



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
टेलीफोन 07926305065- टेलीफैक्स 07926305136



DIN: 20230764SW0000333DC8

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/693/2023-APPEAL / 2786-90
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-41/2023-24
दिनांक Date : 28-06-2023 जारी करने की तारीख Date of Issue 04.07.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 165-166/AC/DEMAND/22-23 दिनांक: 10.11.2022,
issued by Deputy/Assistant Commissioner, CGST, Division-I, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Umiya Galaxy Wheel Alignmnet,
B21 to 24, Shreeji Estate, Near Suttar Karkhana,
Naroda, Ahmedabad-382330

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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

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

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

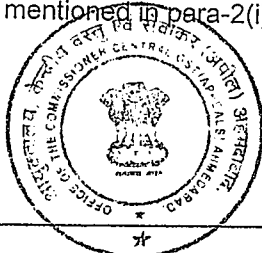
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

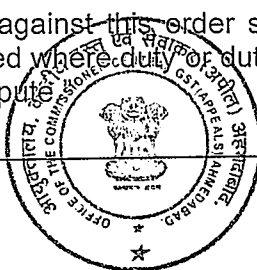
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

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



ORDER IN APPEAL

M/s. Umiya Galaxy Wheel Alignment, B21 to 24, Shreeji Estate, Near Suttar Karkhana, Naroda, Ahmedabad- 382330 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 165-166/AC/DEMAND/22-23, dated 10.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department. They are holding PAN No. AACFU6683K.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. The appellant has neither obtained Service Tax Registration nor paid service tax on such income. After the negative list regime all services are taxable except those covered under negative list. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2014-15 & 2015-16 and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the figure provided by the CBDT was considered as the total taxable value in order to ascertain the tax liability under Section 67 of the F.A., 1994. The service tax was calculated on the income 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)" of the Income Tax Act, 1961, on which no tax was paid.

<i>Sr. No.</i>	<i>F.Y.</i>	<i>Value from ITR or Value of Form 26AS</i>	<i>Service Tax rate</i>	<i>Service Tax Payable</i>
01	2014-2015	53,77,895	12.36%	6,64,708/-
02	2015-2016	32,14,497	14.5%	4,66,102/-

2.1 Two Show Cause Notices (SCN) bearing No. AR-III/Umiya Galaxy Wheel Alignment/S.T/ UnReg./2014-15 dated 29.09.2020 and SCN No. AR-III/Umiya Galaxy Wheel Alignment/S.T/UnReg./2014-15 dated 09.06.2021 were issued to the appellant proposing recovery of service tax amount of Rs. 6,64,708/- and Rs. 4,66,102/- not paid on the value of income received during the F.Y. 2014-15 & F.Y. 2015-16 respectively along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 (1) & (2) and under Section 78 of the Finance Act, 1994 were also proposed. The service tax liability for the F.Y.2016-17 to 2017-18 (up to June, 2017) ascertained in future was also proposed to be recovered under provisions of Section 73 of the F.A., 1994.

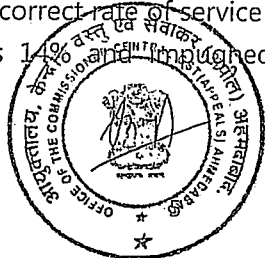
3. Both these SCNs were adjudicated vide the impugned order wherein the total service tax demand of Rs. 11,30,810/- was confirmed alongwith interest on the income received during the F.Y. 2014-15 & F.Y. 2015-16 of 10,000/- for each F.Y. was



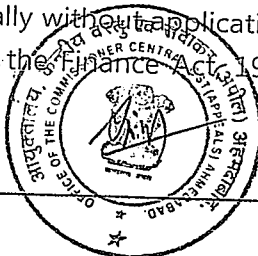
imposed separately under Section 77(1) (a), 77(1) (c) and 77(2) was imposed. Penalty of Rs. 11,30,810/- was also imposed under Section 78 of the Finance Act.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The appellant is engaged in providing wheel alignment service which is in the nature of repairs and maintenance of motor vehicles. They are not authorized by any motor vehicle manufacturer to carry out service, repair or restoration of any motor car, light motor vehicle or two wheeled motor vehicles manufactured by such manufacturer. They were under the bonafide belief that as the authorized service stations are not excluded from the purview of Service tax. Therefore, the exclusion is intended for the workshops which carry on maintenance and repairs of motor vehicles. They placed reliance on Kuttukaran Trading Ventures Vs Commr - 2014(35) STR 481 (Ker.). This decision was maintained by Hon'ble Apex Court - 2015 (40) STR J187 SC.
- As per paragraph 17.10 of Third Edition of FAQs on service tax dated 19-06-2006, released by Chief Commissioner of Central Excise, Coimbatore Zone, authorised automobile service station exclude repair and servicing done by mechanics or mechanic shops, which are not authorised by a manufacturer of automobiles and they do not come under this category of services provided by Authorised service station. Thus, the appellant were under bonafide belief that no service tax was payable by them.
- For the financial year 2014-15, they have received unsigned SCN F.No. AR-III/UMIYA GALAXY WHEEL ALIGNMENT/S.T./UNREG./2014-15 dated 29-09-2020. SCN without signature is non-est and is void-ab-initio. Despite this they replied and appeared before the adjudicating authority and requested to drop the proceedings under the SCN relying on decision in case of Yeshoda Electricals v. ACIT [1175/Bang/2016 to 1179/Bang/201] which holds that the assessment framed on the basis of unsigned notice is bad in law and cannot sustain in the eyes of law. However on flimsy ground that their office copy is signed one and DIN is generated the learned Assistant Commissioner has confirmed demand of service tax for the FY 2014-15 even though the SCN served to the appellant was unsigned which in sheer disregard of the law laid down by Hon. Tribunal and has thus resorted to judicial indiscipline. The impugned order arising out of such non-est SCN being unsigned is not valid. Hence, the entire demand under the SCN for FY 2014-15 is also unsustainable as the SCN is not served till this date. Reliance placed in the case of M. S. Shoes East Ltd. v. UOI [2016 (338) ELT 668 (Del.)] and S. P. S. Steels Rolling Mills Ltd. v. CCE [2007 (219) ELT 881 (Tri.-Kol.)].
- Further, the correct rate of service tax applicable for the period from 01-04-2015 to 31-05-2015 is 12.36% and impugned order has confirmed it at 14.50% mechanically. Also, the correct rate of service tax applicable for period from 01-06-2015 to 14-11-2015 is 14.50% and impugned order has confirmed the same at 14.50% mechanically.



- Where service tax is payable, the value should be treated as inclusive of service tax as no service tax is recovered by them. Reliance placed on Godfrey Phillips India Ltd. v. CCE [2018 (10) GSTL (Tri.-Mum.)]; CCE v. Advantage Media Consultant [2009 (14) STR J49 (SC)] and Balaji Manpower Services v. UOI [2019 (31) GSTL 418 (P&H)].
- The demand in the SCN has been demanded based on the Value from ITR or Total amount paid/credited under Section 194C, 194I, 194H, 194J provided by the Income tax department for the financial year 2014-15. Hon. Tribunal, in case of Kush Constructions v. CGST NACIN [2009 (24) GSTL 606 (Tri.-AI.)], held that the demand on the basis of difference in figures reflected in ST-3 returns and Form 26AS without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. As the Show cause notice presumes that the entire service income received as stated in income tax return is consideration for providing taxable services, the show cause notice itself is infructuous and the impugned order arising out of such infructuous notice should be quashed.
- Recovery of interest under Section 75 of the Finance Act, 1994 as service tax itself is not payable as they are not authorised service station.
- Imposing penalty of Rs. 11,30,810/- u/s 78 of the Finance Act, 1994 even though there is not an iota of evidence of fraud or collusion or wilful misstatement or suppression of facts or violation of any provisions of the Finance Act, 1994 with intent to evade payment of service tax.
- Imposing penalty of Rs. 10000/- or Rs. 200 for every day separately for FY 2014-15 and FY 2015-16 for failure to provide documents/details u/s. 77(1)(c) of the Finance Act, 1994 despite the fact that no information was ever sought by the department and hence there is no such failure to provide documents/details on the part of the appellant.
- Imposing penalty of Rs. 10000/- for each financial year 2014-15 and 2015-16 for failure to take registration under section 77(1)(a) of the Finance Act, 1994 despite the fact that the appellant had not taken service tax registration under the bonafide belief that only person liable to pay service tax is required to take service tax registration and as the appellant was of the bonafide belief that it is not liable to pay service tax as it is not Authorised Service Station, it had not taken service tax registration.
- Imposing penalty of Rs. 10000/- each for FY 2014-15 and FY 2015-16 under section 77(2) of the Finance Act, 1994 which is a penalty without stating any specific provision which are violated by the appellant. Without stating which specific provision of law is violated by this appellant, imposition of such penalty shows that the impugned order is passed mechanically without application of mind. There was no violation of any of the provisions of the Finance Act, 1994 or the rules made

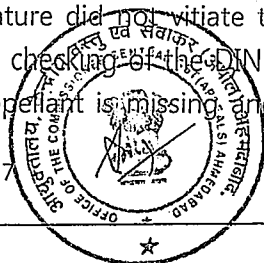


thereunder on the part of the appellant with intent to evade payment of service tax. When no service tax is payable based on bonafide belief, no compliance under Finance Act, 1994 or the rules made thereunder are required on the part of this appellant.

- All provisions under Chapter V the Finance Act, 1994, thereof were omitted vide Section 173 of the Central Goods and Services Tax Act, 2017. They relied on the decision of Hon. Supreme Court in case of Rayala Corporation- 1969(2) SCC 412, which held that no proceedings can be initiated, no liability can be fastened by the Government in respect of any alleged violation or non-compliance of the provisions contained in Chapter V of the Finance Act, 1994 as omitted vide Section 173 of the CGST Act.
- Confirming the demand of service tax by invoking extended period of limitation despite the fact that there is not an iota of evidence of suppression or intent to evade payment of tax on the part of this appellant. When there was no fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of Finance Act, 1994 or the rules made there under with intent to evade payment of service tax extended period cannot be invoked and thus the entire demand is time barred. They placed reliance on catena of decisions the relevant are cited below:
 - Monarch Catalyst Pvt. Ltd. v. CCE [2016 (41) STR 904 (Tri.-Mum.)]
 - Pahwa Chemicals P. Ltd. v. CCE, Delhi [2005 (189) ELT 257 (S.C.)]
 - Orient Packaging Ltd. v. CCE [2011 (23) STR 167 (Tri.-Del.)]
 - Ballarpur Industries Ltd. v. CCE [2014 (36) STR 1122 (Tri.-Mum.)]

4.1 The appellant also filed additional submissions vide letter dated 31.5.2023, wherein they reiterated the grounds of appeal and also stated that considering the due date of filing ST-3. Returns, the five years period for the demand pertaining to April to September, 2014 gets over on 14.11.2019 whereas the notice for the F.Y. 2014-15 was issued on 29.09.2020. Thus, the demand raised on labour income of Rs.2,70,828/- received during aforesaid period is time barred. They also provided a copy of C.A. certificate issued to this effect. Further they claimed that the due date for filing the ST-3 return for the half year ending September, 2015 and March, 2016 was on 25.10.2015 and 29.04.2016 respectively. Considering the normal limitation period of 30 months the period for first Half Year gets over on 25.04.2018 and for 2nd Half Year it is over by 29.10.2018. Even if the extended period is invoked the demand is time barred as the SCN was issued on 09.06.2021. Hence, the entire demand of service tax confirmed in the impugned order for F.Y. 2015-16 is barred by limitation in absence of suppression.

5. Personal hearing in the matter was granted on 23.06.2023. Shri Nandesh Barai, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated the submissions made in the appeal memorandum. He submitted that the SCN issued to them was unsigned and this matter was taken up with the lower authority. However, lower authority has ignored the same stating that the office copy of the SCN was signed one and the omission of signature did not vitiate the SCN because it was issued under a DIN. He submitted that on checking of the DIN from CBIC website it is seen that the name and address of the appellant is missing and also it was under the



category of letter and not a notice. Further, he submitted that the extended period once invoked in the earlier notice, cannot be invoked in subsequent SCN issued later after one year for the next financial year. He has submitted copies of relied upon judgments. Therefore, the SCN are not valid on the grounds of limitation and being unsigned. He also relied upon the judgments where it has been held that no SCN can be issued merely based on ITR. Therefore, he requested to set-aside the impugned order.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 11,30,810/- alongwith interest and penalties, confirmed in the impugned order 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. 2014-15 to F.Y. 2015-16.

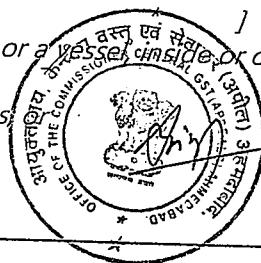
6.1 It is observed that the entire demand under the respective SCNs dated 29.09.2020 and 09.06.2021 have been raised based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The appellant in light of the judgment passed in the case of M/s. Kuttukaran Trading Ventures -2014(35) STR 481 (Ker.) were under the bonafide belief that the wheel alignment service in the nature of repairs and maintenance of motor vehicles, carried out by the workshops were not taxable. They therefore did not obtain service tax registration assuming that there was no tax liability on such services.

6.2 The adjudicating authority however held that the above case law relied by the appellant is not applicable to the present case as the issue involved therein pertains to period prior to negative list regime. He observed that after negative list regime all services are taxable unless covered under negative list or otherwise exempted under any notification. He finds that the wheel alignment service is neither specified under negative list nor covered under Mega Notification No. 25/2012-ST dated 20.06.2012, hence held the services as taxable.

6.3 It is observed that Section 66B specifies that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list. Thus the services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66D. In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions have been consolidated in a single mega exemption. For ease of reference the services specified under negative list are list below;

SECTION [66D. Negative list of services. — *The negative list shall comprise of the following services, namely:—*

- (a) *services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—*
- [(i) * * * *]
 - (ii) *services in relation to an aircraft or a vessel, on board or outside the precincts of a port or an airport;*
 - (iii) *transport of goods or passengers;*



- (iv) [Any service], other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture or agricultural produce by way of—
- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- [(f) * * * *]
- [(g) selling of space for advertisements in print media];
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;

[**Explanation.** - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B;]

- [(j) * * * *]
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- [(l) * * * *]
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
- [(i) * * * *]
 - [(ii) railways in a class other than— * * * ;]
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - [(vi) metered cabs or auto rickshaws]
- (p) services by way of transportation of goods—
- (i) by road except the services of—
 - (A) a goods transportation agency; or
 - (B) a courier agency;
 - [(ii) * * * * ;] or
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

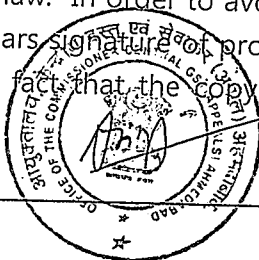


The appellant have claimed that they were providing wheel alignment service of motor vehicles. Considering the period of dispute involved and from the above list of services specified under Section 66D, it is clear that the service of wheel alignment rendered by the appellant is not covered under negative list. Further, it is also observed that the services rendered by the appellant are also not covered under any exemption notification nor have the appellant claimed any exemption thereof. Hence, in the given scenario the services of wheel alignment shall be treated as taxable service.

6.4 The appellant have vehemently relied on the judgment passed in case of M/s. Kuttukaran Trading Ventures -2014(35) STR 481 (Ker.) which deals with the issue whether maintenance or repair service of motor parts are entitled for exclusion in terms of Clause 64 of Section 65 of the Finance Act, 1994 with effect from 16-6-2005. It covers the demand pertaining for the period from 16-6-2005 to 30-9-2007 i.e. prior to the negative list regime. After Finance Act, 2012 a paradigm shift was seen in the Service Tax regime by bringing in the concept of negative list to determine taxability. As per the new provisions, all services except those specified in the negative list under Section 66D are taxable. As the period of dispute involved in the present appeal is after the introduction negative list, I find that the above citation relied by them being prior to amendment in the Finance Act, cannot be squarely made applicable to the present appeal. Similarly, paragraph 17.10 of Third Edition of FAQs on service tax dated 19-06-2006, released by Chief Commissioner of Central Excise, Coimbatore Zone and relied by the appellant is also not relevant here as it cover period prior to introduction of 66B & 66D. In terms of Section 66B effective from 01.07.2012, levy of service tax shall be on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. In the instant case as the services were rendered within the taxable territory hence shall be treated as taxable.

7. Another argument put forth by the appellant is that SCN bearing F. No. AR-III/UMIYA GALAXY WHEEL ALIGNMENT/S.T./UNREG./2014-15 dated 29-09-2020 issued to them was unsigned hence is non-est and void *ab-initio*. Though they requested the adjudicating authority to drop the proceedings by relying on the decision passed in case of Yeshoda Electricals v. ACIT [1175/Bang/2016 to 1179/Bang/201] but he confirmed the service tax demand for the F.Y 2014-15 which has led to judicial indiscipline. They placed reliance in the case of M. S. Shoes East Ltd. v. UOI [2016 (338) ELT 668 (Del.)] and S. P. S. Steels Rolling Mills Ltd. v. CCE [2007 (219) ELT 881 (Tri.-Kol.)]. In the impugned order the adjudicating authority held that the copy of SCN available on record was duly signed and issued to the appellant for which the appellant have given a dated acknowledgment also. Subsequently, they also filed a defence reply for the same. He held that the copy of SCN remained unsigned due to oversight will not make the SCN liable to be dropped when DIN is mentioned on the face of the SCN which establish that the subject SCN was issued by the proper authority.

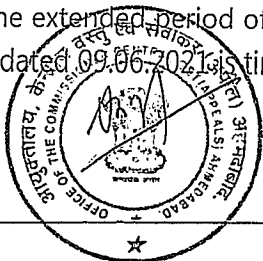
7.1 I find that mere placing a signed copy in the records and issuing an unsigned SCN to the noticee shall not sustain in the eyes of law. In order to avoid litigation it is always advisable to serve that copy of SCN which bears signature of proper officer. Though the SCN available in the file was signed but the fact that the copy of SCN served on the



appellant was unsigned one is not disputed as the adjudicating authority himself has observed that due to oversight the SCN remained unsigned which shall not make the SCN liable to be dropped. The appellant before the adjudicating authority challenged that the notice served to them did not contain the signature of the proper officer. Once it is challenged that the show cause notice issued was unsigned there is no alternative but to declare the proceeding *ab initio* void. It is ordain of justice that a proceeding which is *non est* has no legs to stand. There is nothing factually recorded contrary to the submission of the appellant. The proceeding said to have been initiated by an unsigned show cause notice cannot be held to have any basis in the eyes of law. Keeping in view the aforesaid factual matrix and the legal provisions the entire proceeding made against the appellant was *ab initio* void. I, therefore, find that the demand of Rs. 6,64,708/- issued vide SCN No. AR-III/UMIYA GALAXY WHEEL ALIGNMENT/S.T/UNREG./2014-15 dated 29-09-2020 is not sustainable in law, hence set-aside.

8. The appellant have further contended that extended period once invoked cannot be invoked in the subsequent SCN. In the foregoing paras, I have held that the first SCN was *non-est* as the same was issued unsigned. Once, it is held that the first SCN was not in existence, therefore, the second SCN issued for another period shall be considered as a fresh SCN and hence there is no bar in invoking the extended period. I find that as the demand was raised based on the data provided by the CBDT, extended period has been rightly invoked. It is very difficult to accept the claim that the appellant that were under a *bona fide* belief that since the authorized automobile service station are not excluded from the purview of Service tax therefore this exclusion was intended for workshops which carry out maintenance and repairs of motor vehicles. It was an obligation cast upon the appellant to self-assess the service correctly or if they had entertained any doubt, seek clarification from the Department. Nevertheless, in the absence of any action on the part of the appellant, on their own, to understand the law and its implication, and also their action in continuing to believe no tax is payable, irrespective of changes in law, I come to conclusion that the Department has invoked extended period correctly.

8.1 As regards delay in issuing a show cause notice, it is observed that the due date of filing the ST-3 Return for (April to Sept, 2015) was 25.10.2015. Therefore, the last date to issue the demand notice for said period after invoking extended period would be 24.10.2020. However, due to COVID -19 Pandemic, in exercise of the powers conferred by Section 6 of The Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020), the CBIC vide Notification dated 27.06.2020 extended the time limit till 30.09.2020 which was further extended to 31.12.2020, vide Notification dated 30.09.2020 issued vide F.No:450/61/2020 Cus.IV (Part-1). In the instant case, the SCN for the period covering from April, 2015 to Sept, 2015 should have been issued on or before 31.12.2020, but the same was issued on 09.06.2021. I, therefore, find that the notice covering the period from April, 2015 to Sept, 2015 is time barred. Similarly, the due date for filing ST-3 Return covering period (October, 2015 to March, 2016) was extended from 25th April, 2016 to 29th April, 2016 vide Order No. 01/2016-S.tax. Considering, the five year period, the SCN should have been issued by 29th April, 2021 but the same was issued on 09.06.2021, which is also time barred. Thus, I agree with the contention of the appellant that the Department has delayed the issuance of SCN even after invoking the extended period of limitation. I, therefore, find that the entire demand covered in SCN dated 09.06.2021 is time barred.



9. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of Rs. 11,30,810/- alongwith interest and penalties and allow the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

[Signature]
28-6-23
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 28.06.2023

Attested

[Signature]

(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Umiya Galaxy Wheel Alignment,
B21 to 24, Shreeji Estate,
Near Suttar Karkhana, Naroda,
Ahmedabad- 382330

Appellant

The Assistant Commissioner,
CGST, Division-I,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 4. Guard File.

