



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:20230464SW000000BBB5

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/102/2023-APPEAL / 1188-92
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-003/2023-24
दिनांक Date : 18-04-2023 जारी करने की तारीख Date of Issue 19.04.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 187/AC/Demand/22-23 दिनांक: 18.11.2022, issued
by Deputy/Assistant Commissioner, CGST, Division-I, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Bharti Sunil Madhwani,
Tirupati, A-4, Raj Laxmi Park,
Behind Excise Chowki, Ahmedabad-382345

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-I, Ahmedabad North
,Ground Floor, Jivabhai Mansion Building, Aashram Road, 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 :

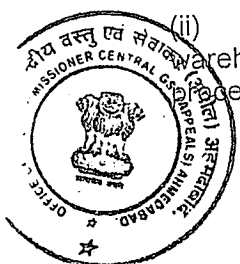
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 मामले 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 ईए-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 ई. का मुख्यशीर्ष के अंतर्गत धारा 35-ई 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.

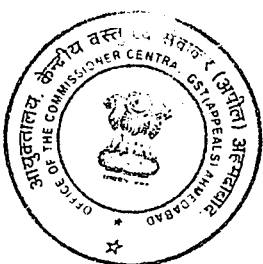
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-ई 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन और 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.

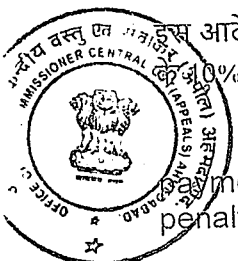
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग किए गए शुल्क 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. Bharti Sunil Madhwani, Tirupati, A-4, Raj Laxmi Park, Behind Excise Chowki, S. Ahmedabad – 382345 (hereinafter referred to as “the appellant”) against Order-in-Original No. 187/AC/Demand/22-23 dated 18.11.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division I, 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. ALSPK4178N. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 16,64,651/- during the FY 2015-16, 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 Accounts, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

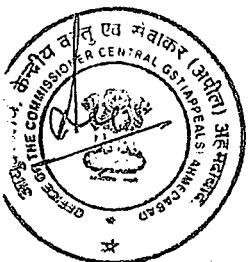
2.1 Subsequently, the appellant were issued Show Cause Notice No. IV/TPD/SCN/ Bharti/2021 dated 23.04.2021 demanding Service Tax amounting to Rs. 2,41,375/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

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. 2,41,375/- 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 2015-16. Further, Penalty of Rs. 2,41,375/- was also imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:



- The appellant were engaged in providing services as insurance agent of Life Insurance Corporation of India and were also engaged in providing services as an agent of Oriflame Sweden to their clients and in exchange of their services, the Oriflame Sweden, was paying the sum in the form of Commission.
- They have received Rs. 2,68,734/- as commission from Life Insurance Corporation and Rs. 16,64,651/- was received as commission from Oriflame Sweden. Thus, total amount of Rs. 19,33,385/- were received as commission during the FY 2015-16.
- The commission in come up to Rs. 10 lakhs are exempted under Notification No. 33/2012-ST. The appellant is, therefore, liable to pay service tax on the amount of Rs. 9,33,385/- received as commission Income mentioned in the Statement FORM 26AS for the year 2015-16.
- The appellant initially at the time entering in the channel has purchased the goods from M/s. Oriflaim Co. and sold the goods as per the price declared by the company and made another seven members and included in this channel. These members will purchase the goods from M/s. Oriflam Co. and sell the goods. In this way the increased to this extend the discount amount credited to appellant account. Actually, at the initial stage in the year 2012-13, the activities of selling of goods were started. At present the appellant is not provided any services relating to selling of goods. These activities just similar to chit fund activities. In chit fund the members collecting cash and the members are selling goods. The discount amount is being distributed by the company as per percentage of sales. Thus, the appellant has not provided any service except becoming member and made out another members in order to join this scheme with a intention to earn their lively hoods.
- The appellant have submitted copies of Balance Sheet with Profit & Loss Account, Form 26AS and Income Tax Return for the FY 2015-16 along with appeal memorandum.
- The department has not carried out any independent enquiry to ascertain as to whether the income declared in the IT returns relates to taxable services provided or otherwise. Even it has not been mentioned in the SCN that what kind of service has been provided by them. No service tax liability can be fastened on unidentified service for unidentified service recipient.



- In the present case, the department has issued show cause notice solely based on data/income particulars collected from Income Tax department but no action in regard to investigate the matter conducted to establish the intention of the appellant regarding involving evasion of payment of service Tax on the income so received. Thus, the provisions of Section 73(1) of Finance Act, 1944 are not sustainable.
- The entire demand is barred by limitation as the period involved in the present case is 2015-16 whereas the SCN is served in the month of 23 April, 2021 i.e., beyond the extended time limit as prescribed under the provisions of Section 73(1) of the Finance Act, 1994. Thus, this is not the case of the suppression of facts or misstatement with intent to evade payment of duty, in as much as, the appellant was not served any letter to produce the evidences in regard to income so received. The department has simply collected the data from the income Tax department such as TDS26 AS Return and Income Tax Return for the year 2015-16 and issued Show cause notice dated 23-04-2021 demanding the amount of Service Tax on the total income so received by the Appellant which is time barred under limitation act and provisions of Section 73(1) of Finance Act, 1994 are not applicable.

(a) CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)

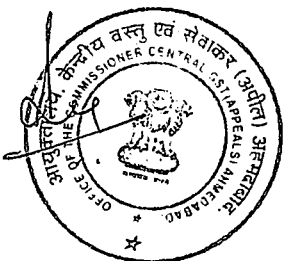
(b) Uniworth Textiles Ltd. Vs. CCE - 2013 (288) ELT 161 (SC)

(c) Pushpam Pharmaceuticals Company Vs. CCE - 1995 (78) ELT 401 (SC)

- Further, so far as order for imposition of penalty under Section 77 & 78 of the Finance Act, 1994 is concerned, the appellant have submitted that when the demand of service tax is not sustainable on merits & limitation, the question of imposition of penalty under Section 77 & 78 of the Finance Act, 1994 does not arise. So far as the proposal to recover the interest under Section 75 of the Finance Act, 1944 is concerned, the appellant have submitted that since the demand of service tax is not legal and valid and thereby not sustainable, the question of recovery of interest does not arise. Therefore, the appellant requested to drop the proposals to either impose any penalty or to recover any interest in this case.

3.1 The appellant in their additional submission dated 20.03.2023, inter alia, made the following submission:

- The appellant is purchasing the product from the Ori Flam Company and selling through groups. The copy of printed catalogue / literature of products in detail was submitted by them. The appellant is selling the product of Oriflam on behalf of



company at the prices determined by the company and invoices on their behalf and getting remuneration on the sales of products in the form of discount, bonus, incentives, etc. During the FY 2015-16, the appellant received the income of Rs. 16,64,651/- which includes the amount of incentive, bonus etc. sanctioned and paid depending upon achievement of targeted sales amount.

- The appellant further submitted that the show cause notice dated 23.04.2021 is time barred under the provisions of limitation act on the date of its issue. The relevant date is separately provided under Section 73(1) of the Finance Act, 1994.

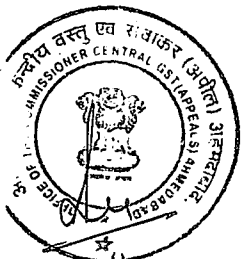
4. Personal hearing in the case was held on 29.03.2023 through virtual mode. Shri Bhudev Mishra, Authorised person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He stated that the demand is barred by limitation.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum as well as in additional submission 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 2015-16.

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

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

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper



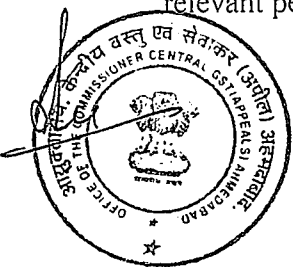
verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

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. I find that the appellant have received the Commission income of Rs. 16,64,651/- from M/s. Oriflame India Pvt. Ltd., which was reflected in Form 26AS and on the said amount, the TDS under Section 194H has been deducted by M/s. Oriflame India Pvt. Ltd.. I also find that the present show cause notice has been issued proposing demand of service tax of Rs. 2,41,375/- along with interest and penalty, on the said income only. In the impugned order passed by the adjudicating authority also confirmed demand of service tax of Rs. 2,41,375/- along with interest and penalties on the said income of Rs. 16,64,651/-.

8. As regard, the income of Rs. 16,64,651/-, it is observed that the appellant in their appeal memorandum contended that they have received the said amount as commission income from Oriflame India Pvt. Ltd. and during the period under question the appellant has not provided services in relation to sale of goods. They further submitted that these activities were just similar to chit fund activities. In chit fund, the members collecting cash and the members are selling goods. The discount amount is being distributed by the company as per percentage of sales. Thus, the appellant has not provided any service except becoming member and made out another members in order to join this scheme with a intention to earn their livelihood.

8.1 However, in their additional submission dated 20.03.2023, the appellant have contended that they were purchasing the product from the Oriflam Company and selling through groups. The appellant is selling the product of Oriflam on behalf of company at the prices determined by the company and invoices on their behalf and getting remuneration on the sales of products in the form of discount, bonus, incentives, etc. However, the appellant have not submitted any supporting documents for purchase and sale of the goods during the relevant period.



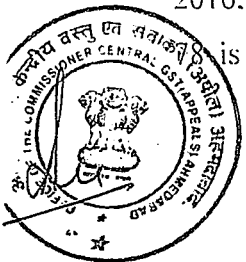
8.2 Hence, I find that it is undisputed that the appellant had received Commission income of Rs. 16.64,651/- from M/s. Oriflame India Pvt. Ltd., which was reflected in Form 26AS and on the said amount the TDS under Section 194H has been deducted by M/s. Oriflame India Pvt. Ltd. Further, the contention of the appellant regarding purchase and sale of the goods is legally not sustainable without any supporting documents.

9. I find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2015 to September, 2015 was 25th October, 2015. Therefore, considering the last date on which such return was to be filed, I find that the demand for the period April, 2015 to September, 2015 is time barred as the notice was issued on 23.04.2021, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant that the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is not sustainable for the period from April, 2015 to September, 2015, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

9.1 For the remaining period from October, 2015 to March, 2016, the due date of filing ST-3 Return was 25th April, 2016. In the instant case, the due date for issuing SCN was 24th April, 2021, and the SCN was issued on 23rd April, 2021. Thus, I find that the notice covering the period from October, 2015 to March, 2016 was issued well within extended period of limitation of five years and is legally sustainable under proviso to Section 73(1) of the Finance Act, 1994.

10. As regard the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 admissible to the appellant or not, I find that this is dependent upon the value of taxable services provided during preceding year, i.e. FY 2014-15. However, the appellant have not submitted any documents with respect to the FY 2014-15. Therefore, they have made only bald statement that they are eligible for threshold limit of exemption which is not tenable without any documentary support.

11. In view of the above discussion, I held that the demand of service tax for the period from April-2015 to September-2015 is barred by limitation and not sustainable. I find that the appellant is liable for payment of service tax on the commission income received by them from M/s. Oriflame India Private Limited, during the period from October-2015 to March-2016, as reflected in Form 26AS. Further, I find that the imposition of penalty under Section 73 is also sustainable, as the demands were raised based on detection noticed during the

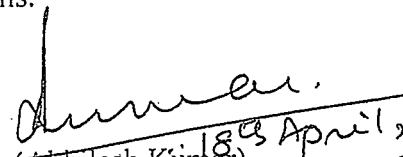


initiation of inquiry by the department. After introduction of measures like self assessment etc., a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules and private records maintained by them for normal business purposes are accepted, for all the purpose of service tax. All these operates on the basis of the trust placed on the service provider and therefore, the governing provisions create an absolute liability when any provision is contravened as there is a breach of the trust placed on them. It is the responsibility of the appellant to correctly assess their tax liability and pay the taxes. The deliberate efforts by not paying correct amount of Service Tax is utter disregard to the requirement of law and breach of trust deposited on them. Hence, I find that the act of willful mis-statement and suppression of facts with an intent to evade payment of tax, made the appellant liable for penal action under the provisions of Section 78(1) of the Finance Act, 1994.


12. In view of the above, I uphold the order passed by the adjudicating authority for demanding Service Tax along with interest for the period from October-2015 to March-2016 and set aside the order for demanding Service Tax along with interest for the period from April-2015 to September-2015. Further, the penalty under Section 78 of the Finance Act, 1994 is required to be re-quantified to the extent of Service Tax demanded and upheld in this order.

13. 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.

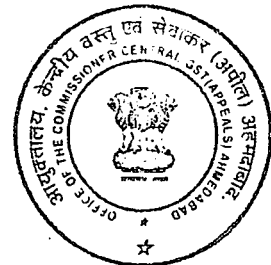

(Akhilesh Kumar)
Commissioner (Appeals) 18.04.2023..

Attested



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

Date : 18.04.2023



By RPAD / SPEED POST

To,
M/s. Bharti Sunil Madhwani,
Tirupati, A-4, Raj Laxmi Park,
Behind Excise Chowki, S,
Ahmedabad – 382345

The Assistant Commissioner,

Appellant

Respondent

CGST, Division-I,
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 I, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) Guard File

6) PA file



