



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



**By SPEED POST**

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|-----|---|---|---------|
| (क) | फाइल संख्या / File No.  | GAPPL/COM/STP/3969/2023 and<br>GAPPL/COM/STP/3970/2023  | 3419-23 |
| (ख) | अपील आदेश संख्या और दिनांक /<br>Order-In -Appeal and date         | AHM-EXCUS-002-APP-303 to 304/23-24 dated<br>27.03.2024  |         |
| (ग) | पारित किया गया /<br>Passed By                                     | श्री ज्ञानचंद जैन, आयुक्त (अपील)<br>Shri Gyan Chand Jain, Commissioner (Appeals)  |         |
| (घ) | जारी करने की दिनांक /<br>Date of Issue                            | 30.03.2024  |         |
| (ङ) | Arising out of  | Order-In-Original No. GST-06/D-<br>VI/O&A/692/RAJAN/AM/2022-23 dated 10.3.2023 and GST-06/D-<br>VI/O&A/800/RAJAN/AM/2022-23 dated 29.03.2023 passed by The<br>Assistant Commissioner, CGST Division-VI, Ahmedabad North |         |
| (च) | अपीलकर्ता का नाम और पता /<br>Name and Address of the<br>Appellant | Rajan Balubhai Mehtaa<br>Bungalow No. 3, Lane 7, Sterling Garden City,<br>Phase-1 Green Woods, Near Vaishnodevi Circle, Off.<br>S P Ring Road<br>Opp. KD Hospital, Ahmedabad - 380060                                   |         |

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो 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।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied



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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(5) इन 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

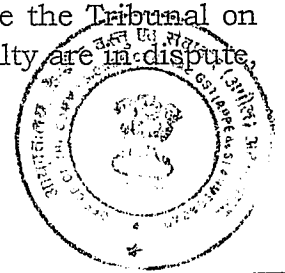
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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



**ORDER IN APPEAL**

M/s. Rajan Babubhai Mehta, Bunglow No.3, Lane 7, Sterling Garden City, Phase-1, Green Woods, Near Vaishnodevi Circle, Off S. P. Ring Road, Opp. K. D. Hospital, Ahmedabad -380060 (hereinafter referred to as '*the appellant*') have filed following appeals against the Order-in-Originals (listed below) passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant was holding PAN No. AADHM1072P. They were providing taxable services but were not registered with the department.

**Table-A**

| Sr.No. | Appeal No.                  | SCN No. Date   | OIO No.& Date  | Period of Dispute | Amount Involved |
|--------|-----------------------------|--|--|-------------------|-----------------|
| A      | B                           | C  | D  | E                 | F               |
| 01     | GAPPL/COM/S<br>TP/3970/2023 | GST-06/ 04-1569/<br>Rajan/2021-22/5356<br>dated 18.10.2021 | GST-06/D-VI/O&A /692/<br>Rajan/AM/2022-23 dated<br>10.03.2023<br><br>Referred to as Impugned<br>Order -1 | 2016-17           | Rs.1,64,226/-   |
| 02     | GAPPL/COM/S<br>TP/3969/2023 | GST-06/ 04-1800/<br>Rajan/2021-22/5587<br>dated 18.10.2021 | GST-06/D-VI/O&A /800/<br>Rajan/AM/2022-23 dated<br>29.03.2023<br><br>Referred to as Impugned<br>Order -2 | 2016-17           | Rs.1,64,226/-   |

**2.1** The facts of the case in brief are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, it was noticed that the appellant has shown substantial taxable income in their ITR. However, the appellant did not pay service tax on such income nor did they file ST-3 Returns. Letters were issued to the appellant seeking justification of non-payment of tax alongwith documentary evidence, if any. The appellant did not respond hence the income declared in ITR was considered as taxable value to ascertain their tax liability. Details of the income is furnished below;

**Table-B**

| F.Y.    | Value as per ITR | Service tax rate | Service Tax liability |
|---------|------------------|------------------|-----------------------|
| 2016-17 | 10,94,840/-      | 15%              | 1,64,226/-            |

**2.2** Based on the above facts two SCNs were issued to the appellant. The first SCN bearing No.GST-06/04-1569/Rajan/2021-22/5356 dated 18.10.2021 (*listed at Sr.No.01*) proposed recovery of service tax amount of Rs. 1,64,226/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70 and penalties under Section 77(1) & Section 78 of the Finance Act, 1994 were also proposed. The said SCN was adjudicated vide impugned order No.1 (***GST-06/D-VI/O&A/692/Rajan/AM/2022-23 dated 10.03.2023***) wherein the demand of Rs. 1,64,226/- was confirmed alongwith interest. Late fees of Rs.40,000/- was imposed under



Section 70; Penalty of Rs.2,000/- under Section 77(1) and penalty of Rs. 1,64,226/- under Section 78 was also imposed.

2.3 The second SCN bearing No.GST-06/04-1800/Rajan/2021-22/5356 dated 18.10.2021 (*listed at Sr.No.02*) proposed recovery of service tax amount of Rs. 1,64,226/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70 and penalties under Section 77(1) & Section 78 of the Finance Act, 1994 were also proposed. The said SCN was adjudicated vide impugned order No.2 (***GST-06/D-VI/O&A/800/Rajan/AM/2022-23 dated 29.03.2023***) wherein the demand of Rs. 1,64,226/- was confirmed alongwith interest. Late fees of Rs.40,000/- was imposed under Section 70; Penalty of Rs.2,000/- under Section 77(1) and penalty of Rs. 1,64,226/- under Section 78 was also imposed.

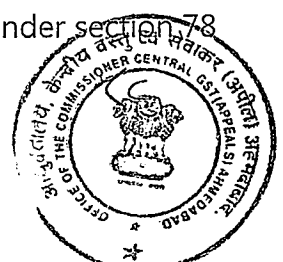
3. Being aggrieved with the impugned orders passed by the adjudicating authority, the appellant have preferred the present appeals, on the grounds elaborated below;

- The appellant is engaged in providing educational services and is a Hindu Undivided Family managing school for students in Pre-Primary and Primary grade. The appellant runs an educational institution providing primary & pre-primary schooling. The appellant receives school fees from the students. Thus, the service provided by appellant has been exempted as per the Sr. No. 9 of the Notification No. 25/2012-Service Tax dated 20.06.2012. Therefore, the appellant is not liable to obtain Service Tax registration under Section 69 of the Finance Act, 1994 and not required to file Service Tax return as prescribed under Section 70 of the Finance Act, 1994.
- The appellant failed to submit the required details/documents or offer any explanation/clarification regarding income earned as the notice issued was delivered at the old address of the appellant i.e. 19/ Sujal Bunglows, Nr. Mann Party Plot, /Opp. Pakwan Rest Road Bodakdev- 380054.
- The same Assistant Commissioner has issued two show cause notice on the same date i.e. on 18.10.2021 for the same financial years and on the same grounds. There is no difference in the Show Cause Notice with respect imposition of demand & drafting of the notice. Every word and content of the said notices were same imposing demand for the same period and on the same grounds. Further, the two Order issued against the said notices are also duplicate whereby all the contents are same word-by-word. This fact only proves that the Orders issued by the Ld. Officer has been issued in bulk without giving any consideration.
- Copy of Sales register indicating the income received from school fees, Copy of Balance Sheet & Profit & Loss for the F.Y 2016-17, school fees receipt & School broacher are produced as evidence. As the appellant is not liable to take registration under Service Tax and not liable to pay Service Tax on the services which are exempted vide Mega Notification No. 25/2012-ST, the demand imposed in the Orders issued should be set aside.
- The aggregate value of taxable services rendered does not exceed Rs 10 lakhs in the preceding financial year. As the turnover after availing exemption under



Notification no.25/2012-ST and Notification no.33/2012-ST was Rs.94,840/-, the appellant has taken benefit of Notification No. 33/2012 Service tax.

- Income Tax department cannot state that the amount shown in Income Tax Return is taxable under Service Tax Law and hence, basis of data submitted to Income Tax department can be used for Income Tax Assessment and not for Service Tax Assessment. Such taxability needs to be proved by the Ld. Assistant Commissioner and such taxability, valuation etc. is required to be discussed in detail in the show cause notice and order-in-original. Such data provided by Income Tax department can be starting point of investigation under Service Tax Law; such data cannot be considered as final data and straight away service tax cannot be demanded unless such income is proved to be taxable income under Service Tax Law. Reliance is placed on
  - Income Tax Returns. [In J.I Jesudasan vs. CCE 2015 (38) S.T.R 1099 (Tri.Chennai);
  - Alpha Management Consultant P. Ltd vs. CST 2006 (6) STR 181 (Tri.Bang); Tempest
  - Advertising (P) Ltd. v. CCE 2007 (5) STR 312 (Tri.-Bang.);
  - Turret Industrial Security vs. CCE 2008 (9) S.T.R. 564 (Tri- Kolkata).
- Extended Period of limitation cannot be invoked in the absence of fulfilment of the conditions under sub-section (1) to Section 73. The figures reflected in Income Tax Returns and Form 26AS are already available with the department at the time of filing during relevant year itself. Therefore, the said information has never been suppressed by the concerned taxpayer from the department.
- The appellant has also not indulged in any fraud or collusion or willful misstatement as the given figures reported in ITR on the basis of which SCN has been issued and the said information is available for department's perusal right from the year in question.
- In F.Y. 2014-15 to F.Y. 2016-17, Appellant has engaged in providing healthcare services. The healthcare service was exempt from service tax, so Appellant did not file the ST-3. Thus, there has been no suppression of fact to departmental officers.
- It is a settled principle of law that in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of imposing interest does not arise. Hence, the demand of interest by the impugned Order is liable to be dropped.
- As regards penalty u/s 77(1) and 77(2) it is submitted that when no tax is payable, the question of penalty does not arise. All the submissions made above would also apply to penalty under Section 77. According to Section 80, no penalty under Section 76, 77 or 78 can be imposed if the appellant proves that there was a reasonable cause for default or failure under these sections. Section 80 provides notwithstanding anything contained in sections 76, 77, 78 or 79; no penalty shall be imposable on appellant for any failure referred to in the said provisions if appellant proves that there was reasonable cause for said failure.
- As Regards Penalty u/s 78, it is submitted that penalty u/s. 78 cannot be levied where no such penalty is proposed in show cause notice. Penalty under section 78



can be levied only if there is a fraud; collusion; willful misstatement; suppression of facts or contravention of any provisions with intend to evade payment of service tax and it can be imposed by invoking larger period or extended period for issue of show-cause notice. There is no finding in impugned OIO which can allege that appellant has intended to evade payment of tax. In the absence of any finding of "intent to evade" demand cannot be sustained. Reliance is placed on the following decisions:

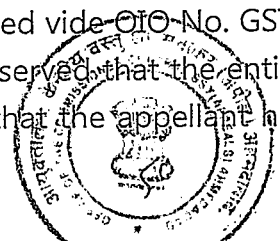
- (i) Continental Foundation v. CCE {2007 {216} E.L. T. 177 {S.C.}]1
- (ii) CCE v. Pioneer Scientific Glass Works [2006 (197) E.L.T. 308 {S.C.}]
- iii) Pahwa Chemicals Pvt. Ltd. v. CCE [2005 (189) E.L. T. 257 {S.C.}]
- (iv) Anand Nishikawa Co Ltd. v. CCE [2005 (188) E.L. T. 149]

4. Personal hearing in the matter was held on 08.03.2024. Ms. Labdhi Shah, Chartered Accountant, appeared on behalf of the appellant. She informed that the client is engaged in primary education so service tax is not liable on them.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum and as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether; the service tax demands of **Rs.1,64,226/-** and **Rs.1,64,226/-** alongwith interest and penalties, confirmed vide two different impugned orders passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise? The demand pertains to the period F.Y. 2016-17.

5.1 From the facts of the case it is observed that both the SCNs were issued on same date i.e. on 18.10.2021. They covered same issue and same F.Y. 2016-17. Further, in both the SCNs, the amount of service tax involved is same i.e Rs.1,64,226/- and the demand has been arrived based on same income of Rs.10,94,840/-. The first SCN was adjudicated vide impugned order no.1 whereas the second SCN was adjudicated vide impugner order no.2 and by the same adjudicating authority. When one SCN has been issued, then for the same period and on same issue another SCN cannot be issued. It is settled principle that there cannot be two demands for same period on same issues. Hon'ble High Court of Calcutta in the matter of **Simplex Infrastructures Ltd. Versus Commissioner of Service Tax, Kolkata-2016 (4) TMI 548** –while following the ratio in Avery India Ltd. V/s UOI - (2011) (268 ELT 64) read with Hon'ble Supreme Court in the case of Dankan Industries Ltd. V/s CCE, New Delhi (2006) (201 ELT 517) held that; two show cause notices could not have been issued in relation to the same period. This is not permissible in law as held by the Hon'ble Calcutta High Court in Avery India Ltd. Vs. Union of India. In light of above judicial pronouncements, I find that the demand raised vide the second SCN shall not sustain legally as one cannot be allowed to re-agitate a matter afresh for which already a notice exist. Accordingly, I find that the impugned O-I-O No.GST-06/D-VI/O&A/800/Rajan/AM/2022-2023 dated 29.03.2023, adjudicating the second SCN shall be unlawful when the earlier SCN for same period exist. Hence, I set-aside the impugned O-I-O No.GST-06/D-VI/O&A/800/Rajan/AM/2022-2023 dated 29.03.2023, being non-maintainable.

5.2 Coming to the demand raised under first SCN and adjudicated vide OIO No. GST-06/D-VI/O&A/692/Rajan/AM/2022-2023 dated 10.03.2023, it is observed that the entire demand has been raised based on third party data. It is alleged that the appellant has



declared an income of Rs.10,94,840/- in ITR and on which no tax was paid. Hence, service tax demand of Rs.1,64,226/- was made. The appellant however has contended that they were in the business of providing primary and pre-primary schooling and the above income pertains to school fees received from the students. They claim that the said income is exempted vide Entry No. 9(a) of Notification No.25/2012-ST dated 20.06.2012, hence no tax is required to be paid on said income.

**5.3** It is observed that in terms of **serial no. 9(a)** of the Notification No. 25/2012-ST dated 20.6.2012, amended vide Notification No.10/2017 dated 08.03.2017 following services are exempted;

**9. Services provided**

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

*"Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent;"* Inserted vide notification 10/2017-service Tax.

**5.4** The terms '**educational institution**' is defined in clause (oa) of Notification No.25/2012-ST (inserted vide Notification No. 09/2016-ST as;

*"(oa) "educational institution" means an institution providing services by way of:*

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

**5.5** On going the ITR, Balance Sheet and Brochure submitted by the appellant, it is observed that the appellant is running a Primary School named '**Mother's Pet-Charvi English School**' wherein they are imparting education to primary school children. In the P&L Account they have shown the income of Rs.10,94,840/- as School Fess Received and the same amount is also reflected in the Balance Sheet ledgers of the 'School Fess Received'. Further, they also produced receipts as proof to show various amounts received as school fess. Based on above documents, I find that the entire disputed income received by the appellant during F.Y. 2016-17 is from the school fees. In terms of Entry No. 9(a) of the above notification, the services provided by an educational institution to its students is not a taxable service. I find that the appellant is squarely covered under the scope of definition of educational institution as they were providing education to their students. I, therefore, find that the income of Rs.10,94,840/- earned from school fees is not taxable and consequently, the service tax demand of Rs. 1,64,226/- shall also not sustain legally.

**6.** When the demand is not sustainable, the recovery of interest, imposition of late fees and penalties also does not arise.

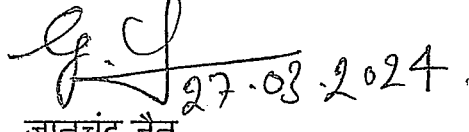




7. In view of the above discussion and findings, I pass following order;


- a) The OIO No. GST-06/D-VI/O&A/692/Rajan/AM/2022-2023 dated 10.03.2023 is set-aside on merits;
- b) The OIO No. GST-06/D-VI/O&A/800/Rajan/AM/2022-2023 dated 29.03.2023 is set-aside being non-maintainable.

8. अपीलकर्ता 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.

  
27.03.2024  
जानचंद जैन  
आयुक्त (अपील्स)

Dated: 27.03.2024

सत्यापित/Attested :

  
अधीक्षक (अपील्स),  
सी जी एस टी, अहमदाबाद



**By REGD/SPEED POST A/D**

To,  
M/s. Rajan Babubhai Mehta,  
Bungalow No.3, Lane 7,  
Sterling Garden City, Phase-1,  
Green Woods, Near Vaishnodevi Circle,  
Off S. P. Ring Road, Opp. K. D. Hospital,  
Ahmedabad -380060

- **Appellant**

The Assistant Commissioner,  
Central GST, Division-VI,  
Ahmedabad North

- **Respondent**

**Copy to:**

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad North.
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for uploading OIA on website.
4. Guard file.

