



आयुक्त(अपील)का कार्यालय Office of the Commissioner (Appeals)

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3466/2022 / 1113 - 1117

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-002-APP-018/2023-24**
दिनांक Date : **21-04-2023** जारी करने की तारीख Date of Issue 04.05.2023

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

ग Arising out of OIO No. **GST-06/D-VI/O&A/161/Dr. Sunita/AM/2021-22** दिनांक: **22.03.2022**
passed by Assistant Commissioner, CGST, Division-VI, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. Dr. Sunita Nagar,
44, Amantran Bungalows,
Arohi Club Road, Bopal Ghuma,
Ahmedabad - 380058

Resondent

1. The Assistant Commissioner
CGST, Division VI, Ahmedabad North
7th Floor, B.D. Patel House,
Naranpura, Ahmedabad - 380014

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

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

भारत सरकार का पुनरीक्षण आवेदन :

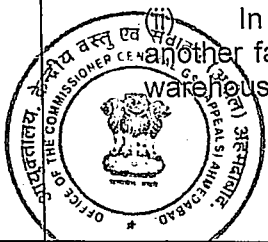
Revision application to Government of India:

(i) 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 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 में हो माल की प्रक्रिया 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.



(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 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो 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 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 :-

(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 पढ़ी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

70 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
- इण लिया गलत सेनवैट क्रेडिट की राशि;
- बण 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.

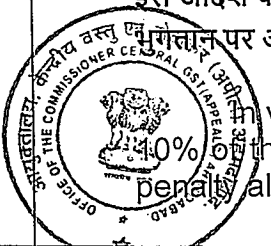
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxiii) amount determined under Section 11 D;
- (clxiv) amount of erroneous Cenvat Credit taken;
- (clxv) 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

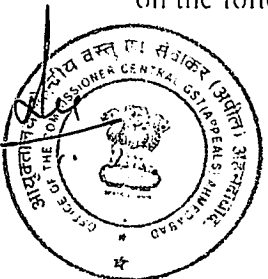
The present appeal has been filed by Dr. Sunita Nagar, 44, Amantran Bungalows, Arohi Club Road, Bopal Ghuma, Ahmedabad – 380058 (hereinafter referred to as “the appellant”) against Order-in-Original No. GST-06/D-VI/O&A/161/Dr.Sunita/AM/2021-22 dated 22.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ABBPN2146A. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15; it was noticed that the appellant had earned an income of Rs. 12,19,147/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194-H, 194-J (as per 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 accounts, Income Tax Returns, 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-06/04-621/O&A/ Dr. Sunita/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 1,50,686/- for the period FY 2014-15, 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; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 76, Section 77(1) & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority and the demand of Service Tax amounting to Rs. 1,36,336/- was confirmed under provision of Section 73(1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15 and dropped the remaining demand of Service Tax. Further (i) Penalty of Rs. 1,36,336/- 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) of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

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



- The appellant is a doctor by profession and provides services as a Professor at a Medical College. The appellant provided such services to the students who are pursuing Bachelor of Medicine and Bachelor of Surgery (M.B.B.S). The said services were provided as professor in Gujarat Cancer Society Medical College, which is recognized by Medical Council of India and is affiliated with Gujarat University. Further, the appellant is also associated with Dean Government Medical College.
- The amounts received from the colleges are of following nature:
 - (i) Salary Income received from Dean Govt. Medical college amounting to Rs.1,16,107/-
 - (ii) Professional fees received from Gujarat Cancer Society Medical College amounting to Rs. 11,03,040/-.
- According to the definition of "service" as defined under Section 65B(44) of the Finance Act, 1994, services provided in course of employment is not classified as service and hence, no service tax is payable. In the instant case, the appellant received Salary income in course of employment at the college. Thus, the same shall not be taxable under Service tax.
- Further, with regards to the income received as "Professional fees", the appellant has eligible for exemption from service tax as per Entry 9 of Mega Exemption Notification No. 25/2012-ST dated 01.07.2012. However, Entry 9 got amended vide Notification No. 06/2014-ST dated 11.07.2014 whereby exemption to services provided by the appellant got withdrawn w.e.f. 11.07.2014. Accordingly, appellant was eligible for availing exemption up to 10.07.2014.
- The appellant's turnover did not exceed by 'Rs. 10 lakhs for being liable to pay Service Tax during FY 2014-15. The appellant also eligible for benefit of threshold exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15, as their taxable turnover in the FY 2014-15 did not exceed Rs. 10 lakh. Thus, the appellant has taken benefit of the afore-mentioned exemption and thus, shall not be liable to pay Service Tax. The summary of the income of the appellant is tabulated as under:

Particulars	Amounts (in Rs.)	Remarks
Amount received as Salary	1,16,107/-	Not covered in definition of "service"
Amount received as professor from medical college, for the month of May-2014 and June-2014.	1,80,000/-	Covered under the Mega Exemption Notification No. 25/2012-ST (Entry No. 9)
Amount received as professor from medical college, for the rest of the period of FY 2014-15	9,23,040/-	Benefit of Notification No. 33/2012-ST taken for turnover upto Rs. 10 lakh.

- When no service tax is payable, the question of penalty under Section 76 and Section 77 of the Finance Act, 1994 does not arise.



- In the present case, there is no fraud; collusion; willful misstatement; suppression of facts or contravention of any provisions with intend to evade payment of service tax, penalty under Section 78 of the Finance Act, 1994 can not be imposable and also invoking larger period or extended period for issue of show-cause notice not correct.
- The appellant were not liable to furnish returns as the taxable turnover during the FY 2014-15 did not exceed Rs. 10 lakhs. Thus, the appellant is not liable to pay Penalty under Section 70(1) of the Finance Act, 1994 for the same.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 22.03.2022 and received by the appellant on 02.06.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 30.08.2022, i.e. after a delay of 29 days from last day of filing appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the applicant was out of town since long due to having medical emergency in family and the delay is accidental and not intentional.

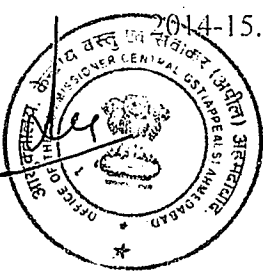
4.1 Personal hearing in the matter of Application for condonation of delay was held on 15.02.2023 through virtual mode. Ms. Forum Dhruv, Chartered Accountant, appeared on behalf of the appellant. She re-iterated the submission made in the application for condonation of delay.

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 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 Finance Act, 1994, 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 given in application as genuine, I condone the delay of 29 days and take up the appeal for decision on merits.

5. Personal hearing in the case was held on 29.03.2023 through virtual mode. Ms. Forum Dhruv, Chartered Accountant and Ms. Bhagyashree Dave, Chartered Accountant, appeared on behalf of the appellant for personal hearing. They reiterated submission made in appeal memorandum.

6. 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.



7. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 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 they were liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

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

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

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

8. It is observed that the contentions of the appellant are that (i) the salary income of Rs. 1,16,107/- is not taxable as the same does not fall under the definition of "service" as defined under Section 65B(44) of the Finance Act, 1994; (ii) the professional fees income of Rs. 1,80,000/- up to 10.07.2014 is exempted from service tax as per Entry 9 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012; and (iii) the remaining income of Rs. 9,23,040/- is below threshold limit of exemption and they are eligible for exemption from service tax under Notification No. 33/2012-ST.

8.1 The adjudicating authority has confirmed the demand of service tax in the impugned order referring to the Entry No. 9 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, as amended, vide Notification No. 6/2014-ST dated 11.07.2014. However, the adjudicating authority has failed to refer the Entry No. 9 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 which existed up to 10.07.2014.

9. For ease of reference, I reproduce the relevant provisions (Entry No. 9 existed up to 10.07.2014) under the Notification No. 25/2012-ST dated 20.06.2012, 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... ..

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

- (a) auxiliary educational services; or*
(b) renting of immovable property;

.....

2. Definitions. - For the purpose of this notification, unless the context otherwise requires, -

(a)

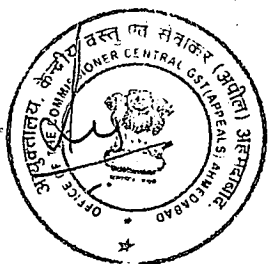
(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge - enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;"

10. On verification of the Form 26AS for the FY 2014-15, it is observed that the appellant have received an amount of Rs. 1,16,107/- from Dean Govt. Medical College and TDS on this income was deducted under Section 192 of the Income Tax Act, 1961. In view of the specific exclusion under Section 65B(44) of the Finance Act, 1994, the appellant is not liable to pay service tax on the said amount of Rs. 1,16,107/- received from Dean Govt. Medical College, which is in the nature of salary, on which TDS was deducted under Section 192 of the Income Tax Act, 1961. The relevant provision of Section 65B(44) of the Finance Act, 1994 reads as under:

"Section 65(B)(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or



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(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force."

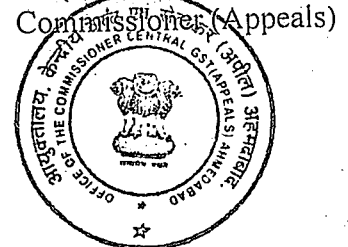
10.1 On verification of the Form 26AS for the FY 2014-15, I also find that the appellant had received an income of Rs. 1,80,000/- during the month of May-2014 and June-2014 from Gujarat Cancer Society Medical College as Professional Fees, I find that the said service provided by the appellant is exempted up to 10.07.2014 as per Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012.

10.2 As regard the remaining income of Rs. 9,23,040/- for the FY 2014-15, I find that the taxable income of the appellant for the FY 2013-14 is required to be checked to ascertain the eligibility of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15. On verification of the Income Tax Return and Income Ledger for the FY 2013-14 submitted by the appellant, I find that total value of service provided by the appellant during the Financial Year 2013-14 was Rs. 10,80,000/-, which was received by her from Gujarat Cancer Society Medical College as Professional Fees and exempted as per Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012. Thus, 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, as their total taxable value of service during the Financial Year 2013-14 was NIL, i.e. below Rs. 10,00,000/-.

10.3 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. 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.


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

12. 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.



Attested

Date : 21.04.2023


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

By RPAD / SPEED POST

To,

Dr. Sunita Nagar,

Appellant

44, Amantran Bungalows,

Arohi Club Road, Bopal Ghuma,

Ahmedabad – 380058

The Assistant Commissioner,

Respondent

CGST, Division-VI,

Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) Guard File

6) PA file

