



सत्यमेव जयते

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- टेलीफैक्स 07926305136



DIN:20230464SW0000510978

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2940/2022-APPEAL / 760-61
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-014/2023-24
 दिनांक Date : 25-04-2023 जारी करने की तारीख Date of Issue 26.04.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/RAJ/93/2022-23 दिनांक: 29.04.2022,
 issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Roosh Bipinbhai Kalaria,
 10, Kalaria House, B. D. Patel Farm,
 Opp. YMCA Club, Muhmatpura Gam Road,
 Ahmedabad-380058

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
 North, 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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 :

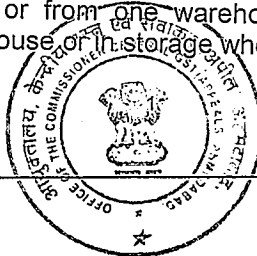
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 प्रक्रिया 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 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 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.

- (7) 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.

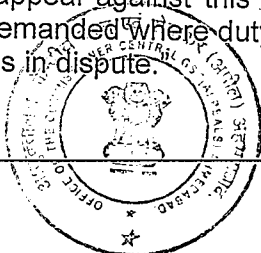
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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.



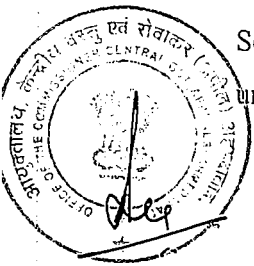
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Roosh Bipinbhai Kalaria, 10, Kalaria House, B. D. Patel Farm, Opp. YMCA Club, Muhmatpura Gam Road, Ahmedabad – 380058 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/RAJ/93/2022-23 dated 29.04.2022 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST, Division VII, 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. BILPK3292G. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 and FY 2016-17, it was noticed that the appellant had earned an income of Rs. 15,85,070/- during the FY 2014-15 and Rs. 15,95,513/- during the FY 2016-17, which was 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)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/AR-I/Div-VII/A'bad-North/52/Rush Bip/20-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 3,93,120/- for the period FY 2014-15 and FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2015-16 and FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,93,120/- 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 from FY 2014-15 and FY 2016-17. Further (i) Penalty of Rs. 3,93,120/- was also 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) and Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs.



10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for not submitting documents to the department, when called for.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal along with an application for condonation of delay on the following grounds:

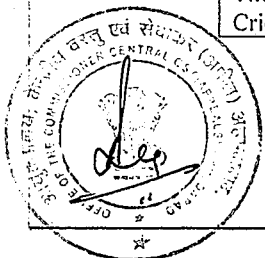
- The appellant is an individual and is engaged / employed / serves the country as a cricketer / sports person.
- The appellant is a recognized cricketer and plays for the nation at various levels under the recognized sports bodies of Gujarat Cricket Association and the Board of Cricket Association of India and also filed their Income Tax Returns as "sports-person". The said cricket associations have deducted TDS on the professional fees income under Section 194J of the Income Tax Act, 1961.
- The income received by them as professional fees, but the same was exempted under Sr. No. 10 of the Notification No. 25/2012-ST dated 20.06.2012, and hence, the appellant had not paid any Service Tax. While playing for the nation, the appellant never intended to evade any payment of taxes which were applicable to them.
- The appellant has provided reconciliation of their income shown in their 26AS with applicability of Service Tax under Chapter V of the Finance Act, 1994, which is as under:

FY 2014-15

Amount received from	Amount (in Rs.)	Head of Income	Explanation
Gujarat Cricket Association	4,54,200/-	Professional Fees	Exempted under Notification No. 25/2012-ST dated 20.06.2012 (Sr. No. 10)
The Board of Control for Cricket in India	7,05,736/-	Professional Fees	Exempted under Notification No. 25/2012-ST dated 20.06.2012 (Sr. No. 10)
Adidas India Marketing Private Limited	2,91,667/-	Sponsorship	RCM applicable under Notification No. 30/2012-ST dated 20.06.2012 (Sr. No. 3)
Total	14,51,603/-		

FY 2016-17

Amount received from	Amount (in Rs.)	Head of Income	Explanation
Gujarat Cricket Association	6,01,600/-	Professional Fees	Exempted under Notification No. 25/2012-ST dated 20.06.2012 (Sr. No. 10)
The Board of Control for Cricket in India	6,33,913/-	Professional Fees	Exempted under Notification No. 25/2012-ST dated 20.06.2012 (Sr. No. 10)



Reliance Industries Ltd.	3,60,000/-	Employment Contract	10) Not taxable under Service Tax
Total	15,95,513/-		

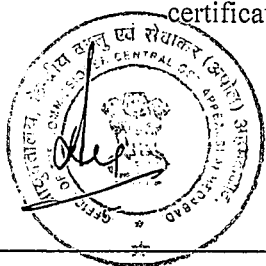
- The appellant submitted that no SCN or OIO should be issued merely on assumption and presumption. The same should be backed by facts and documents, which the impugned order lacks. As the facts and documents that the appellant provided services to recognized sports body in his individual capacity as a cricket player has not been considered by the adjudicating authority and moreover no classification of service provided by the adjudicating authority in the impugned order.
- The appellant submitted that ITR / 26AS cannot be considered as base document for determining Service Tax liability. The appellant relied on the following case laws in support of their arguments :
 - Kush Construction Vs. CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.All.)]
 - Quest Engineers & Consultant Pvt. Ltd Vs. Commissioner, CGST & C.Ex. Allahabad [2022 (58) GSTL 345 (Tri. All.)]
 - Ganpati Mega Builders (I) Pvt. Ltd. Vs. Commr. Cus. C.Ex. & ST, Agra [2022 (58) GSTL 324 (Tri. All.)]
 - Hindalco Industries Ltd. Vs. CCE. Allahabad [2003 (161) ELT 346 (Tri. Del.)]
 - Alpa Management Consultant P. Ltd. Vs. CST [2006 (4) STR 21 (Tri. Bang)]
 - CCE Ludhiana Vs. Deluxe Enterprises [2011 (22) STR 203 (Tri. Del.)]
 - Raj Engineering Vs. CCE, Udaipr [2020 (37) GSTL 252 (Tri. Del.)]
- The SCN presumes that the difference in turnover is towards provision of service. It is a settled law that no Service Tax liability can be fastened on any assessee without determining the classification of service further, once there is no allegation in the Show Cause Notice based on which the demand is proposed then the demand cannot be sustained. The appellant relied on the following case laws in support of their arguments :
 - CCE Vs. Brindavan Beverages [(2007) 213 ELT 487(SC)]
 - Delta Enterprises Vs. CCE, Delhi [2018 (10) GSTL 392 (Tri - Del)]
- The appellant submitted that they should also get the benefit of small-scale service provider under Notification no. 33/2012-ST dated 20.06.2012, wherein Service Tax is not applicable to services provided upto Rs. 10 lakhs. Hence, for FY 2014-15 the said exemption should be available to them. The appellant submitted copies of Profit & Loss Accounts, Balance Sheets, Form 26AS and Income Tax Returns for the FY 2013-14 to FY 2016-17.



- Benefit of cum-tax under Section 67 of the Finance Act, 1994 required to extended to them in case demand stands confirmed same shall be re-quantified after allowing the benefit of cum-tax under Section 67(2) of Finance Act, 1994 as they have not collected Service Tax from customers.
- For FY 2014-15 Apr-Sep period, the date of filing ST-3 return was 25.10.2014. The five years for the same completed on 25.10.2019. Whereas, the present SCN was issued on 26.09.2020, which is a period beyond the stipulated five years and thus, the SCN was time barred.
- Mere invoking of the extended period without proper reasoning cannot be substantiated. It is the legal burden on the authorities to prove that the appellant has suppressed certain facts with willful intention to evade liability from the Tax Department through legitimate proofs.
- They are not liable to pay Service Tax, therefore, they cannot be subjected to penalty under section 77 and 78 of the Finance Act, 1994. Similarly, no interest under section 75 can be demanded from them.

4. On going through the appeal memorandum, it is observed that the impugned order was issued on 29.04.2022 and received by the appellant on 12.07.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 07.10.2022, i.e. after a delay of 26 days from the last day of filing of appeal. The appellant have, along with appeal memorandum, also filed an Application seeking condonation of delay stating that the appellant and his family had shifted from the residential address on which the letters, notices and the subsequent order was send. Only the appellant's father was in contact with the new owners of the residence to which the letters, notices and subsequent order was send. The appellant had been travelling to various locations nationally and internationally for holidays, training and playing matches at various levels. The last day of filing of appeal was 11.09.2022, however, the month of September being the month for completion of Income Tax returns and other statutory audits the appellant; his father and his Chartered Accountant were busy in the same. Therefore, there is delay in filing appeal.

4.1 Personal hearing in the matter was held on 29.03.2023 and 19.04.2023. Shri Roosh Kalaria, Appellant and Ms. Pooja Shah, Chartered Accountant, appeared for personal hearing. The Chartered Accountant submitted relevant documents of income tax along with the certificate from Gujarat Cricket Association during hearing.



4.2 Before taking up the issue on merits, I proceed to decide the 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 dates 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 Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay and 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 given in application as genuine, I condone the delay of 26 days and take up the appeal for decision on merits.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15 and FY 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 and FY 2016-17 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."

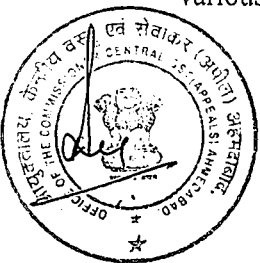


6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without 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 valid ground for raising of demand of service tax.

7. It is also observed that the adjudicating authority has scheduled personal hearing by specifying 3 (three) different dates i.e. 19.04.2022, 21.04.2022 and 25.04.2022 in the single letter / notice dated 07.04.2022. In this regard, I find that the adjudicating authority has given three dates of personal hearing in one notice and has considered the same as three opportunities. As per Section 33A(2) of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such case, the adjudicating authority may grant time and adjourn the personal hearing by recording the reason in writing. Not more than three such adjournments can be granted. Since such adjournments are limited to three, the hearing would be required to be fixed on each such occasion and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another date. However, the adjudicating authority is required to give one date a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case.

7.2 In view of the above, I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and it is only thereafter, the impugned order was required to be passed. Thus, it is held that the impugned order passed by the adjudicating authority is clearly in breach of the principles of natural justice. The same is not legally sustainable on this count also.

8. It is observed that, the main contentions of the appellant are that the income received by them was professional fees and the same was exempted under Sr. No. 10 of the Notification No. 25/2012-ST dated 20.06.2012, and for the remaining income, they were eligible for threshold exemption under the Notification No. 33/2012-ST dated 20.06.2012. The appellant have submitted a Certificate dated 15.04.2023 issued by the Gujarat Cricket Association (GCA) certifying that the appellant is a Cricket Player, who represents GCA for various cricket tournaments.



8.1 On verification of the copies of Profit & Loss Accounts, Balance Sheets, Form 26AS and Income Tax Returns for the FY 2013-14 to FY 2016-17, it is observed that the appellant had received the income during the period FY 2013-14 to FY 2016-17 as detailed below:

(Amount in Rs.)

Financial Year	Profession Fees from GCA and BCCI	Other Income	Total Income
2013-14	2,27,063/-	6,81,667/-	9,08,730/-
2014-15	11,59,936/-	4,25,134/-	15,85,070/-
2015-16	16,94,225/-	0	16,94,225/-
2016-17	12,35,513/-	3,60,000/-	15,95,513/-

9. For ease of reference, I reproduce the relevant provision of Notification No. 25/2012-ST dated 20.06.2012 as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

10. Services provided to a recognised sports body by-

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;

(b) another recognised sports body;"

9.1 In view of the above legal provision, I find that the professional fees received by the appellant from the recognized sports bodies of Gujarat Cricket Association and the Board of Cricket Association of India related to match fees as a Cricket player and the said income was



exempted under Sr. No. 10 of Notification No. 25/2012-ST dated 20.06.2012. The appellant are not required to pay any service tax on such income.

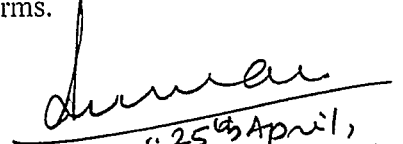
10. As regards the remaining income of Rs. 4,25,134/- for the FY 2014-15 and Rs. 3,60,000/- for the FY 2016-17, I find that the appellant is eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15 and for the FY 2016-17, as their total taxable value of service during the FY 2013-14 was Rs. 6,81,000/- and during the FY 2015-16 was NIL, i.e. below Rs. 10,00,000/- which is corroborated by various documents submitted by the appellant for the FY 2013-14 and FY 2015-16.

9. In view of the above, I hold that the appellant is not liable to Service Tax for the income received by them during the FY 2014-15 and FY 2016-17. The impugned order passed by the adjudicating authority confirming the demand against the appellant is not legally sustainable on merits. Since the demand of service tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case. As the matter is being decided on merits, the other contentions of the appellant regarding issue of limitation is not being discussed.

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


11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

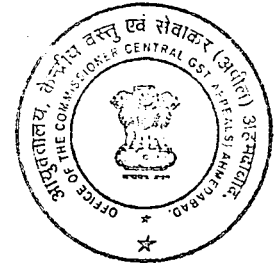
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
25th April, 2023

Date : 25.04.2023

Attested


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



By RPAD / SPEED POST

To,
M/s. Roosh Bipinbhai Kalaria,
10, Kalaria House, B. D. Patel Farm,
Opp. YMCA Club, Muhmatpura Gam Road,

Appellant

Ahmedabad – 380058

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

Respondent

Copy to :

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

