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- टेलेफैक्स07926305136

DIN: 20230764SW000000E848

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1509/2023/3901 - 38

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-62/2023-24**
दिनाँक Dated : 24.07.2023 जारी करने की तारीख Date of Issue 31.07.2023

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

ग Arising out of Order-in-Original No. **CGST/WT07/HG/594/2022-23** दिनाँक: **25-11-2022**, issued by Assistant Commissioner, CGST, Division VII, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Taraben Prakashbhai Majithia
5, Hasubhai Bunglows,
Nr. Vasupujya Bunglows,
Opp. Gulmohar Park Mall, Satellite,
Ahmedabad - 380054

2. Respondent

The Assistant Commissioner,
CGST, Division VII, Ahmedabad North
4th Floor, Shajanand Arcade, Nr. Helmet Circle,
Memnagar, Ahmedabad - 52

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.

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 not withstanding 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.

(38) 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:
(xcvii) amount determined under Section 11 D;
(xcviii) amount of erroneous Cenvat Credit taken;
(xcix) 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. Taraben Prakashbhai Majithia, 5, Hasubhai Bunglows, Nr. Vasupujya Bunglows, Opp. Gulmohar Park Mall, Satellite, Ahmedabad-380054 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/594/2022-23 dated 25.11.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VII, 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. AAYPM5788K. 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. 10,51,628/- during the FY 2015-16, which was reflected under the heads "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 has 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. CGST/A'bad-North/Div-VII/AR-IV/TPD/UNREG 15-16/34/20-21 dated 24.12.2020 demanding Service Tax amounting to Rs. 1,52,486/- 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.

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. 1,52,486/- 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. 1,52,486/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(1)(a) and Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant was working as an Insurance Agent as well as providing consultancy services and receiving income in the nature of Commission charges and consultancy fees, being small service provider by virtue of Notification No. 33/2012-ST dated 20/06/2012, they were not required to registered with the service tax department.

- They had neither received Show Cause Notice nor any letters as mentioned the impugned order. From the para 17 of the impugned order, it can be observed that by sending single letter (which had not been received by them) 3 personal hearings dated 15.09.2022, 19.09.2022 and 21.09.2022 were arranged which is clearly violation of natural justice, this way adjudicating authority wants to satisfy the conditions of giving 3 personal hearing opportunities to the appellant. In support of their contention they relied upon the judgment of Hon'ble Gujarat High Court in the matter of REGENT OVERSEAS PVT. LTD. Versus UNION OF INDIA, where it has been held that Three adjournments/dates for hearing cannot be given by a single notice.

- The appellant submitted that during the F.Y. 2014-15 appellant had received total income of Rs. 7,41,097/- which includes Interest Income of Rs.2,92,078/- which suggest that total taxable value of services is not exceeding Rs. 10,00,000/- hence appellant is eligible for small service provider exemption for the FY 2015-16, as per Notification No. 33/2012- ST dated 20.06.2012. For verification purpose they have submitted copy of Profit & Loss account and Balance sheet for the FY 2014-15; copy of Income Tax Return (ITR) of FY 2014-15; and copy of FORM 26AS for the FY 2014-15.

- The appellant submitted that in the impugned order it is alleged that during the FY 2015-16, Income of Rs. 10,51,628/- reflected in his FORM 26AS and considered it as taxable services and on that service tax Rs. 1,52,486/- demanded without considering the fact that whether such income is taxable or not as per service tax provisions.

- They submitted bifurcation of income for the FY 2015-16 as under:

Particulars	Amount (in Rs.)
Amount Reflected in FORM 26AS and based on which OIO issued:	10,51,628/-

TDS deducted on provisional basis by INTERSTELLAR SERVICES PRIVATE LIMITED which is income of next Financial Year (i.e., 2016-17), and appellant have not claimed TDS deducted on such amount as refund in the ITR, appellant had not claimed TDS in her ITR, though such amount reflected in FORM 26AS.	43,684/-
Re-imbursement of expenses on that also TDS deducted by Winco Valves Pvt Ltd. Declaration issued by Winco Valves Pvt. Ltd. is attached	16,350/-
Taxable Services (Consultancy Income)	9,91,594/-

- From the above table it is crystal clear that being small service provider for the FY 2015-16 their taxable services up to Rs. 10,00,000/- were exempted while they had provided services of Rs. 9,91,594/- only. Hence, no service tax liability arises as demanded in the impugned order has been arise.

- For verification purpose they have submitted copy of Profit & Loss Account and Balance sheet for the FY 2015-16; consultancy income ledger as well as ledger of all service recipients along with copy of invoices issued for the FY 201516. From that it can be verified that out of total consultancy income, only Rs. 5,75,436/- is related to INTERSTELLAR SERVICES PRIVATE LIMITED for the FY 2015-16 (6,19,120 - 5,75,436 = 43,684).

- They have also submitted copy of Income Tax Return (ITR) of FY 2015-16, from that it can be verified that appellant had claimed TDS of Rs. 57,543/- only in the ITR while in the FORM 26AS TDS deducted by INTERSTELLAR SERVICES PRIVATE LIMITED is Rs. 61,913/-. Hence, difference TDS of Rs. 4,369/- on the amount of Rs. 43,684/- is reflected in the FORM 26AS which is the income of the appellant for next the FY 2016-17. They have also submitted copy of bank statement where it can be observed that such income is received in the month Oct-16 & Dec-16.

- They have submitted Declaration issued by Winco Valves Pvt. Ltd. regarding the fact that they had wrongly deducted TDS on re-imbursement amount.

- In terms of Rule 3 of Point of Taxation (POT) Rules, 2011, the 'point of taxation' for services have been provided. In the given case, they have provided services for the value of Rs. 43,684/- in FY 2016-17, and accordingly they have raised an invoice on the company namely INTERSTELLAR SERVICES PRIVATE LIMITED, in FY 2016-17 on 15-10-2016. However, the said company had deducted TDS on 31-03-

2016 on provisional basis. However, neither the provision of service was completed nor any invoice was raised by them for such services as the said services were never provided till 31-03-2016. Further, also the payment for the same was received on 18-10-2016 & 16-12-2016 (4,369 + 39,315 = 43,684). Hence, point of taxation in accordance with Rule 3 of POT Rules, arises only in 2016-17 and does not fall in 2015-16. They have also submitted copy of invoice raised on 15-10-2016.

- From the above reconciliation it is clear that the though amount reflected in FORM 26AS but for the purpose of service tax provisions (Point of Taxation Rules, 2011) such is taxable in the FY 2016-17 only. Hence, no service tax liability arises as the value is less than the threshold exemption limit of Rs. 10 lacs.

- SCN has been issued and demand has been confirmed by invoking the extended period under Section 73(1) of the Finance Act, 1994. However, from the above facts it can be very well established that the appellant was not liable to pay service tax. Hence, charging suppression and invoking extended period and levying service tax is not valid.

4. Personal hearing in the case was held on 10.07.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum and requested to set aside the impugned order based on the submission.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 2015-16.

6. It is observed that the main contention of the appellant that during the FY 2015-16 their taxable services of Rs. 9,91,594/- only and therefore being small service provider they were eligible for threshold limit of exemption of Rs. 10 lac as per Notification No. 33/2012-ST. Hence, no service tax liability arises as demanded in the impugned order has been arise. It is also observed that the adjudicating authority has confirmed the demand of service tax vide impugned order passed ex-parte.

7. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" provided by the Income Tax department. Except for the same, 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 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."*

7.1 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.

8. As regard, the contention of the appellant that the impugned order was issued without conducting personal hearing, it is observed that the adjudicating authority has scheduled personal hearing by specifying 3 (three) different dates i.e. 15.09.2022, 19.09.2022 and 21.09.2022 in the single letter / notice. The appellant contended that they have not received any personal hearing letter and therefore could not attend the personal hearing.

8.1 In this regard, I find that the adjudicating authority has given three dates of personal hearing in one notice and has considered the same as three opportunities. As per Section

33A(2) of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such case, the adjudicating authority may grant time and adjourn the personal hearing by recording the reason in writing. Not more than three such adjournments can be granted. Since such adjournments are limited to three, the hearing would be required to be fixed on each such occasion and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another date. However, the adjudicating authority is required to give one date a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case.

8.2 It is further observed that by notice for personal hearing on three dates and absence of the appellant on those dates appears to have been considered as grant of three adjournments by the adjudicating authority. In this regard, I find that the Section 33A(2) of the Central Excise Act, 1944 provides for grant of not more than 3 adjournments, which would envisage four dates of personal hearing and not three dates. The similar view has been taken by the Hon'ble High Court of Gujarat in the case of Regent Overseas Private Limited and others Vs. Union of India and others reported in 2017 (3) TMI 557 – Gujarat High Court.

8.3 In view of the above, I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and it is only thereafter, the impugned order was required to be passed. Thus, it is held that the impugned order passed by the adjudicating authority is clearly in breach of the principles of natural justice. The same is not legally sustainable.

9. I find that below mentioned facts emerged on verifying the documents available on records:

- The appellant have shown income of Rs. 10,10,435/- in the Income Tax Return filed by them for the FY 2015-16.
- The appellant have also shown total income of Rs. 10,10,435/- (Rs. 9,91,494/- as Consultancy Fees Income; Rs. 2,491/- as Insurance Commission Income; and 16,450/- as Reimbursement Income) in the Profit & Loss Account, and Income ledger for the FY 2015-16.
- The appellant have issued total 4 invoices during the FY 2015-16, totally amounting to Rs. 9,91,494/- for Consultancy Fees and a Debit Note for Rs. 16,450/- for Reimbursement Income.

9.1 I also find that in the Form 26AS total credit of Rs. 10,51,628/- has been mentioned. However, the appellant contended in their submission that out of the said amount for Rs. 43,684/- invoice issued by them in the FY 2016-17 and also the said amount received by them in the FY 2016-17. As regard, the amount of Rs. 16,450/- the appellant contended that deductor has done mistake in deducting TDS on the said Reimbursement amount and also provide certificate / declaration from the concerned party.

9.2 On verification of the invoice dated 15.10.2016, and payment receipt entry in the bank account dated 18.10.2016 and 16.12.2016, I find that the contention of the appellant is correct that the amount of Rs. 43,684/- shown in the Form 26AS of the FY 2015-16 is actually received in FY 2016-17 and in accordance with Rule 3 of Point of Taxation Rules, 2011, the liability of service tax on the said amount arises only in FY 2016-17.

9.3 As regard the amount of Rs. 16,450/-, the appellant submitted a declaration / certificate dated 01.02.2023 from M/s. Winco Valves Private Limited, certifying that they have paid Rs. 16,450/- towards reimbursement of Auto Fare and Mobile Expenses during the year 2015-16 and they have received all supporting of reimbursement of expenditure along with consultancy fees invoice from the appellant. Thus, the said amount is also required to deducted from the taxable service.

10. In view of the above discussion, I find that the taxable service provided by the appellant in the FY 2015-16 comes to Rs. 9,91,494/-. As regard the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 admissible to the appellant or not, I find that the total value of service provided during the previous Financial Year 2014-15 was Rs. 7,41,097/- 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 2015-16. I also find that the total taxable income received by the appellant was Rs. 9,91,494/- during the Financial Year 2015-16 and the appellant are eligible for benefit of exemption of Rs. 10,00,000/- during the FY 2015-16 and they are not liable to pay Service Tax.

11. 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.

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

13. 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.

24.7.23

(Shiv Pratap Singh)
Commissioner (Appeals)

Attested

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

Date : 24.7.23

By RPAD / SPEED POST

To,
M/s. Taraben Prakashbhai Majithia,
5, Hasubhai Bunglows,
Nr. Vasupujya Bunglows,
Opp. Gulmohar Park Mall, Satellite,
Ahmedabad-380054

Appellant

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, CGST, Division VII, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file