आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20231164SW0000111DB8

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3093/2023 8399 - 8403
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-134/23-24 and 31.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	20.11.2023
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/28/Gita/AM/2022-23 dated 26.05.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Gita Arvind Joshi, 33-Mahalaya-2, SVM Lane, Off Science City Road, Sola, Ahmedabad-382350

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 मे हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

M/s. Gita Arvind Joshi (Proprietor of M/s Focal Point Management Services), 33-Mahalaya-2, SVM Lane, Off Science City Road, Sola, Ahmedabad-382350 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/28/Gita/AM/2022-23 dated 26.05.2023, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding Service Tax Registration No.AFSPJ0268ESD001.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, 2015-16 & 2016-17, it was noticed that the income reflected in the ITR/TDS were not tallying with the Gross Value of Services declared in their ST-3 Returns Letters were, therefore, issued to the appellant to provide details of the services provided during said period and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the differential income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, was considered as a taxable value.

F.Y.	*Differential Income*	*Rate of S.Tax*	*S.Tax payable*
2014-15	205999	12.36%	25462
2015-16	6052501		844524
		Total	**8,69,986/-**

2.1 A Show Cause Notices (SCN) bearing No. GST-06/04-501/O&A/GITA/20-21 dated 28.09.2020 was issued to the appellant proposing recovery of service tax of Rs. 8,69,986/- along with interest, not paid on the value of income received during the F.Y. 2014-15 under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 76, Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

3. The SCN was adjudicated vide the impugned order wherein the total service tax demand of Rs. 9,07,236/- was confirmed alongwith interest. Penalty of 10,000/- each was imposed under Section 77 and penalty of Rs. 9,07,236/- was also imposed under Section 78 of the Finance Act. Penalty under Section 76 was however dropped.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, along with the application seeking condonation of delay, on the grounds elaborated below:-

- The SCN is issued based on the tax difference noticed in income as reflected in Form 26AS / Income Tax Records and Service Tax Returns, hence, willful suppression of facts cannot be alleged.

- The appellant has submitted the relevant documents to substantiate that the services were provided to the units located in SEZ, which were not considered.

- When the demand is not sustainable, interest & penalties are also not justifiable.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 26.05.2022 and the same was received by the appellant on 06.06.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 01.09.2022 i.e. after a delay of 27 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that the appellant was under the bonafide impression that the appeal is required to be filed within 3 months further they were in search of appropriate Advocate and were also managing funds to pay the online pre-deposit, hence the delay. They requested to condone the delay in filing the appeal as the delay is within the condonable period.

5.1 Personal hearing in the matter was held on 18.08.2023. Shri Jaimin Gandhi, Advocate appeared for personal hearing on behalf of the appellant and handed over additional written submissions along with supporting documents. He reiterated the submissions therein, and the submissions made in the appeal and in the paper book of documents submitted on 14th July, 2023. He submitted that the appellant inadvertently could not file service tax return for the period October, 2015 to March, 2016 but had paid tax dues of Rs.8,31,455/-, challan of which is enclosed in the paper book. Apart from this, he stated that the appellant had supplied services to Intas Ltd located in SEZ, although, they could not obtain Form No. A1 from Intas Ltd in respect of this supply, but proof of supply in the form of invoice and e-mail from Intas is enclosed. Further, he also claimed that the demand is time barred in the absence of any intention to evade tax through suppression. He referred to case laws relied upon by them in this regard and also regarding issuance of show cause notice on the basis of income tax data. He requested to condone the delay in filing of appeal and to set-aside the impugned order.

5.2 Subsequently, due to change in the appellate authority fresh personal hearing was granted on 10.10.2023. Shri Jaimin Gandhi, Advocate appeared for personal hearing on behalf of the appellant and reiterated the submissions made in written submissions. He also requested two weeks time to make further additional submissions. However, till date no additional submissions were made. I, therefore, proceed to decide the case based on the detailed submissions made before the earlier appellate authority and the documents available on record.

5.3 In the addition written submission submitted before the then appellate authority they have claimed that;

- Merely because there is some discrepancy in the service tax return filed, reflecting the complete turn over under the service tax return, it does not amount to any malafide intention on the part of the Appellant. If the Appellant had malafide intention of evading the payment of service tax then the Appellant would not have made those disclosures in the income tax return.

- Out of the total difference, Rs. 1,44,000/- (Rs. 1,00,000/- in F.Y 2014-15 & Rs. 44,000/- in F.Y 2015-16) are towards services rendered to M/s. Intas Pharmaceuticals Limited, a unit located in Special Economic Zone. The Appellant relies on the e-mail correspondences between the Appellant and M/s. Intas Limited. They have relied on the e-mail dated 28/06/2023 by Shri Amit Sharma on behalf of M/s. Intas Pharma to the Appellant same is reproduced as under:

  "As discussed over a call, please find attached the DC (Development Commissioner, KASEZ) list of services for exemption for SEZ. You may share this along with the invoice raised to Intas and payment records to establish that the services were rendered at SEZ. This might be helpful in obtaining exemption."

- In letter dated 01/04/2016 by the Pharmaceutical Special Economic Zone, Ministry of Commerce, Office of the Specified Officer, Government of India to M/s. Intas Pharmaceuticals Limited it indicates that decision was taken on 17/11/2011 approving 93 authorised services. The Intas Pharma has acknowledge that the service is covered by the appeal and by the invoices at pitch number 10 and 11 of the paper book are services provided to it (SEZ) and they are covered by the approved list of services and so the appellant is entitled to exemption on service tax on the same. The Appeal was under a Bonafide belief and he relied upon the declaration made by Intas Pharma services provided to them are entitled for exemption under the service tax. Merely, because the new process as prescribed under the law of issuing form number AI at the relevant point in time by Intas Pharma shall not deprive the appellant of their legitimate claim of exemption of service tax. Accordingly, the appellant is entitled to exemption of service tax from the services provided to Intas Pharma.

- They also placed on record the e-mail correspondences along with the invoices and the list of approved service so as to establish the claim that services of Rs. 1,44,000/- are rendered to a unit located in special economic zone and accordingly they are exempt from levy of service tax.

- Merely because there is non-compliance on certain procedural aspects of the Finance Act 1994 along with the notifications issued therein will not disentitled the appellant from his legitimate right of exemption on services provided to a unit located in a Special Economic Zone. The Appellant further submits that merely because there is lapse of certain procedure compliances, it will not take away the substantial legitimate right of examination of the appellant. The Appellant relies on the following judgement

- [2012] 27 taxmann.com 207 (Ahd. - CESTAT), Adani Ports & Special Economic Zone Ltd.
- 2015] 53 taxmann.com 476 (Ahmedabad - CESTAT), Reliance Ports & Terminals Ltd.
- (2022] 142 taxmann.com 221 (New Delhi - CESTAT), SRF Ltd.

➢ Inadvertently failed to filed the ST-3 return for the period October, 2015 to December, 2015 however they paid Rs. 2,50,017/- on 05.02.2016 and also paid tax of Rs.5,81,438/- for the period January, 2016 to March, 2016 on 24.06.2016 and submitted a challan and Bank statement.

➢ In the F.Y. 2014-15, the professional fees of Rs.61,33,856/-, the professional fees of Rs.1,07,97,486/- in the F.Y. 2015-16 and the professional fees of Rs. 2,04,47,888/- in the F.Y. 2016-17 were reflected in the P&L A/c. Therefore, extended period of limitation cannot be invoked.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering, the cause of delay as genuine, I condone the delay of 27 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issues to be decided in the present case is whether the service tax demand of Rs.9,07,236/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise.

The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

7.1 On scrutiny of the documents, it is noticed that the SCN proposed service tax demand of Rs.8,69,986/- covering F.Y. 2014-15 to 2015-16. As the gross receipts from services for the F.Y. 2016-17 to 2017-18 (upto June, 2017) was not shared by CBDT, hence, was not available with the department at the time of issuance of SCN. The data however, was subsequently ascertained by the adjudicating authority from the appellant therefore the demand for the F.Y. 2016-17 to 2017-18 (upto June, 2017) was quantified in terms of CBIC Circular No. 1053/02/2017-CS dated 10.03.2017. The adjudicating authority therefore confirmed the total tax demand of Rs.9,07,236/- against the appellant.

TABLE-B

F.Y.	*Differential Income*	*Rate of S.Tax*	*S.Tax payable*
2014-15	2,05,999	12.36%	25,462
2015-16	60,52,501	14%	8,44,524
2016-17	2,48,331	15%	37,250
Total	**65,06,831/-**		**9,07,236**

7.2 Entire demand has been raised in the SCN based on the income data shared by the CBDT, on which service tax was not paid by the appellant. The appellant is registered with the department. They before the adjudicating authority filed a defense reply wherein they claimed that the differential income is due to the services provided to the units located in SEZ which is exempted from payment of service tax. They submitted copy of Forem-26 AS, ITR-Return, Balance Sheet, Profit & Loss Account, ST-3 Returns, however, the adjudicating authority confirmed the demand on the grounds that the appellant have failed to provide documentary evidences to establish that the services was rendered to the SEZ unit.

7.3 On going through the records submitted, it is observed that in ST-3 returns the appellant have shown to have rendered taxable services under Manpower Recruitment /Supply Agency Service; Event Management Service, Management or Business Consultant Service. They also submitted two invoices raised to Shri Bhavin Vahia, Sr. Manager-HR of M/s. Intas Pharmaceuticals Ltd. having office at 5, 6, 7- Pharmez Sarkhej-Bavla Highway, Matoda Village, Ahmedabad. Invoice No. FPMS/15-16/IPL-P/01 dated 23.05.2014 was raised for amount of Rs.10,00,000/- and Invoice No. FPMS/15-16/IPL-P/01 dated 10.07.2015 was for amount of Rs. 44,000/-. Both these amounts were raised towards professional fees for training program-Development Skill.

7.4 Further, the appellant have also produced a letter of Specified Officer addressed to M/s. Intas Pharmaceuticals Ltd informing list of approved 96 authorized services approved by Development Commissioner, KASEZ, Ahmedabad, which includes the taxable services like, Commercial training & Coaching, Manpower Recruitment /Supply Agency Service; Event Management Service, Management or Business Consultant Service & Event Management Services. The appellant have claimed that the differential value noticed in the ITR was pertaining to the income received in respect of the taxable services rendered to M/s. Intas Pharmaceuticals, which is a SEZ unit hence they are eligible for exemption from tax. They also submitted following reconciliation statement to arrive at their tax liability.

TABLE-C

F.Y.	*Differential Income*	*S.Tax payable*	*Value of Service rendered to SEZ*	*Taxable Income after exemption*
2014-15	2,05,999	25,462	1,00,000	1,05,999
2015-16	60,52,501	8,44,524	44,000	60,08,501
2016-17	2,48,331	37,250	2,48,331	0

TOTAL	65,06,831	9,07,236	392331	61,14,500

7.5 Notification No. 12/2013-ST dated 01.07.2013, exempts the services on which service tax is leviable under Section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess and secondary and higher education cess leviable thereon. However, the exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations. The procedure for refund prescribed in the notification is for the SEZ Unit /Developer of SEZ and not for the service provider. However, in terms of **Para-3 (II)** of the notification, *ab initio* exemption on the specified services received by the SEZ unit or the developer and used exclusively for the authorized operation shall be allowed subject to the following procedures and conditions, namely;

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) ***the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;***

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

7.6 Thus, in terms of Notification No.12/2013-ST dated 01.07.2013 (amending Notification No. 40/2012-ST dated 20.06.2012), the SEZ Unit or the Developer shall have the option either to avail this exemption by way of filing refund claim or not to avail the exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004. However, for ab initio exemption on the specified services the SEZ Unit or the Developer shall have to furnish a declaration in Form A-1,

verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition to the jurisdictional Deputy Commissioner (D.C). The D.C. on the basis of declaration made in Form A-1, shall issue an Authorization in Form A-2. Then, the SEZ Unit or the Developer shall provide a copy of said Authorization (A-2) to the provider of specified services. On the basis of the said authorization, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax. Thereafter, the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax. The SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorized operation or were found not to have been used exclusively for authorized operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

7.7 In the instant appeal, the appellant have provided the list of specified services and two invoices which they claim were issued in respect of the services rendered to SEZ unit. However, it is observed that Notification No.12/2013-ST dated 01.07.2013 is a conditional notification. *Ab initio* exemption can be claimed by the SEZ or the service provider only on fulfilment of the conditions prescribed in Para 3 (II) of the above notification. I find that the appellant could neither provide a copy of Authorization issued by Department to the SEZ/Developer, based on which they rendered services to the SEZ Unit or the Developer without payment of tax nor could they provide an undertaking by the SEZ unit stating that the specified services were used exclusively for authorized operations. In the absence of such authorization, I find that the benefit of exemption cannot be extended to the appellant, as exemption is conditional and the notification strictly prescribes the procedure for availing such exemption. Hon'ble Supreme Court decision in *Commissioner of Central Excise, Allahabad* v. *Ginni Filaments Ltd.* [2005 (181) E.L.T. 145 (S.C.)] for the proposition that exemption notification has to be read strictly so far as the eligibility is concerned it was for the assesses to prove by evidence.

7.8 It is a well settled position of the law that a person who claims the exemption has to prove that he satisfies all the conditions of the Notification so as to be eligible to the benefit of the same. References can be made to the Hon'ble Supreme Court Constitutional Bench decision in the case of *CCE* v. *Harichand Shri Gopal* 2010 (260) E.L.T. 3 (S.C.); *Mysore Metal Industries* v. *CC*, Bombay 1988 (36) E.L.T. 369 (S.C.); *Moti Ram Tolaram* v. *Union of India* - [1999 (112) E.L.T. 749 S.C.]; *Collector* v. *Presto Industries* - 2001 (128) E.L.T. 321 and *Hotel Leela Ventures* v. *Commissioner* - 2009 (234) E.L.T. 389 (S.C.). It stands held in all the above decisions that onus to prove and show the satisfaction of the conditions of the Notification is on the person who claims the benefit of the same and every exemption Notification has to be read in strict sense. In the case of *CCE* v. *Paranteral Drugs* - 2009 (236) E.L.T. 625 (S.C.), the position was reiterated by the Hon'ble Apex Court that exemption Notification have to be read strictly and burden is on the assessee to show that they fall within the four corners of the exemption Notification. Reference can again be made to the latest decision of the

Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai* v. *Dilip Kumar & Company*— 2018 (361) E.L.T. 577 (S.C.) wherein it was held that burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption. I also refer to another decision of the Hon'ble Supreme Court in the case of *Larsen & Toubro Ltd.* v. *Commissioner of Central Excise, Hyderabad* - 2015 (324) E.L.T. 646 (S.C.). In view of the above said law, I find that the appellant was not entitled to the benefit of the Notification.

7.9 The appellant have relied on various case laws: Adani Ports & Special Economic Zone Ltd.- 2012 (27) S.T.R. 171 (Tri. - Ahmd.); Reliance Ports & Terminals Ltd.- 2015] 53 taxmann.com 476 (Ahmedabad - CESTAT), 2015] 53 taxmann.com 476 (Ahmedabad - CESTAT), SRF Ltd-2015] 53 taxmann.com 476 (Ahmedabad - CESTAT). I have gone through the above decisions. Hon'ble Tribunal in the case of M/s. Adani Ports & Special Economic Zone Ltd- held that Service Tax is not leviable on services provided to SEZ Unit in terms of Section 26(1)(e) of SEZ Act, 2005 read with Rule 30(10) of SEZ Rules, 2006. Further, Section 51 of Act, 2005 provides overriding effect of SEZ Act, in case of any inconsistent provision in any other Act. Notification No. 9/2009-S.T. and amending Notification No. 15/2009-S.T. issued only to operationalize exemption/immunity from Service Tax available in Act ibid. However, this decision was challenged before Hon'ble High Court of Gujarat- *2015 (39) S.T.R. J363 (Guj.)]*. In the case of Reliance Ports & Terminals Ltd-**2015 (40) S.T.R. 200 (Tri. - Ahmd.)**, also hon'ble Tribunal held similar view which was challenged before Hon'ble High Court of Gujarat. Both these appeals are pending for decision hence reliance on these decisions is pre-mature. Further, in the case of M/s. SRF Ltd- 2022 (64) G.S.T.L. 489 (Tri. - Del.), the issue is distinguishable as it dealt with the refund filed by SEZ unit.

8. Another contention raised by the appellant is that they as the gross receipts were reflected in the ITR, suppression cannot be invoked. I find that CBDT & CBIC are different department hence information revealed in ITR cannot be treated as a declaration before the department. In the case of *Maruti Udyog Ltd.* v. *CCE, New Delhi,* 2001 (134) E.L.T. 269, the Tribunal has held that the theory of universal knowledge cannot be attributed to the department in the absence of any declaration. The appellant never declared in their ST-3 Return the exemptions claimed vide above notification or that the services were rendered to SEZ unit. Similarly, Honble CESTAT, SOUTH ZONAL BENCH, BANGALORE in the case of ICICI ECONET INTERNET & TECHNOLOGY FUND - 2021 (51) G.S.T.L. 36 (Tri. - Bang.) held that;

"…It cannot be argued that suppression cannot be alleged as the information is in the public domain. Information being in the public domain is not of any consequence. The information should be in the knowledge or made available to the authorities concerned who need to take a certain decision depending on such information. It is not the case of the appellants that they have been paying applicable service tax on getting registered and have been submitting regular returns to service tax authorities. ***It is not the case of the appellants that the material information available in the form of various contracts/agreements and balance sheets/ledgers have been submitted to the Department suo motu by the appellants.*** *It is only after investigation has been initiated, the necessary documents were submitted. Thus, the*

information available in the public domain is of no avail. We find that Learned Adjudicating Authority has rightly relied upon in the case of CCE, Calicut v. Steel Industries Kerala Ltd., 2005 (188) E.L.T. 33 (Tri. - Bang.) wherein it is held at Para 3 as under :

> *3. We find that in the case of Maruti Udyog Ltd. v. CCE, New Delhi, 2001 (134) E.L.T. 269, the Tribunal has upheld the invocation of the extended period of limitation when the assessees did not declare waste and scrap of iron and steel and aluminium and availment of credit therein either in their classification list or modvat declaration or in the statutory records. The Tribunal held that the theory of universal knowledge cannot be attributed to the department in the absence of any declaration."*

Thus, in light of above decisions, I find that the suppression has been rightly invoked and the demand is not barred by limitation.

9. Further, the appellant have also claimed that they have discharged the tax liability of Rs.2,50,017/- on 05.02.2016 towards the tax liability for the period (October, 2015 to December, 2016) and tax of Rs.5,81,438/- paid on 24.06.2016 was towards tax liability for the period (January, 2016 to March, 2016). They however could not file the ST-3 return for said period. They also submitted a challan and Bank statement to this effect. In all the appellant have made the payment of Rs.8,31,455/- during 2016, which were towards Event Management Service. These payments were made in 2016 i.e. prior to issuance of impugned order on 26.05.2022. I find that said payments made in 2016 shall be appropriated against the present tax liability of Rs.9,07,236/- subject to the verification of fact that the payments made were towards the present tax liability.

10. It is also observed that the demand for the period April, 2014 to September, 2014 is time barred as the ST-3 return was filed on 16.10.2014 and considering five years period, the SCN should have been issued by 15.10.2019, whereas the notice was issued on 28.09.2020. Thus, I find that the demand pertaining to period April, 2014 to September, 2014 is time barred. Therefore, the taxable value shall get reduced from Rs.25,462/- to Rs.7,540/- for the F.Y. 2014-15. The calculation is given below:-

F.Y.	ST-3 Value (April to Sept)	B/S Value (April to Sept)	Difference in value held time barred	S.tax liability (12.36%)	S.Tax liability as per SCN	Actual tax liability
1	2	3	4	5	6	7
2014-15	**2155809**	**2300808**	**144999**	**17922**	**25462**	**7540**

11. In light of above discussion and findings, I find that the service tax demand of only **Rs.8,52,064/-** (Rs.7,540/- + Rs.8,44,524/-) is sustainable on merits as well as on limitation. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.

12. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India* v/s *Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser

penalty. I find that the appellant was rendering a taxable service but suppressed the value of taxable service and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

13. As regards the imposition of penalty under Section 77(2) is concerned, I find that the same is also imposable as the appellant were rendering the taxable service but failed to correctly assess their tax liability thereby filed incorrect ST-3 Return. However, considering the reduction in tax and the fact that the appellant have discharge majority of the tax liability before issuance of impugned order, I therefore reduce the penalty from Rs.10,000/- to Rs.1000/- under Section 77(2) of the Finance Act, 1994.

14. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of **Rs.8,52,064/-** alongwith interest and penalties and also order appropriation of the amount Rs.8,31,455/- already paid by the appellant subject to verification as directed in para-9 supra.

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

31.10.23

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date:31.10.2023

Attested

(रेखा नायर)
अधीक्षक(अपील्स)
सी. जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

M/s. Gita Arvind Joshi - **Appellant**
(Proprietor of M/s Focal Point Management Services),
33-Mahalaya-2, SVM Lane, Off Science City Road,
Sola, Ahmedabad-382350

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

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North (For uploading the OIA)
4. Guard File.