).

9. First of all, I take up the issue whether appeal has been filed in time or not. It is observed from the case records that the impugned order was received by the appellant on 25.03.2021 and appeal was filed by the appellant on 09.08.2021. The appellant has also filed an application relying on the Order dated 27.04.2021 passed by the Hon'ble Supreme Court of India wherein the Hon'ble Apex Court had extended the period of limitation for institution of any proceedings from 14.03.2021 till further orders. Considering the orders passed by the Hon'ble Supreme Court on the subject matter of limitations, which also covered the quasi-judicial proceedings, I find that the appeal has been filed in time.

10. It is further observed that the appellant has raised contentions that the impugned order has been passed in violation of principles of natural justice in as much as they were not given any opportunity to present their case. In the impugned order, the adjudicating authority, at Para 25, has observed as under:

" 25. No reply has been submitted by the assessee to the show cause notice nor any request for extension has been received from them so far even though considerable time has been elapsed. Further, it is pertinent to mention here that the show cause notice in question has been delivered to the assessee on 22.10.2019 as per speed post 'track consignment' number EG191586529IN....

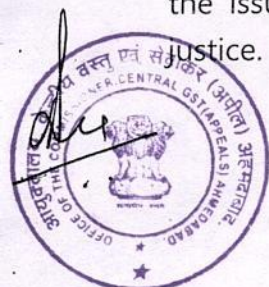


10.1 It is further observed from the impugned order that the appellant was granted opportunities for personal hearing by the adjudicating authority on 05.01.2021, 08.02.2021 and 10.03.2021. The appellant did not appear on any of the dates. Hence it cannot be said that natural justice was denied to them and that adjudicating authority was wrong in deciding the case ex-parte.

11. It is further observed that the appellant also strongly contended that they were under the bonafide belief that services rendered to Election Commission is not chargeable to service tax, therefore, they neither took registration nor collected or paid the taxes. Hence, they were eligible to claim cum tax benefit which should be extended to them. To examine the admissibility of cum-duty value while computing the tax liability, I have gone through the copy of agreement entered between the appellant firm and the Collector & District Election Officer and also the invoices raised for the services rendered to them. I find that clause 11 of the said agreement mentions "*When the service has to be provided directly to the Government, there is no need to levy service tax in the service bill. Accordingly, the service tax will not have to be assessed in the bill if the videography/photography service during the election is to be provided directly to the Government.*", which support their bonafide intentions. Further, it is also noticed that service tax was not charged separately in the sample invoices submitted with the appeal memorandum. So, the fact that no tax was collected by the appellant is apparent from the records. Therefore, I find that the appellants are entitled to the benefit of cum-tax price for the invoices where no tax has been separately charged. The amounts received by them in such cases from their customers should be treated to be inclusive of Service Tax and, accordingly, the liability of Service Tax needs to be recalculated.

11.1 Further, considering the claim of the appellant that they have not received the show cause notice as a result they could not file their defense reply, it is apparent that the impugned order has been passed ex-parte without considering the submissions of the appellant. I find that the contentions of the appellant regarding claim of exemption and the benefit of cum duty price benefit was not raised before the adjudicating authority and consequently the same was not examined in the impugned order. Moreover, the evidence is produced for the first time before the Commissioner (Appeals), therefore, the matter needs to be remanded back to the adjudicating authority to consider the evidence produced by the appellant and pass a fresh order in the matter. The adjudicating authority shall grant a reasonable opportunity of personal hearing to the appellant and the appellant is directed to appear before the adjudicating authority as and when opportunity of personal hearing is granted justifying their claim by producing documentary evidence.

12. In view of this, without expressing any opinion on the merits of the case, 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.



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

Akhil
8th August,
(अखिलेश कुमार) 2022.
आयुक्त (अपील्स)

Date: 8.2022

Attested

Rekha Nair
(Rekha A. Nair)

Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. 3rd Eye Solutions
54, Shree Sadguru Arvind Nagar,
Opposite Sabarmati School, Chandkheda,
Ahmedabad-38 019

Appellant

The Joint Commissioner
CGST, Ahmedabad North
Ahmedabad

Respondent

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. Guard File.