



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



DIN:20230764SW000000F6D0

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1510/2023-APPEAL/3879 - 83

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-51/2023-24
 दिनांक Date : 21-07-2023 जारी करने की तारीख Date of Issue 25.07.2023

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

ग Arising out of Order-in-Original No. CGST/WT07/RAJ/88/2022-23 दिनांक: 29.04.2022,
 issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Kalpeshbhai A. Maheshwari,
 109, 1st Floor, Abhishree Adroit,
 Near Mansi Circle, Ahmedabad-380015

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, 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 संक्षम 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) केंद्रीय 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 or 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.

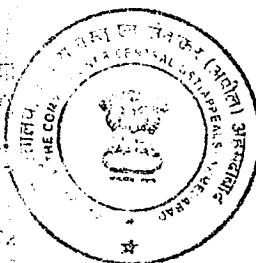
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Customs, Excise & Service Tax Appellate Tribunal.

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

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

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

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

- (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 उत्पादन शुल्क और सेवाकर के अंतर्गत शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेन्वैट क्रेडिट की राशि;
- सेन्वैट 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.

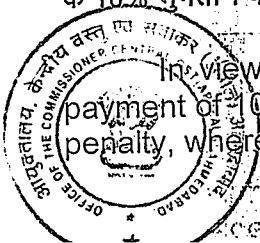
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs. 10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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. Kalpeshbhai A. Maheshwari, 109, 1st Floor Abhishree Adroit, Near Mansi Circle, Ahmedabad- 380015 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/RAJ/88/2022-23 dated 29.04.2022, (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-VII, 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. AJLPM7867P.

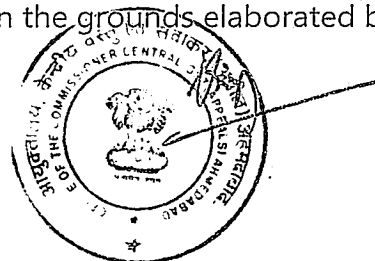
2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. The appellant has neither obtained Service Tax Registration 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 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, was considered as a taxable value.

<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	10,36,891	12.36%	1,28,160/-
02	2015-2016	15,67,528	14.5%	2,27,292/-
			Total	3,55,452/-

2.1 A Show Cause Notices (SCN) bearing No. CGST/AR-I/Div-VII/A'bad-North/42/Kalpesh/2020-2021 dated 26.09.2020 was issued to the appellant proposing recovery of service tax of Rs. 3,55,452/- along with interest, not paid on the value of income received during the F.Y. 2014-15 & F.Y. 2015-16 under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 (1) & 77(2) and under Section 78 of the Finance Act, 1994 were also proposed.

3. The SCN was adjudicated vide the impugned order wherein the total service tax demand of Rs.3,55,452/- was confirmed alongwith interest on the income received during the F.Y. 2014-15 & F.Y. 2015-16. Penalty of 10,000/- each was imposed under Section 77(1) and 77(2). Penalty of Rs. 3,55,452/- 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 show cause notice and the consequential order-in-original has been issued without any investigation to know whether the amount shown in the TDS/ITR is towards providing service or ascertain the type of service provided by the appellant and whether service tax is payable or otherwise on such services. Reliance placed on following case laws:-

- Mayfair Resorts (2011) 22 STR 263;
- Synergy Audio Visual Workshop P. Ltd.-2008 (10) STR 578
- Order-in-Appeal no. BHV-EXCUS-OOO-APP- 022-2021-22 dated 31.03.2022
- Luit Developers Pvt Ltd - 2022-TIOL-180-CESTAT-KOL-ST
- Reynolds Petro Chem Ltd-2022-TIOL-731-CESTAT-AHM

- The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/ action proposed should be mentioned specifically and unambiguously. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised. Reliance placed on following case-laws:-

- Huhtamaki PPL Ltd. 2021 (50) G.S.T.L. 309 (Tri. - Ahmd.)
- R. RAMADAS -2021 (44) G.S.T.L. 258 (Mad.)
- AJANTA MANUFACTURING LTD-2019 (369) E.L.T. 1067 (Tri. - Ahmd.)

- The appellant was engaged in providing service as an estate agent. The entire income on the basis of which the demand has been raised was not received from the supply of any taxable service. The bifurcation of the income as mentioned in the Profit & Loss account is as follows:

Income Head	2014-15	2015-16
Brokerage Income	9,99,456/-	3,17,528/-
Commission Income	-	1,97,000/-
Fixed Deposit withdrawal	26,475/-	-
Saving Bank Interest Income	406/-	2,852/-
Mediclaime Reimbursement	10,554/-	71,448/-
Proceeds from sale of office	-	12,50,000/-
Total	10,36,891/-	18,38,827/-

- As per Section 65 (44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within

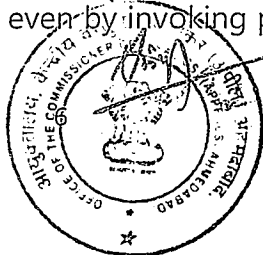


*the meaning of clause (29A) of article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;*

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being

- Thus, in terms of above definition to qualify as an activity it must involve an active action which could be measured in terms of "work completed" and create a result. Except for the brokerage/commission income, none of the income shown above in the heads of income are covered under the definition of service. On the contrary, the amount received as Bank interest, F.D. withdrawal, Reimbursement of mediclaim and proceeds from sale of office are in fact transaction in money and are excluded from the definition of service itself. In the present show cause notice/impugned order the 'consideration' is not for any service or there is no service for which there was any consideration. Further they claim that for an activity to be taxable it should not constitute a transfer in title of goods or immovable property by way of sale, gift or in any other manner. Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service.
- After deducting the value of income as shown against Bank interest, F.D. withdrawal, Reimbursement of mediclaim and proceeds from Sale of Office, the income of brokerage/commission income is below the exemption limit of Rs.10 lacs as per Notification No. 33/2012-Service Tax dated Q 20.06.2012. For the year 2014-15, the income from Brokerage Income is Rs.9,99,456/- and that of in the year 2015-16, the brokerage and commission income is Rs.5,14,528/- and in both the years these incomes were below the exemption limit of Rs.10 lacs as per Notification No. 33/2012-Service Tax dated 20.06.2012. Therefore, the appellant is not liable for payment of any service tax in the Financial Year 2014-15 and 2015-16.
- Entire details have been taken from TDS returns, Income Tax returns, 26AS returns and as such it is not forthcoming as to how the details were suppressed from the department. There is no suppression and as such the show cause notice was time-barred and Service Tax cannot be demanded and confirmed under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. Appellant relies upon following case laws:
 - M/s Oriental Insurance Company Limited-2021-TIOL-307-CESTAT-DEL
 - Blackstone Polymers-2014 (301) E.L.T. 657 (Tri. - Del.)
 - Kirloskar Oil Engines Ltd.-2004 (178) E.L.T. 998 (Tri. - Mumbai)
 - Hindalco Industries Ltd. -2003 (161) E.L.T. 346 (Tri. - Del.)
- Service tax liability (if any) for period pertaining to April 2014 to March 2015 cannot be demanded/ recovered even by invoking proviso to section 73(1) as the



period of five years shall be counted from the relevant date which for April 2014 to March 2015 was 25th March, 2015 and 5 years time limit lapses on 25th March, 2020 for invoking show cause notice under proviso to section 73(1) of the Finance Act, 1994. The adjudicating authority has referred to Notification no.55/2020-Central Tax dated 27.06.2020, which is not applicable in the present case. Even if this notification is construed to be applicable then also the ST-3 return for the period 01.04.2014 to 30.09.2014 was required to be filed by 25.10.2014 and the show cause notice for that period was required to be issued latest by 24.10.2019. Such compliance was not between 20th day of March, 2020 to the 29th day of June, 2020 but well before that and as such the demand was time barred. In view of the above submissions, the show cause notice is time barred and as such the consequential order to the extent of confirmation of demand of Rs.3,55,452/- is also not legal.

- In the case of interpretation of law, no penalty is imposable considering several judgment of the Tribunals and High Courts. In support of this, the appellant relies upon the judgment in the case of ITEL Industries Pvt. Ltd. -2004 (163) E. L. T. 219 (Tri- Bang.). Penalty could be restored to only in cases where malafide intention or guilty conscious of an assessee was established, this measure is to be restored to sparingly. In the facts of the present case where no suggestion or allegation of any malafide intention to evade payment of duty is even made out against the Appellant, there is no justification in the imposition of penalty in law as well as in facts. Honb'le Supreme Court in the land mark case of M/s. Hindustan Steel Ltd. - 1978 ELT (J159) held that 'penalty should not be imposed merely because it was lawful to do so'. Reliance placed on following decisions:-

- Tamil Nadu Housing Board -1994 (74) E.L.T.9 (SC)
- Town Hall Committee, Mysore City Corporation: 2011 (24) S.T.R. 172 (Kar.)
- Instant Credit: 2010 (17) S.T.R. 397 (Tri. - Del.)

5. 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. 3,55,452/- 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. It is observed that the entire demand have been raised based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The adjudicating authority decided the matter ex-parte. He confirmed the demand on the ground that the appellant have not come up with any documentary evidence to justify non payment of service tax on the disputed income reflected in the ITR.

6.1 The appellant however before the Appellate Authority have submitted the Profit & Loss Accounts Statement for the F.Y. 2014-15 & F.Y. 2015-16. On going through the



P&L account, I find that the appellant during the F.Y. 2014-15 & F.Y. 2015-16 had earned income of Rs.10,36,891/- & 18,38,827/-Break-up of the income is given below:-

Income Head	2014-15	2015-16
Brokerage Income	9,99,456/-	3,17,528/-
Commission Income	-	1,97,000/-
Fixed Deposit withdrawal	26,475/-	-
Saving Bank Interest Income	406/-	2,852/-
Mediclaime Reimbursement	10,554/-	71,448/-
Proceeds from sale of office	-	12,50,000/-
Total	10,36,891/-	18,38,827/-

6.2 From the above table, I find that the income of Fixed Deposit Withdrawal, Saving Bank Interest Income and Mediclaime Reimbursement cannot be treated as consideration against any service, hence are not taxable income. However, I find that the appellant are engaged in providing Estate Agent service hence the Brokerage Income and Commission Income earned are taxable as was earned against a provision of service, which even the appellant is not disputing.

6.3 With respect to the income earned from sale of office, I agree with the contention of the appellant that proceeds from sale of office shall not constitute a 'service' as defined in Section 65B (44). The terms 'service' is defined as;

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—*
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or*
 - (iii) a transaction in money or actionable claim;*
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
- (c) fees taken in any Court or tribunal established under any law for the time being in force.*

In terms of above definition, I find that the activity of sale of goods is kept outside the purview of service tax and accordingly no tax shall be levied on income earned from such sale proceeds. For the F.Y. 2015-16, the taxable income arrived is **Rs.15,67,528/-** which includes the income earned from Brokerage (i.e. Rs.3,17,528/-) and income from sale proceeds (i.e. Rs.12,50,000/-). Since the income from sale of office shall not attract service tax, the value of taxable income for the F.Y. 2015-16 shall get reduced to Rs.3,17,528/- which pertains to the income earned from Brokerage. And for the F.Y. 2014-15, the taxable income shall be Rs. 9,99,456/-

7. Further, the appellant have contended that considering the total income of Rs.9,99,456/- (Brokerage Income) in the F.Y. 2014-15 and income of Rs.5,14,527/- in the year 2015-16 (brokerage income Rs. 3,17,528/- plus commission income Rs.1,97,000/-),



they are eligible for threshold limit exemption in terms of Notification No. 33/2012-Service Tax dated 20.06.2012. So, they are not liable to make payment of any service tax in the Financial Year 2014-15 and 2015-16.


7.1 As regards, the Small Service Providers benefit claimed by the appellant under Notification No. 33/2012-ST dated 20.06.2012, it is observed that the said notification exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act. The "*aggregate value*" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification.

7.2 On going through the P&L account, I find that the appellant have earned taxable income of Rs.9,99,456/- in the F.Y. 2014-15 and taxable income of Rs.5,14,527/- in F.Y. 2015-16. Further, as per P&L Account of F.Y. 2013-14 submitted by the appellant, it is noticed that they have earned income of Rs.8,37,829/- (Brokerage Income) which is also below the threshold limit of Rs. 10 lacs. Hence, I find that the benefit of small scale service provider benefit can be extended to the appellant for the F.Y. 2014-15 and F.Y. 2015-16 as the taxable income/value of taxable service in all the three years were less than the Rs. 10 Lacs.

8. As per the discussion held above, I find that the demand of Rs. 3,55,452/- for the F.Y. 2014-15 & F.Y. 2015-16 shall not sustain. When the demand does not sustain there is no question of recovering the interest and imposing penalties thereon.

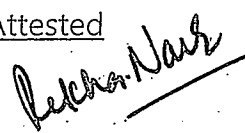
9. In light of above discussion, I set-aside the impugned order and allow the appeal filed by the appellant.

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.


(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date:

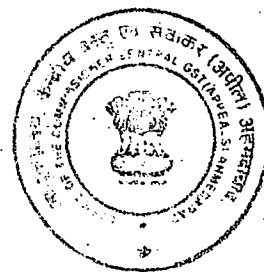
Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Kalpeshbhai A. Maheshwari,

Appellant



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Ahmedabad- 380015

The Assistant Commissioner
CGST, Division-VII,
Ahmedabad North

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.

