



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: 20230564SW0000919169

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/5/2023-APPEAL / 1770-34
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-30/2023-24
 दिनांक Date : 23-05-2023 जारी करने की तारीख Date of Issue 26.05.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 51/JC/LD/2022-23 दिनांक: 20.10.2022, issued by
 Joint/Additional Commissioner, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Shri Ketan Sureshkumar Desai,
 Proprietor of M/s. Astha Marketing,
 104, Shreyas, Opp. Jain Temple,
 Navrangpura, Ahmedabad-380009

2. Respondent

The Joint Commissioner, CGST, Ahmedabad North, Custom House, 1st
 Floor, Navrangpura, Ahmedabad - 380009

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 :

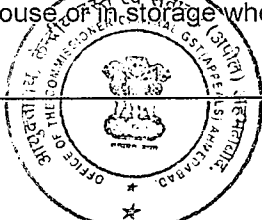
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(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 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.

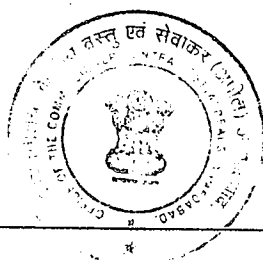
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 अपीलो 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.

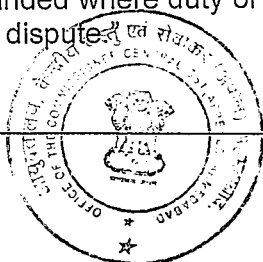
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

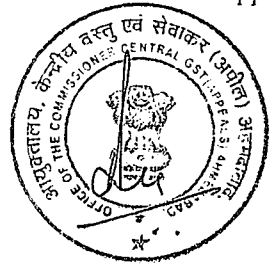
The present appeal has been filed by Shri Ketan Sureshkumar Desai, Proprietor of M/s. Astha Marketing, 104, Shreyas, Opp. Jain Temple, Navrangpura, Ahmedabad – 380009 (hereinafter referred to as “the appellant”) against Order-in-Original No. 51/JC/LD/2022-23 dated 20.10.2022 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. AETPD8372DSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that there is difference of value of service amounting to Rs. 5,06,18,932/- for the FY 2015-16 and Rs. 3,26,54,910/- for the FY 2016-17 when compared with the gross value of service shown in Service Tax return filed by the appellant. The appellant was called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. STC/15-49/OA/2021 dated 23.04.2021 demanding Service Tax amounting to Rs. 1,22,37,982/- for the period FY 2015-16 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(2)& Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,22,37,982/- 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 and FY 2016-17. Further, Penalty of Rs. 1,22,37,982/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant has preferred the present appeal on the following grounds:

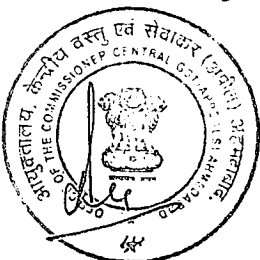


- The appellant has been engaged into the business of selling space or time slots for advertisement in print media i.e. newspaper, books, magazines, hording and advertisement via other media and holding Service Tax Registration No. AETPD8372DSD001.
- It is evident from Form 26AS and Audited Balance Sheet and Profit & Loss Account that Gross Receipt (Turnover) figures mentioned in SCN is absolutely baseless and proceeding was concluded by the adjudicating authority on such baseless figures received from third party source. The aforesaid submission was already given to the adjudicating authority in reply to SCN, however, the impugned order was passed without considering the actual figure of turnover and/or representation made by the appellant before the adjudicating authority.
- The turnover figures mentioned in SCN and actual amount of turnover of the appellant as per audited financial statement vis-à-vis Form 26AS is as under:

(Amount in Rs.)

Financial Year	Actual turnover as per Audited Financial	Gross Receipts as per Form 26AS	Gross receipt as per ITR	Gross receipt taken in the Show Causes Notice
2015-16	3,74,88,858/-	2,57,57,100/-	3,74,88,858/-	5,06,18,932/-
2016-17	2,16,76,556/-	1,63,27,455/-	2,16,76,556/-	3,26,54,910/-

- They submitted their reply to SCN dated 21.05.2021 and copy of ITR for the FY 2015-16 and FY 2016-17 along with appeal memorandum.
- Further as mentioned in the beginning, the appellant is into the business of selling of space in print media and such service contributes majority to the total turnover of appellant during the period under consideration. Further, on such service, appellant's agency commission is 15% and as per industry practice service tax is charged on such agency commission value only treating it as taxable value for computing service tax. However, the adjudicating authority has not considered this as well and directly applied certain percentage of service tax to the turnover figure mentioned in SCN and demanded service tax in order in original and followed by interest u/s 75, penalty u/s 77 and penalty u/s 78.
- The adjudicating authority has erred in interpreting the provision of Service Tax Law insofar as it relates to taxability under Advertising Agency of Print Media Services



and incorrectly valued taxable services under impugned order. The adjudicating authority has erred in not allowing CENVAT Credit available to the appellant as per CENVAT register submitted in reply to SCN and incorrectly determined service tax payable and also erred in confirming service tax under Section 75 of the Finance Act, 1994 and imposing penalties under Section 77 and 78 of the Finance Act, 1994 without exercising powers under Section 80 of the Finance Act, 1994.

4. Personal hearing in the case was held on 17.05.2023. Shri Dhruvit Parikh, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.

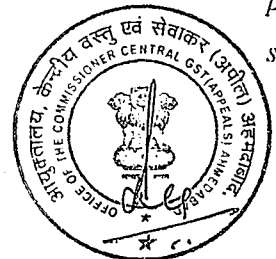
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax amounting to Rs. 1,22,37,982/- 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 and FY 2016-17.

6. I find that the adjudicating authority in the impugned order has, while confirming demand of service tax, held as under:

"15. I find that the said assessee in their reply to the show cause notice has submitted that they are into the business of selling of space or time slots for advertisements in print media i.e. newspaper, books, magazines, hoardings, and advertisement via other media; that they were majorly selling space for advertisement in various print media specifically in newspaper and customer deducts TDS on such amount and the same was reflected in Form 26AS. Along with their reply, they have submitted the following documents:

- (i) *Statement showing service tax reconciliation with audited financial statements.*
- (ii) *Copies of P&L A/c for the period 2015-16 and 2016-17*
- (iii) *Statement showing working of service tax liability*
- (iv) *Form 26AS for the period 2015-16 and 2016-17*
- (v) *Sample copies of Sales and purchase invoices*

16. I find that Shri Dhruvit Parikh, CA, authorized representative appeared for personal hearing on 04.08.2022 on behalf of the assessee and reiterated their written submission dated 21.05.2021. He further requested time till 22.08.2022 for submission of



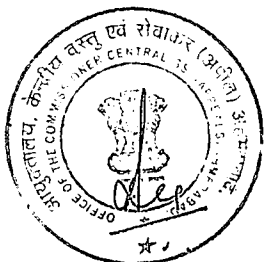
remaining documents. Subsequently, the said assessee has submitted Cenvat register for the period 2015-16 and 2016-17. Apart from the Cenvat register, they have not submitted any other supporting documents till date.

17. In the instant case, I find that the said assessee has stated that they are into business of selling of space or time slots for advertisements in print media. However, they have remained silent regarding filing of service tax returns and payment of service tax. I find that in spite of providing sufficient time, the said assessee has not provided any documents evidencing filing of service tax returns and payment of service tax by them. I further find that they have not submitted the audited balance sheets and income tax returns for the financial year 2015-16 and 2016-17. In fact, they have only submitted the pages of Profit and Loss A/c for the period 2015-16 and 2016-17. They have also failed to state the reasons for such difference between the figures shown in FORM 26AS and the figures shown in their STR filed, if any."

7. On verification of the documents submitted by the appellant, I find that the appellant are engaged in providing various services, details of which are as below:

- (i) Advertising services for advertisement in News paper
- (ii) Advertising services for advertisement in Magazine
- (iii) Event Management Service
- (iv) Advertising Services for advertisement in Radio-TV
- (v) Advertising Services by Screen Advertisement
- (vi) Advertising Services for advertisement by Cycle
- (vii) Advertising Services for advertisement at Navrati event
- (viii) Selling of space at Bus-shelter
- (ix) Selling of space for Hording

7.1 As regard the question of taxability of services provided by the appellant, I find that with effect from 01.07.2012, there has been total shift in the service tax levy, from "specific service based taxation" to "negative list based taxation", that means, all the services, except those listed in negative list shall be liable to service tax. I also find that the services provided by the appellant are not in negative list of service under Section 66D of the Finance Act, 1994 not exempted by any notification. I also find that the appellant has also not claimed any exemption from service tax in respect of service provided by them.



8. On perusal of the working of Service Tax Payable prepared and submitted by the appellant, I find that the appellant has shown the income bifurcation and total service tax liability for the FY 2015-16 and FY 2016-17, which are as under:

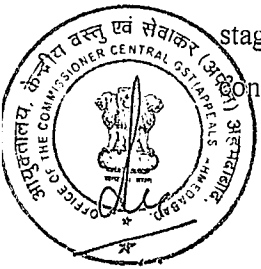
FY 2015-16**(Amount in Rs.)**

Sr. No.	Type of income	Total Income	Total Service Tax payable
1	Advertisement (News Paper) Net	2,53,16,398/-	5,25,377/-
2	Advertisement (Magazine) Net	2,99,160/-	
3	Sales (Event Management) - Net	9,51,088/-	13,29,790/-
4	Sales (Adv-Redio-TV) - Net	35,34,427/-	
5	Sales (Screen Advtisement) - Net	2,54,500/-	
6	Sales (Cycle) - Net	17,000/-	
7	Sales (Bus Shelter) - Net	11,77,000/-	
8	Sales (Adv-Hording) - Net	34,59,300/-	18,55,167/-
	Total	3,50,08,873/-	

FY 2016-17**(Amount in Rs.)**

Sr. No.	Type of income	Total Income	Total Service Tax payable
1	Advertisement (News Paper) Net	1,60,87,233/-	3,59,918/-
2	Advertisement (Magazine) Net	12,800/-	
3	Sales (Event Management) - Net	5,23,766/-	6,67,172/-
4	Sales (Adv-Redio-TV) - Net	10,05,159/-	
5	Sales (Screen Advtisement) - Net	1,75,000/-	
6	Sales (Navratri)	5,17,000/-	
7	Sales (Bus Shelter) - Net	6,12,000/-	
8	Sales (Adv-Hording) - Net	16,41,200/-	10,27,090/-
	Total	2,05,74,158/-	

8.1 On verification of the above figures, I find that the appellant has mentioned all the aforesaid income in "Net" and not mentioned the "Gross" income. The valuation for calculation of service tax liability would be the gross amount charged by the service provider for such services as per the provisions of Section 67 of the Finance Act, 1994. I also find that the appellant not submitted any income ledger to the adjudicating authority or at the appeal stage. Hence, the calculation of service tax liability by the appellant as above cannot be considered.



9. On verification of the Profit & Loss Accounts of the appellant for the FY 2015-16 and FY 2016-17, I find that the below mentioned income have been shown in the Profit & Loss Accounts by the appellant:

Financial Year	Description of Income	Amount (Rs.)
2015-16	Sales	3,74,88,858/-
	Direct Income	1,08,203/-
	Other Income	2,83,399/-
	Total	3,78,80,460/-
2016-17	Sales	2,16,76,556/-
	Direct Income	1,123/-
	Other Income	1,99,419/-
	Total	2,18,77,098/-

9.1 On verification of the Form - 26AS of the appellant for the FY 2015-16 and FY 2016-17, I find that the appellant has received total amount of Rs. 2,53,09,466/- during the FY 2015-16 and total amount of Rs. 1,63,27,455/- during FY 2016-17 on which the various parties have deducted TDS under Section 194C of the Income Tax Act, 1961. I also find that the show cause notice has been issued taking into consideration the figures of Form 26 AS or ITR as Rs. 5,06,18,932/- for the FY 2015-16 and Rs. 3,26,54,910/- for the FY 2016-17. The appellant have contested the value taken in the SCN. The adjudicating authority has not given any finding on the value of services considered in the SCN, which is disputed by the appellant.

9.2 In view of the above, I find that the adjudicating authority has, in the impugned order, confirmed the demand of service tax amount on the value which does not co-relate / match with the Profit & Loss Accounts or Income Tax Returns or Form 26AS. Thus, I find that the adjudicating authority has calculated and confirmed the demand of service tax on the wrong value. Therefore, the impugned order passed by the adjudicating authority is not correct and legal.

10. I also find that the appellant had submitted various documents viz. Sample invoices issued by them; the invoices on which they claim Cenvat Credit, along with appeal memorandum, which was not produced by them before the adjudicating authority and have been for the first time submitted at appeal stage. In this regard, I am of the considered view that the appellant cannot seek to establish their stand at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the



adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for Cenvat credit.

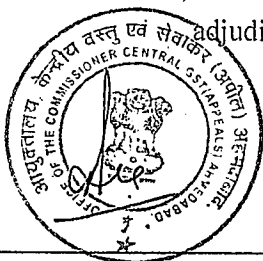
10.1 I find that the SCN in question, the demand has been raised based on the figures provided by the Income Tax Department. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021 specifically directed that in all such cases the adjudicating authorities are expected to pass an order after appreciation of facts and submission of the party. The relevant portion of the same is read as under:

"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."

10.2 However, I find that the adjudicating authority has passed the impugned order without verification of the documents produced by the appellant. I also find that as explained above, the adjudicating authority has also failed to reconcile the income figures shown in the show cause notice with the documents produced by the appellant or with Form 26AS / Income Tax Return filed by the appellant.

10.3 I also find that the appellant has also submitted the working of Service Tax Payable and has also claimed the Cenvat credit against the same in the appeal memorandum. However, the said calculation has been made without supporting documentary evidences viz. Income Ledger for different type of incomes, copies of invoices on which Cenvat credit has been claimed, etc.

11. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits after proper verification of all the documents produced by the appellant and arrive at correct reconciliation of figures obtained from the Income Tax authorities with those submitted by the appellant. The quantification of the demand shall be arrived by carrying out the reconciliation exercise and after examination of the eligibility of the claim of the appellant for Cenvat credit. The appellant is also directed to submit all the records and documents as required by the adjudicating authority before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority

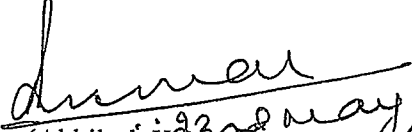


shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

12. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue afresh and pass a speaking order after following the principles of natural justice.


13. 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) 23.05.2023

Attested

Date : 23.05.2023


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



By RPAD / SPEED POST

To,

Shri Ketan Sureshkumar Desai,
Proprietor of M/s. Astha Marketing,
104, Shreyas, Opp. Jain Temple,
Navrangpura, Ahmedabad – 380009

Appellant

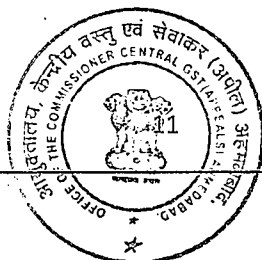
The Joint Commissioner,
CGST & Central Excise,
Ahmedabad North

Respondent

Copy to :

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

(for uploading the OIA)



5) ~~Guard File~~

6) PA file