



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलिफैक्स 07926305136



DIN:20230764SW000000F1B8

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/301/2023-APPEAL/3219 - 23
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-46/2023-24
दिनांक 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. 132/AC/Demand/22-23 दिनांक: 27.09.2022, issued by Deputy/Assistant Commissioner, CGST, Division-I, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Shreeram Travels Agency,
S-17, Shiv Apartment, Opp. Noble School,
Krishna Nagar Colony, Parshwanath Road,
Saijpur Bogha, Ahmedabad

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 :

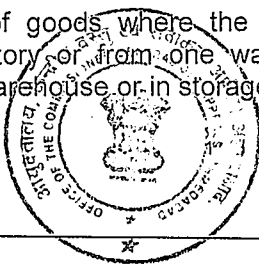
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

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

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

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

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

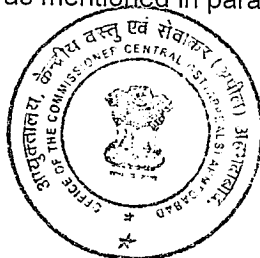
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

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



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

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 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.

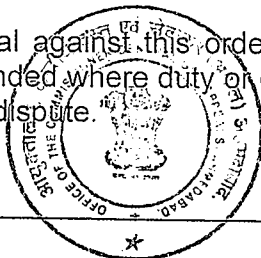
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Shreeram Travels Agency, S-17, Shiv Apartment, Opp. Noble School, Krishna Nagar Colony, Parshwanath Road, Saijpur Bogha, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 132/AC/Demand/22-23 dated 27.09.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AGBPT8161GSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that there was difference of value of service amounting to Rs. 18,83,029/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2014-15. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. IV/16-178/Prev./Shreeram/2018-19 dated 24.08.2020 demanding Service Tax amounting to Rs. 2,32,742/- 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 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,32,742/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further, Penalty of Rs. 2,32,742/- was also imposed on the appellant under Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal alongwith an application for condonation of delay on the following grounds:

- The appellant were engaged in the business of giving motorcar on hire and was registered with service tax Department and had filed ST-3 Returns from time to time.
- The services of the appellant is giving motor car on hire, the said service was covered under Reverse Charge Notification No. 30/2012-ST dated 20th June 2012. As per the



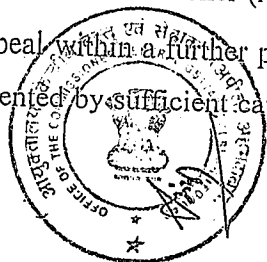
said notification, in every case where the service is rendered to body corporate the liability would arise on the recipient to pay tax.

- As per Form 26AS amount on which TDS has been deducted, except in one case of service to Mr. Parikh, all services were given to body corporate. Therefore, the appellant had no liability to pay tax.
- In fact, the liability of appellant were only in respect of Rs. 1,11,237/-, subject to abatement, whereas by mistake appellant has paid tax on value of Rs. 2,06,991/- Thus there is excess payment of tax on part of appellant as compared to his liability. The excess tax paid is required to be refunded.
- It is submitted that the appellant was entitled to abatement of 40% as per Notification No. 26/2012-ST dated 20.06.2012 as amended. In fact, in the return filed by the appellant the same was claimed. The fact of filing return was noticed in the notice. The abatement was also claimed / given on figure shown in the return. Thus, the Department had the knowledge about the claim of abatement and eligibility of the same. Despite this, no abatement was given in the impugned order.
- When there is no tax liability, the question of interest or penalty also does not arise.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 27.09.2022 and received by the appellant on 24.10.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 04.01.2023, i.e. after a delay of 11 days from last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that their service tax User ID and Password were blocked or not working, therefore, they have contacted the jurisdictional range superintendent as on 13.12.2022 and informed them about the same, they have received reply through mail on 23.12.2022. After that they again contacted the department to take guidance how to make payment of pre-deposit and follow the procedure, which take time.

4.1 Personal hearing in the matter of Application for condonation of delay was held on 27.06.2023. Shri Shridev J. Vyas, Advocate, appeared on behalf of the appellant. He re-iterated the submission made in the application for condonation of delay.

4.2 Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two



months. Considering the cause of delay given in application as genuine, I condone the delay of 11 days and take up the appeal for decision on merits.

5. Personal hearing in the case was held on 27.06.2023. Shri Shridev J. Vyas, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He submitted that the appellant provided rent-a-cab service which is eligible for RCM and applicable abatement. Out of all the services recipients, only one is not eligible for RCM. The appellant has already paid applicable service tax, after applying abatement and has filed ST-03 returns. He will submit a copy of profit and loss account, ledger, sample invoices, if available, within a week. He requested to set aside the impugned order.

5.1 However, the appellant had not submitted any further documents as assured during the course of personal hearing till the date of issuance of this order.

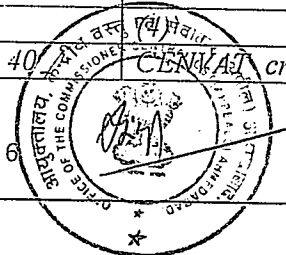
6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

7. It is observed that the contentions of the appellant are that (i) they have not required to pay any service tax on the services rendered to the body corporate as per Notification No. 30/2012-ST dated 20.06.2012; (ii) they were entitled to abatement under Notification No. 26/2012-ST dated 20.06.2012; and (iii) the liability of appellant were only in respect of Rs. 1,11,237/- received from Mr. Parikh, subject to abatement, whereas by mistake appellant has paid tax on value of Rs. 2,06,991/-. Thus, there is excess payment of tax on part of appellant as compared to his liability. It is also observed that the adjudicating authority confirmed the demand of service tax ex-parte.

8. For ease of reference, I reproduce the relevant provision for abatement as provided under Notification No. 26/2012-ST dated 20.06.2012 as amended and relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 as amended, which reads as under:

Notification No. 26/2012-Service Tax dated 20.06.2012, as amended vide Notification No. 08/2014-ST dated 11.07.2014

Sl. No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	
9A.	Transport of passengers, with	40	CEN credit on inputs, capital



or without accompanied belongings, by – a. a contract carriage other than motor cab. b. a radio taxi		goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004
--	--	--

Notification No. 30/2012-Service Tax dated 20.6.2012, as amended vide Notification No. 10/2014-ST dated 11.07.2014

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

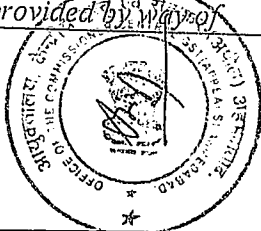
1. The taxable services, -

(A) (i)

.....
(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose [or security service- (Inserted by Notification No.45/2012-ST, dated 7-8-2012 w.e.f. 7-8-2012.)] or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory
.....

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
7.	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	NIL	100%
	(b) in respect of services provided or agreed to be provided by way of	50%	50%



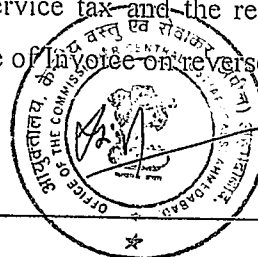
	<i>renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business</i>		
--	---	--	--

9. In view of the above provisions of Notification No. 30/2012-ST dated 20.06.2012, I find that there are two options under reverse charge mechanism, viz., (i) if an assessee, who opted for payment of Service Tax on abated value, will issue invoices indicating service tax on abated value and in that case if the recipient of service is a Body Corporate, the assessee is not required to pay any service tax and the recipient of service is required to pay service tax on 40% of gross value of Invoice on reverse charge basis; and (ii) if an assessee, who had not opted for payment of Service Tax on abated value, will issue invoices indicating full service tax on non-abated value and in that case if the recipient of service is Body Corporate, the assessee is required to pay service tax on 50% of gross value of Invoice and the recipient of service is required to pay service tax on remaining 50% of gross value of Invoice on reverse charge basis.

9.1 I find that in the present case, on verification of the Form 26AS for the FY 2014-15, it appears that the appellant has provided services to the below mentioned entity, who has been deducted TDS under Section 194C of the Income Tax Act, 1961, and the appellant had received total amount of Rs. 18,83,029/- during the FY 2014-15:

Sr. No.	Name of the party	Amount received
1	Entrepreneurship Development Institute of India	4,51,487/-
2	GVK Emergency Management and Research Institute	2,44,339/-
3	Hindustan Petroleum Corporation Ltd.	7,97,146/-
4	Hindustan Petroleum Corporation Ltd.	16,862/-
5	Hemendra Manharlal Parikh	1,11,237/-
6	RNTCP Sub Committee State Health Society	55,204/-
7	Centre for Personnel Talent Management (CEPTAM)	65,655/-
8	Crescent EPC Projects and Technical Services Limited	71,360/-
9	Ipca Laboratories Ltd.	39,987/-
10	Alkem Laboratories Ltd.	29,752/-
		18,83,029/-

9.2 On verification of the ST-3 Returns filed by the appellant for FY 2014-15, I find that the appellant had opted for payment of service tax on abated value as per the Notification No. 26/2012-ST dated 20.06.2012. Under such circumstances, if the recipient of service is a Body Corporate, the assessee is not required to pay any service tax and the recipient of service is required to pay 100% service tax on 40% of gross value of Invoice on reverse charge basis.



9.3 On verification of the Form 26AS for the FY 2014-15, I find that the appellant provided their services (i) to various Body Corporate, viz. Hindustan Petroleum Corporation Ltd., Ipca Laboratories Ltd., Alkem Laboratories Ltd.; (ii) to individual viz. Hemendra Manharlal Parikh; and (iii) to various other entity viz. autonomous bodies and other governmental agencies. I find that the autonomous bodies and other governmental agencies, etc. not falls under the definition of Body Corporate as defined under Section 2(11) of the Companies Act, 2013, which reads as under:

““body corporate” or “corporation” includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and*
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf”*

9.4 In view of the above, I find that the contention of the appellant that the liability of appellant were only in respect of Rs. 1,11,237/- received from Mr. Parikh is not sustainable and the appellant is also required to pay service tax on the income received from the entity, who are not body corporate as discussed above.

10. I also 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 they were liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

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

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

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



were already registered with service tax department and filed their ST-3 Returns from time to time. It is also observed that the adjudicating authority without carried out any further investigation, decided the case, ex-parte, and confirmed the demand of service tax as proposed in the Show Cause Notice, which is not correct and legal.

11. I find that the appellant has not disputed the taxability of services provided by them i.e. "Renting of Motor Vehicle" and on verification of case records, I also find that the appellant has also discharged their service tax liability and paid service tax on the total value of Rs. 2,06,991/- as reflected in ST-3 Returns filed by them for the FY 2014-15. They have, in the appeal memorandum, simply claimed that the services provided by them were under RCM under Notification No. 30/2012-ST dated 20.06.2012.


12. Considering the facts of the case as discussed hereinabove and in the interest of justice, I find that the demand needs to be re-quantified considering the fact that the appellant provided services to some Body Corporate also. However, I am of the considered view that the adjudicating authority is the best placed to verify the authenticity of the documents as well as the eligibility for exemption. Therefore, the case is required to be remanded back to the adjudicating authority to examine the case on merits and also to consider the claim of the appellant for exemption under Notification No. 30/2012-ST dated 20.06.2012. The appellant is directed to submit all the records and documents in support of their claim before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

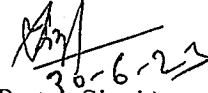
13. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

14. 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.

Attested


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


(Shiv Pratap Singh)
Commissioner (Appeals)



By RPAD / SPEED POST

To,
M/s. Shreeram Travels Agency,
S-17, Shiv Apartment,
Opp. Noble School, Krishna Nagar Colony,
Parshwanath Road, SaijpurBogha,
Ahmedabad

Appellant

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

(for uploading the OIA)

5) Guard File

6) PA file

