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- टेलेफैक्स07926305136

सत्यमेव जयते

NATION TAX MARKET

DIN:20230764SW0000510835

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2703/2022-APPEAL/3236 – 40

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-45/2023-24**
दिनाँक Date : **30-06-2023** जारी करने की तारीख Date of Issue 17.07.2023.

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **GST-06/D-VI/O&A/26/Manish/AM/2022-23** दिनॉक: **26.05.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Manish Bhanuprasad Patel,
   35, Super Bungalows, Opp. Science City,
   Sola, Santej Road, Sola,
   Ahmedabad-380060

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North ,7th Floor, B. D Patel House, Nr. Sardar Patel Statue, Ahmedabad - 380014

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

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

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 प्रकिया 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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.

OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD
केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्तालय, अहमदाबाद

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. Registar 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 ओदश 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 हैं।

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 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 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 in 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 M/s. Manish Bhanuprasad Patel, 35, Super Bungalows, Opp. Science City, Sola Santej Road, Sola, Ahmedabad – 380060 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/26 /Manish/AM/2022-23 dated 26.05.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ASJPP6961G. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned an income of Rs. 17,43,258/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. GST-06/04-671/O&A/Manish/2020-21 dated 29.09.2020 demanding Service Tax amounting to Rs. 2,15,466/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77 and Section 78 of the Finance Act, 1994. The Show Cause Notice also proposed demand of unquantified Service Tax for the FY 2015-16 and FY 2017-18 (upto Jun-2017) under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994.

2.2 The Show Cause Notice dated 29.09.2020 was adjudicated vide the impugned order by the adjudicating authority and the demand of Service Tax amounting to Rs. 3,14,363/- was confirmed under Section 73(1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15 to FY 2016-17 considering the service provided by the appellant falls under Work Contract Service and after giving abatement benefit of 60% as per Rule 2A(ii)(A) of the Service Tax (Determination of Value) Rules, 2006 . Further (i) Penalty of Rs. 3,14,363/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to take Service Tax Registration; and (iii) Penalty of Rs.

1,20,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

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

- The appellant engaged in the business of providing services and trading of printing materials.

- The nature of services provided by the appellant includes goods as well as services, and not purely services in a financial year. Services rendered is in respect of printing on different types of materials whereas trading of goods include printing material of different types.

- The appellant has not obtained Service Tax registration as per the exemption provided under clause 2(viii) of the Notification No. 33/20012-ST dated 20.06.2012. The aggregate taxable value of the appellant has been below the threshold limit of Rs. 10 Lakhs as provided in the Notification No. 33/2012-ST dated 20.06.2012.

- The appellant submitted that in advertently, the consultant of the appellant while filing the ITR during the disputed period recorded the total sales of sale of trading of goods and services in the column of sale by services. It is submitted that this is a clear case of inadvertent wrong selection of category while filing the return. It is submitted that it is a bona fide mistake on the part of the consultant. However, it is submitted that the same has been recorded correctly in the Profit and Loss Account of the appellant.

- The adjudicating authority erred in demanding Service Tax on the appellant for the disputed period on the premise that the appellant is providing works contract services. It is submitted that the SCN did not propose to demand Service Tax on the basis of works contract services. The demand proposed in the SCN was limited to the differential value qua STR3 and 26AS. The adjudicating authority by demanding Service Tax on works contract service has travelled beyond the SCN.

- It is well settled law that the SCN is the foundation of demand and any subsequent orders cannot raise demand which has not been alleged in the SCN. It is submitted that where adjudication order is passed on the grounds not listed in the SCN, such order is violation of principle of natural justice and is liable to be quashed.

- In this regard the appellant relied upon the following case laws:

  a) Rusapi Containers v Commissioner (Appeals) reported in [2014] 43 taxmann.com 385 (Guj)
  b) M.K. Industries Commissioner of Central Excise, Daman reported in 2013 (31) S.T.R. 59 (Tri.-Ahmd.)

- The adjudicating authority has confirmed demand of Service Tax on the income received for providing works contract services, however, the SCN does not propose to demand Service Tax on works contract. In fact, the SCN solely proposes to demand Service Tax on the basis of total amount paid/credited or sales/gross receipts from services (from ITR). Therefore, the Impugned Order is beyond the scope of SCN and required to be set aside.

- The adjudicating authority has erroneously demanded service tax on the income received for providing works contract service by way of designing and printing services along with materials. The appellant have submitted that they are mainly engaged in trading of goods and only a marginal portion is engaged in rendering of services. The appellant have submitted that the appellant does not in any way provide works contract services.

- Section 65B (54) of the Act defines works contract as under:

  65B. Interpretations.

  *In this Chapter, unless the context otherwise requires,(54) "**works contract**" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

- It is submitted that along with printing the appellant have provides services of graphic designing. Services of graphic designing will not amount to transfer of property of goods. In fact, as enumerated in point (b) above, the services provided cannot be classified in any of the activities mentioned in the second limb of the definition.

- Printing of the brochure designed by the appellant does not involve any activity related to construction, erection, installation, commissioning, completion, fitting out, maintenance, repair, alteration, renovation or any other similar activity. All these activities relate to physical changes to a structure of immovable or movable property. However, in the

present case, the appellant have mainly carried out trading and even otherwise, designing of brochure and printing is two different activities and will not amount to providing works contract services.

- Further, the adjudicating authority has relied on Rule 2A of the Service Tax (Determination of Value) Rules, 2006, However, the appellant have submitted that the adjudicating authority has erroneously placed reliance on Sr. No. (ii) (A) of the Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

- It is pertinent to note that services provided by the appellant does not fall within the definition original work. The definition of original works relates to construction, alteration, addition, erection, commissioning or installation to immovable or movable property which is not even closely related to the services provided by the appellant. Therefore, the adjudicating authority has erred in demanding Service Tax on income received for providing works contract service when in reality the appellant does not provide works contract service. This shows that the adjudicating authority has erred in interpreting the provisions and has demanded Service Tax along with interest and penalty without considering the facts of the case.

- During the course of investigation, the appellant provided sample invoices to the Department along with their reply dated 29.10.2020. However, the adjudicating authority has conveniently taken into consideration sale invoices issued to M/s Alpha College of Engineering & Technology and M/s Biotrex Nutraceuticals for designing services, in isolation. The Appellant as stated above, mainly engages in trading of goods. The adjudicating authority ought not rely on standalone invoices and demand Service Tax on the total sale invoices.

- The appellant is engaged in trading of goods and charging VAT on the same. The adjudicating authority has not taken into consideration invoices wherein VAT is charged. Without prejudice to above, in case the appellant is held liable to pay Service Tax on total sales, it will amount to double taxation.

- The adjudicating authority ought to have considered the submission and invoices submitted by the appellant in whole and not in parts which are convenient to them. This action of the adjudicating authority clearly shows that the impugned order against the appellant was passed with biased attitude and is illegal and bad-in-law.

- The adjudicating authority has raised demand of Service Tax on the basis of differential value of income for providing services which is calculated from the Reconciliation statement for the disputed period while relying on income as per ITR and Form 26AS. It is pertinent to mention that the SCN has not specified information regarding the transaction or service provider. The SCN and the impugned order has blindly relied on ITR and Form 26AS even when the appellant in its letter dated 29.10.2020 has explained that the consultant of the appellant has wrongly recorded total sales in sales by services. In this regard the appellant relied upon the following case laws:

  a) Centre for Entrepreneurship Development Vs. C.C.E., Bhopal reported in 2017 (4) GSTL 338
  b) Alpa Management Consultants Pvt. Ltd. Vs. CST, reported in 2007(6) S.T.R. 181 (Tri. - Bang.)
  c) M/s. Luit Developers Pvt. Ltd. Vs. CGST & Central Excise, reported in 2022-T10L-180-CESTAT-KOL
  d) Forward Resources Pvt. Ltd. Vs. C.C.E. & S.T., Surat-I in Service Tax Appeal No. 10024 of 2020 in Final Order No. A/10801/2022 dated 15.07.2022

- Therefore, on the basis of the Notification No. 33/2012-ST dated 20.06.2012, the appellant is not liable to register with the Service Tax Registration as the taxable value of services for the period FY 2014-15 is Rs. 7,97,471/-, for the period FY 2015-16 is Rs. 8,12,452/-, and for the period FY 2016-17 (up to June 2017) is Rs. 8,27,680/-, which are below Rs. 10 Lakh.

- Without being prejudice to the above, the adjudicating authority erred by not considering the fact that the amount mentioned in the Income Tax Return against the heading "Sales of Services" includes Sales of goods. The appellant's consultant inadvertently clubbed and disclosed the same in the Income Tax Returns.

- It is submitted that trading of goods is covered under the negative list as provided under Section 66D(e) of the Act, 1994. Therefore, the same is not liable to be taxed under the Service tax regime. The appellant crave leave to submit, rely upon the additional document in relation to trading of goods at the time of the hearing.

- The adjudicating authority ought to have considered that extended period of limitation ought not to have been invoked in the present case as the Show Cause Notice was issued on 29.09.2020 for the period from F.Y. 2014-15 and therefore, demand for the disputed period is barred by limitation and the extended period of limitation ought not to have

been invoked. In fact, in the present case for the period 2014-15, the Show Cause Notice dated 29.09.2020 is beyond the limitation period of five years. The larger period of limitation can be invoked only on those grounds which are specifically provided under the Statute viz. is suppression, omission or failure to disclose information with intent to evade the payment of service tax. If the department seeks to invoke the extended period of limitation on the ground other than those mentioned in the statue, then such invocation of extended period of limitation is bad in law.

- The adjudicating authority ought to have appreciated that the extended period of limitation can be invoked only where an escapement of tax has been occasioned by the suppression, omission or failure to disclose wholly or truly all material facts required for verification of assessment by the appellant or where the appellant had an intention to evade the payment of tax, whereas in the present case, none of the ingredients for invoking larger period in satisfied. In this regard, they have relied following decisions:

  a) Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata – 2016-T10L-779-HC-KOL-ST
  b) Delhi International Airport Ltd. Vs. Commissioner of CGST – 2019 (24) GSTL 403 (T).
  c) Binjrajka Steel Tubes Ltd. Vs. Commissioner of C. Ex. – 2016 (342) ELT 302 (T)
  d) Roma Henny Security Service Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi – 2018 (8) GSTL 239 (Del.)

- The appellant have submitted that for the reasons set out herein above, the entire demand itself is unsustainable as the appellant is not liable to pay Service Tax for the disputed period. Hence, no interest and penalty can be imposed.

- The adjudicating authority ought to have appreciated that there was no ill intention on the part of the appellant to evade payment of Service tax. The appellant have submitted that in terms of settled law, penalty under Section 78 of the Act can be imposed only when service tax has not been paid by reason of fraud, collusion, willful misstatement or suppression of facts with intent to evade payment of service tax. In the absence of such circumstances, the imposition of penalty is clearly unsustainable. The adjudicating authority ought to have appreciated that none of the ingredients for applicability of Section78 of the Act have been dealt with in the impugned order passed by the adjudicating authority.

- Further, the adjudicating authority has wrongly imposed penalty under Section 70(1) of the Act read with Rule 7C of the Service Tax Rules, 1994 and penalty under Section 77 of the Act when the appellant is not liable to take registration under Service Tax since the amount of taxable services is under Rs. 10 Lakhs. The appellant bonafidely has not filed the returns since the taxable services for the disputed period was below Rs. 10 Lakhs.

4. Personal hearing in the case was held on 23.06.2023. Shri Ashish Agarwal, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum and those in the additional written submissions had over at the time of personal hearing. He submitted that the appellant earned income from sale of goods as well as supply of services. However, inadvertently in the ITR, the entire income was shown from sale of services in one financial year and from sale of goods in another financial year. However, the appellant had submitted sample invoices for both sources and the same is also reflected in the profit and loss account. The appellant in their appeal memorandum has shown bifurcation of income from sale of goods and from sale of services year wise. It may be seen that income from sale of services is below the threshold limit in each of the financial year. Therefore, the appellant is eligible for threshold limit of exemption. He undertook to submit profit and loss account for pervious years i.e. FY 2013-14. He requested to set aside the order in original.

4.1 The appellant vide their mail dated 05.07.2023 submitted copies of Profit & Loss Account, Balance Sheet, and Income Tax Return for the FY 2013-14.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing 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 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 from FY 2014-15 to FY 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBEC had, vide Instruction dated 26.10.2021, directed that:

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

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

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

7. I also find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14th November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). Therefore, considering the last date on which such return was to be filed, I find that the demand for the period April, 2014 to September, 2014 is time barred as the notice was issued on 28.09.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant that, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

7.1 For the remaining period from October, 2014 to March, 2015, the due date of filing ST-3 Return was 25th April, 2015. However, due to COVID pandemic, in terms of relaxation provision of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government had extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the

period from 20th March, 2020 to 29th September, 2020, the same shall stand extended to 31st March, 2021. In the instant case, the due date for issuing SCN was 24th April, 2020, but the same was issued on 28th September 2020. Considering the relaxation provided vide above Ordinance in the time limit for issuance of SCN, I find that the notice covering the period from October, 2014 to March, 2015 was issued well within extended period of limitation of five years and is legally sustainable under proviso to Section 73(1) of the Finance Act, 1994.

8. On verification of sample invoices submitted by the appellant, I find that the appellant is engaged in the business of providing designing services and trading of printing materials. I also find that the adjudicating authority has confirmed demand of Service Tax considering the service provided by the appellant as Work Contract Service and also extended benefit of abatement as per Rule 2A(ii)(A) of the Service Tax (Determination of Value) Rules, 2006. However, by no stretch of imagination, the service provided by the appellant can classified under the Work Contract Service. Thus, I find that the adjudicating authority erred in confirming the demand of service tax considering the service provided by the appellant as Work Contract Service. I also find that the adjudicating authority not considered the contention of the appellant that they have provided services as well as also engaged in trading of goods and also paid applicable VAT on the goods Traded, which can be easily verifiable from the sample copies of invoices submitted by the appellant. The adjudicating authority by relying two invoices for services, has came to conclusion that the service provided by the appellant falls under Works Contract Service, which is not correct. Thus, the impugned order passed by the adjudicating authority bad-in-law and legally not sustainable.

9. On verification of the invoice wise worksheet and Profit & Loss Accounts submitted by the appellant, I find that the appellant is engaged in trading of goods and received income amounting to Rs. 9,45,787/- during the FY 2014-15, Rs. 10,35,177/- during the FY 2015-16 and Rs. 11,89,208/- during the FY 2016-17. The sale of goods / trading of goods falls in Negative List as per Section 66D(e) of the Finance Act, 1994. Hence, the appellant are not liable to pay service tax on the said amount. Section 66D(e) of the Finance Act, 1994 reads as under:

> *"SECTION 66D. Negative list of services.—*
>
> *The negative list shall comprise of the following services, namely :-*
>
> *(a) ....*
>
> *(e) trading of goods;"*

9.1 I also find that the taxable value of services provided by the appellant during the FY 2014-15 is Rs. 7,97,471/-, during the FY 2015-16 is Rs. 8,12,452/-, and during the FY 2016-17 is Rs.

8,27,680/-, for which the appellant contended that they are eligible for threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012. In this regard, I find that the total value of service provided during the Financial Year 2013-14 was NIL as per the Profit & Loss Account and Income Tax Return submitted by the appellant, which is relevant for the exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15. I also find that the total taxable income received by the appellant was Rs. 7,97,471/- during the Financial Year 2014-15 and hence the appellant are eligible for benefit of exemption of Rs. 10,00,000/- during the FY 2014-15 and the appellant not liable to pay any service tax on the income received by them during the FY 2014-15.

9.2 I also find that during the FY 2015-16 and FY 2016-17, the taxable income of the appellant remained below the threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012. Therefore, the appellant also not liable to pay any service tax on the income received by them during the FY 2015-16 and FY 2016-17.

10. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant during the FY 2014-15 to FY 2016-17. is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.

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

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

(Shiv Pratap Singh)
Commissioner (Appeals)

Date: 03.01.2023

Attested

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

By RPAD / SPEED POST

To,

M/s. Manish Bhanuprasad Patel,
35, Super Bungalows,

Appellant

Opp. Science City, Sola Santej Road,
Sola, Ahmedabad – 380060

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

Respondent

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file