



**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: 20230764SW000000F33F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/250/2023 **13989-93**
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-59/2023-24
दिनांक Dated : 21.07.2023 जारी करने की तारीख Date of Issue 28.07.2023
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **78/AC/D/2021-22/KMV** दिनांक: **30-03-2022**, issued by
Assistant Commissioner, CGST, Division IV, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Bhavesh Nathulal Charan
Sheshshakti Bhajiya House,
Near Sarvottam Hotel, Moraiya,
Sanand, Ahmedabad - 382215

2. Respondent

The Assistant Commissioner,
CGST, Division-IV, Ahmedabad North
2nd Floor, Gokuldharm Arcade, Sarkhej Sanand Road,
Ahmedabad - 382210

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 :

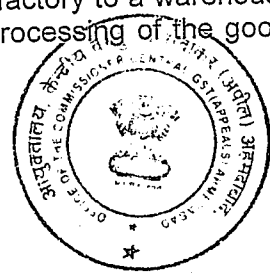
Revision application to Government of India :

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

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

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

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

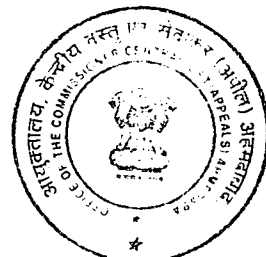
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

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



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

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

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

- (36) 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.

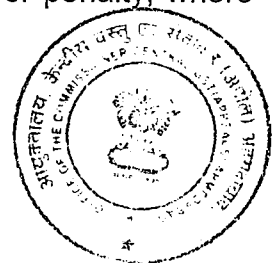
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xci) amount determined under Section 11 D;
- (xcii) amount of erroneous Cenvat Credit taken;
- (xciii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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."



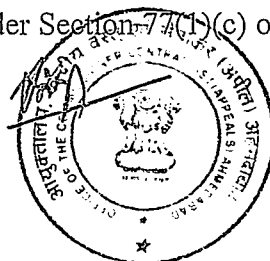
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Bhavesh Nathulal Charan, Sheshshakti Bhajiya House, Near Sarvottam Hotel, Moraiya, Tal: Sanand, Ahmedabad – 382215 (hereinafter referred to as “the appellant”) against Order-in-Original No. 78/AC/D/2021-22/KMV dated 30.03.2022 issued on 31.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division IV, 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. ASMPC2098N. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 27,00,986/- during the FY 2015-16, which was 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)” 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 Account, Income Tax Return, Form 26AS, 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. V/27-65/Bhavesh Nathulal/2020/TPD/UR dated 28.09.2020 demanding Service Tax amounting to Rs. 3,91,642/- for the period FY 2015-16, 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 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 2017-18 (up to Jun-17).

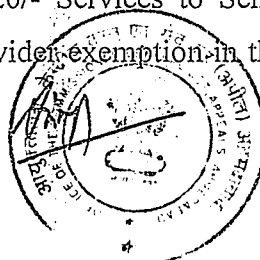
2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,91,642/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further (i) Penalty of Rs. 3,91,642/- 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 taking Service Tax Registration; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994



for failure to submission of the information and required documents; and (iv) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for failure to assess their correct service tax liability and failed to file correct Service Tax Returns.

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

- The appellant is engaged in providing Outdoor Catering Services, being small service provide by virtue of Notification No. 33/2012-ST dated 20.06.2012, they were not required to registered with the service tax department and not liable to pay service tax.
- They have neither received Show Cause Notice nor any letters as mentioned in the impugned order. They submitted a affidavit dated 03.12.2022 in this regard. The adjudicating authority confirmed the demand without considering the fact that SCN and other department letters had not been delivered to the appellant. The adjudicating authority confirmed the demand without giving proper opportunity of being heard to the appellant, which is violation of natural justice.
- The show cause notice and impugned order issued merely on the basis of amount reflected on 26AS/ITR, therefore, liable to be quashed. In this regard, they relied upon the following case laws:
 - a) M/s. Amrish Rameshchandra Shah Vs. Union of India and others (TS-77-HC-2021Bom.-ST)
 - b) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri. - All.)]
 - c) Kush Constructions Vs. CGST NACIN [2019 (24) GSTL 606 (Tri. - All.)]
 - d) Alpa Management Consultants P. Ltd. Vs. CST [2007 (6) S.T.R. 181 (Tri.-Bang.)]
- The appellant had mostly provided catering services to Schools and Pre-primary Schools and these services was exempted from service tax by virtue of Entry No. 9 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.
- Apart from that if any small catering work done by them, it covered under threshold exemption limit under Notification No. 33/2012-ST dated 20.06.2012. The total income of the appellant during the FY 2014-15 from taxable services was Rs. 7,17,398/- (Rs. 21,65,718/- – Rs. 14,48,320/- Services to Schools). Therefore, the appellant was eligible for small service provider exemption in the FY 2015-16 as per



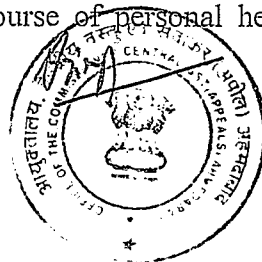
Notification No. 33/2012-ST dated 20.06.2012. They have submitted copy of ITR for the FY 2014-15.

- The appellant submitted bifurcation of income for the FY 2015-16 as below:

Total Income during the FY 2015-16	-	Rs. 27,00,986/-
Catering services provided to School and Pre-primary School (exempted)	-	Rs. 18,80,245/-
Remaining value of Catering Services	-	Rs. 8,20,741/-
Less: Abatement @40%	-	Rs. 3,28,296/-
Taxable Value of Services	-	Rs. 4,92,445/-
(Remain below threshold exemption of Rs. 10 lakh as per Noti. No. 33/2012-ST)		
- The appellant submitted declarations / certificates issued by Schools regarding catering services availed by them.
- Even otherwise the adjudicating authority, while passing the impugned order, not considered the abatement of 40% available for outdoor catering services.
- The show cause notice has been issued and demand of service tax has been confirmed by invoking the extended period under Section 73(1) of the Finance Act, 1994, however, there is not an iota evidence how the appellant has suppressed any fact. The facts that the appellant was not liable to pay service tax. Therefore, charging suppression and invoking extended period and levying service tax is not valid.
- In absence of liability of tax, question of levy of penalty, late fee and interest does not arise.

4. Personal hearing in the case was held on 14.07.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submission made in appeal memorandum. He submitted that the appellant provided outdoor catering service. The service provided to pre-primary schools is exempted under Serial No. 9 of Notification No. 25/2012-ST. The remaining income after applicable abatement was less than Rs. 10,00,000/-, which is eligible for threshold exemption. In view of this, he requested to set aside the impugned order, which was passed ex-parte, without any verification.

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 FY 2015-16.

6. It is observed that the main contentions of the appellant are that (i) they were engaged in outdoor catering service mainly to Schools and Pre-primary Schools and their services was exempted from service tax by virtue of Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012; (ii) the remaining small catering work income remain within threshold exemption limit under Notification No. 33/2012-ST dated 20.06.2012.

6.1 It is also observed that the adjudicating authority has passed the impugned order ex-parte.

7. For ease of reference, I hereby produce the relevant text of the Notification No. 25/2012-ST dated 20.06.2012, as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- 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. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

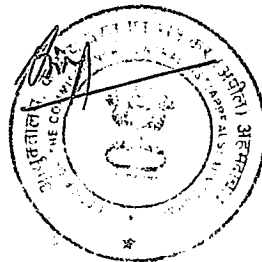
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"9. Services provided, -

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

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

(i) transportation of students, faculty and staff;



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

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

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

7.1 In view of the above provisions of Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012 as amended, it is clear that catering services provided by the appellant to an educational institution were exempted during the relevant period.

8. On verification of the documents submitted by the appellant, I find that they have submitted Certificate dated 03.01.2023 issued by Jia Pre-school, Certificate dated 29.12.2022 issued by Aloha, and Certificate dated 05.01.2023 issued by EuroKids, certifying that they have received catering service from the appellant for their students. The details of the amount received from the aforementioned educational institutes during the FY 2014-15 and FY 2015-16, as per the certificates are as under:

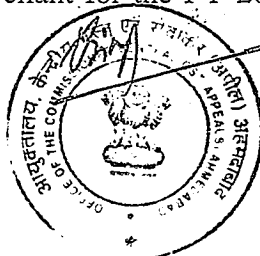
(Amount in Rs.)

Name of the institutes	FY 2014-15	FY 2015-16
Jia Pre-School	10,71,790/-	10,26,110/-
Aloha	3,76,530/-	5,03,330/-
EuroKids		3,50,805/-
Total	14,48,320/-	18,80,245/-

8.1 In view of the aforesaid certificates, the taxable value of the service provided by the appellant for the FY 2014-15 was Rs. 2,86,959/- [40% of 7,17,398/- (Rs. 21,65,718/- – Rs. 14,48,320/- Services to Schools)] and the taxable value of the service provided by the appellant for the FY 2015-16 was Rs. 3,28,296/- [40% of Rs. 8,20,741/- (Rs. 27,00,986/- – Rs. 18,80,245/- Services to Schools)]

9. In view of the above, I find that the taxable value of the appellant for the FY 2015-16 is Rs. 3,28,296/- and the same remain within the threshold limit of exemption as per Notification No. 33/2012-ST dated 20.06.2012 for which the appellant was very well eligible as their taxable value for the FY 2014-15 was Rs. 2,86,959/-, i.e. below Rs. 10 lakh, as per the documents submitted by the appellant.

10. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2015-16, is not legal and

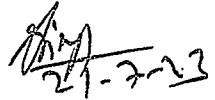


proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.

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 : 21-7-23

Attested


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



By RPAD / SPEED POST

To,

M/s. Bhavesh Nathulal Charan,
Sheshshakti Bhajiya House,
Near Sarvottam Hotel, Moraiya,
Tal: Sanand, Ahmedabad – 382215

Appellant

The Assistant Commissioner,
CGST, Division-IV,
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 IV, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

~~5) Guard File~~

6) PA file

