आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN : **20230164SW000000E6B5**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/765/2022 / 7012 – 16

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-120/2022-23**
दिनाँक Date : **05-01-2023** जारी करने की तारीख Date of Issue 09.01.2023

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **09/CGST/Ahmd-South/AC/PMC/2022** दिनाँक: **28.01.2022** passed by Assistant Commissioner, CGST, Division-V, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Maize Products
Kathwada
Ahmedabad - 382430

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 हानिकार खाने 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 मे 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 भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 होत`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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

10ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

(cclxv) amount determined under Section 11 D;
(cclxvi) amount of erroneous Cenvat Credit taken;
(cclxvii) 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. Maize Products, Kathwada, Ahmedabad (hereinafter referred to as the appellant) against Order in Original No. 09/CGST/Ahmd-South/AC/PMC/2022 dated 28.01.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-V, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AADCS0861RXST001 and engaged in providing Consulting Engineering Services, Business Auxiliary Services, Manpower Services etc. During the course of audit of the records of the appellant conducted by the officer of CERA, the following observations were raised and communicated to the appellant vide LAR No. 120/17-18 dated 28.02.2018.

2.1 **Para No. 4** : During test check of the records of the appellant and from the details given in the Trial Balance, it was observed that the appellant had incurred expenditure in foreign currency on Technical Engineer Services received from abroad in respect of which they had short paid service tax amounting to Rs.5,70,088/-.

2.2 **Para No. 5** : It was observed that the appellant had made payment to agents abroad towards Brokerage and Commission and had short paid Service Tax amounting to Rs.5,03,762/-. The appellant were liable to pay the service tax on the said service under reverse charge in terms of Entry No.10 of Notification No. 30/2012-ST dated 20.06.2012.

2.3 **Para No. 7** : It was observed that the appellant had received supply of Manpower Service having taxable value amounting to Rs.46,51,645/- during April, 2015 in respect of which they were liable to pay 100% service tax under reverse charge. However, it appeared that the appellant had claimed deduction amounting to Rs.10,35,450/- on the basis that the service provider would pay the service tax. It was verified from the ST-3 return of the service provider that

they did not pay service tax on the said amount. The appellant appeared to be liable to pay service tax amounting to Rs.1,27,982/-.

3. The appellant was issued a Show Cause Notice bearing No. V.LAR-120/3-10/Maize/2018-19 dated 13.08.2018 wherein it was proposed to :

a) Demand and recover service tax amounting to Rs.12,01,832/-, under reverse charge, in terms of Section 73 (1) of the Finance Act, 1994.

b) Recover Interest under Section 75 of the Finance Act, 1994.

c) Impose penalty under Section 78 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax was confirmed along with interest. Penalty equivalent to the service tax amount confirmed was imposed under Section 78 of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. There is a violation of natural justice as none of the submissions made by them were considered by the adjudicating authority. It has not been considered that the TDS amount deposited by them can never be part of the value of taxable services. The TDS amount paid by them was not the amount charged by them by the service provider.

ii. The findings of the adjudicating authority are erroneous because they had submitted all the relevant documents to establish that the difference was related to TDS amount paid by them on behalf of the foreign based service providers.

iii. The difference of Rs.9,29,427/- during F.Y. 2013-14 was on account of TDS paid by them and the same was not deducted from the invoice value of Rs.26,80,000/-. The details of the remittance and TDS paid are recorded in Form 15CB under Income Tax Act. Similarly, during F.Y. 2014-15, the difference of Rs.7,68,265/- was on account of TDS paid by them, which too was not deducted from the invoice value of Rs.22,15,290/-. These facts are recorded in the Chartered Accountant Certificate dated 16.04.2015, a copy of which is submitted.

iv. They had paid service tax amounting to Rs.2,73,810/- on the invoice value of Rs.22,15,290/-, which was not recorded in the ST-3 returns for F.Y. 2014-15 as the invoice was issued on 26.03.2015 and the journal voucher was prepared on 31.03.2015. The payment of service tax was recorded on 16.04.2015 and shown in Trial Balance. Copies of these documents are submitted.

v. The amount of TDS paid from their pocket is not the value of service in terms of Section 67 of the Finance Act, 1994 and service tax is not required to be discharged on the amount of TDS.

vi. For F.Y. 2015-16, the adjudicating authority has not considered the fact that the amount of Rs.5,96,161/- was the amount of TDS which was paid out of their pocket and no service tax can be demanded on this amount.

vii. It is a settled law that service tax cannot be charged on the amount of TDS as the same is not consideration for rendering services. Reliance is placed upon the judgment in the case of Magarpatta Township Dev. & Construction Co. Limited Vs. CCE, Pune – 2016 (43) STR 132 (Tri.-Mum.) and Garware Polyester Ltd. Vs. CCE & Cus., Aurangabad – 2017 (5) GSTL 274 (Tri.-Mum.).

viii. The adjudicating authority has erred in holding that they are liable for service tax on the differential value pertaining to services of commission agents located in foreign country. It was submitted by them that some of the services were recorded in the Trial Balance in the current year but the service liability was discharged in the subsequent year. The services were received in the year ending and, therefore, the payment of service tax was made in the subsequent year. They had also submitted documentary proof in this regard. However, the same were not accepted on the ground that no documentary evidence or CA certificate was produced to substantiate their claim.

ix. A statement showing details of payment made in subsequent years and party wise ledgers conclusively proving that the payments made in the subsequent years is enclosed. Therefore, there was no actual difference in Trial Balance as compared to ST-3 returns.

x. They have also paid service tax on those services where the payment to the service provider was not made.

xi. The adjudicating authority has also not considered the fact that they had also received services of domestic commission agents for which reverse

charge is not applicable. The value of the services provided by the domestic commission agents was recorded in the Trial Balance, but the element of service tax pay by them was not shown in the ST-3 returns as they had not paid the service tax under reverse charge.

xii. Regarding the demand of service tax on Manpower Supply services, it is submitted that the services were received in the month of March, 2015 and the service providers has raised bills after completion of service. Since the services were received in March, 2015, they were liable to pay service tax @ 75% only.

xiii. The reason for rejection of their submissions by the adjudicating authority is that they had bills for Rs.41,41,802/- and not for the entire amount of Rs.46,51,645/-. However, the same cannot be the reason for upholding the demand of service tax.

xiv. No findings have been given in respect of the invoices submitted by them and the invoices for which demand of service tax was made were not examined by the adjudicating authority.

xv. The correction in dates of a few invoices were not made by them but by the service provider. The reason for correction of date from 02.04.2015 to 31.03.2015 was on account of the fact that the service provider has recorded the same in their internal records in the month of March, 2015 and the services were rendered in March, 2015 only and service tax @ 25% was paid by the service provider. Copy of certificate dated 16.02.2022 issued by the service provider as well as certificates issued by other service providers are submitted.

xvi. The service tax @25% has already been discharged by the service providers which is apparent from the invoices issued by them. Service tax once paid cannot be charged again from them as it would amount to double taxation. Reliance is placed upon the decision in the case of Mahatma Gandhi University of Medical Sciences & Technology Vs. Commr. of C.Ex., & CGST, Jaipur – 2021 (55) GSTL 26 (Tri.-Del.).

xvii. Regarding the difference of Rs.5,09,843/-, it is submitted that this pertains to the service providers who had issued invoices in March, 2015 and therefore, service tax liability, if any, can only be to the extent of 75%, as the liability to pay 100% service tax came into effect only from 01.04.2015. Further, the invoices were issued by service providers who are not providing manpower supply service but are themselves

conducting activities like garden maintenance, housekeeping etc. These service providers are not under the category of manpower supply service and therefore, no service tax is payable on these activities.

xviii. The service tax has been demanded under reverse charge, therefore, even if service tax was required to be paid by them, they would be eligible to claim cenvat credit and therefore, there is no revenue loss.

xix. Reliance is placed upon the judgment in the case of Jay Yusin Ltd. Vs. Commissioner of Central Excise – 2000 (119) ELT 718 (Tri.-LB) where in it was held that extended period of limitation is not applicable where payment of tax is available as cenvat credit to the assessee. A similar view was taken in the case of John Energy Limited Vs. CCE & ST, Ahmedabad – Final Order No. A/12620/2018 dated 26.11.2018.

xx. Demand cannot be made only on the basis of figures appearing in Balance Sheet and P&L account. The department has failed to substantiate the proposals made in the SCN.

xxi. Reliance is placed upon the judgment in the case of Go Bindas Entertainment Pvt. Ltd. Vs. Commissioner of S.T., Noida – 2019 (27) GSTL 397 (Tri.-All); Vijay Packaging Systems Ltd.- 2010 (262) ELT 832 (Tri.-Bang.); Triveni Castings Pvt. Ltd. – 2015 (321) ELT 336 (Tri.-Del.); K.J. Diesels (P) Ltd. – 2000 (120) ELT 505 (Tribunal) and Commissioner of Central Excise, Ludhiana Vs. Mayfair Resorts – 2011 (21) STR 589 (Tri.-Del.).

xxii. Imposition of penalties under Section 78 of the said Act is also an action without jurisdiction as no one can be penalized under different sections for the same alleged offence. Further, no justifiable reason is recorded for imposing penalty.

xxiii. Reliance is placed upon the judgment in the case of Hindustan Steel Ltd. – 1978 ELT (J159).

xxiv. The order regarding recovery of interest is also without authority of law as Section 75 is not attracted in the instant case as there is no short levy or short payment or non-levy or non-payment of service tax.

6. Personal Hearing in the case was held on 18.11.2022. Shri Sudhanshu Bissa, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted two case laws in support of contention that service tax is not leviable on TDS amount.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made during the personal hearing and the materials available on records. The issues before me for decision are :

A) Whether the appellant had short paid service tax amounting to Rs.5,70,088/-, under reverse charge, in respect of the Technical Engineer Services received from abroad ?

B) Whether the appellant had short paid Service Tax amounting to Rs.5,03,762/- in respect of the payment made to agents abroad towards Brokerage and Commission ?

C) Whether the appellant had short paid service tax amounting to Rs.1,27,982/-, under reverse charge, in respect of the Manpower Service received by them during April, 2015.

The demand pertains to the period F.Y. 2012-13 to F.Y. 2015-16.

8. Regarding the issue of short payment of service tax, under reverse charge, in respect of the Technical Engineer services received from abroad, it is observed that the appellant have claimed that the difference in the taxable value was on account of the TDS paid by them on the payments made to the service providers. The appellant have also relied upon a few judgments in support of their stand that service tax cannot be charged on the amount of TDS. The adjudicating authority has rejected the contentions of the appellant on the grounds that they have not submitted copies of the agreement with the overseas service providers and also not submitted certificate from the Chartered Accountant in respect of the TDS pertaining to F.Y. 2013-14 and F.Y. 2015-16. The appellant have, as part of their appeal memorandum, submitted copies of Receipts of payment of TDS as well as Form 15CB – Certificate of an Accountant – issued to them by a Chartered Accountant. Having examined these documents, I find that the amount of TDS paid by the appellant are matching with the differential amount mentioned in the impugned order in the Table under Para 2.1.

8.1 In respect of the differential amount of Rs.29,83,555/- pertaining to F.Y. 2014-15, the appellant have contended that the invoice value of the service

received from M/s. Sigma is Rs.22,15,290/- and the TDS in respect of the said invoice amounted to Rs.7,68,265/-, which was paid them as is evident from the Certificate dated 16.04.2015 issued by the Chartered Accountant. The appellant have further contended that they have paid service tax amounting to Rs.2,73,810/- on the invoice value amounting to Rs.22,15,290/-, however, the same was not recorded in the ST-3 returns for F.Y. 2014-15, as the journal voucher for payment was prepared on 31.03.2015 and the payment of service tax was recorded on 16.04.2015. The appellant have submitted copies of the receipts for payment of service tax as well as the journal voucher dated 31.03.2015. I have perused the said documents and find that the Rs.7,68,265/- was paid by the appellant as TDS on 16.04.2015, which is evidenced by the Form 15CB issued by the Chartered Accountant and the TDS receipt issued by Punjab National Bank. I have also perused the challans for payment for service tax and find that the appellant have paid service tax amounting to Rs.1,63,045 on 16.04.2015 and Rs.1,10,765/- on 10.04.2015, totally amounting to Rs.2,73,780/- and after adjusting for cess paid @ 5% towards R&D cess, I find that the appellant have discharged their service tax liability amounting to Rs.2,73,810/- in respect of the invoice value of Rs.22,15,290/-.

8.2 On the issue of whether the TDS in respect of payments made to overseas service providers is liable to service tax under reverse charge, I find it pertinent to refer to the judgments relied upon by the appellant. In the case of Magarpatta Township Dev. & Construction Co. Ltd. Vs. CCE, Pune-III – 2016 (43) STR 132 (Tri.-Mumbai), the Hon'ble Tribunal had held that :

> "7. Undisputedly, the appellant has entered into an arrangement/agreement with foreign architect for receiving his services. The said agreement also indicates an amount to be paid as consideration by the appellant to such architect; appellant has discharged the Service Tax liability on such an amount paid to the architect. As per provision of Income Tax Act, the appellant is required to pay the Income Tax on such amount, which he has done so from his own pocket. On this factual matrix it requires to be seen whether the relevant provision of Section 67 of the Finance Act, 1994 gets attracted. We reproduce the said Section : -
>
> **"Valuation of taxable services for charging Service Tax.**
>
> 67. (1) Subject to the provisions of this Chapter, where Service Tax is chargeable on any taxable service with reference to its value, then such value shall, -
>
> (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
>
> (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal of to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. - For the purposes of this section, -

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment."

It can be seen from the above reproduced Section 67 that it contemplates how the valuation of taxable service for charging Service Tax needs to be arrived and sub-section 1(i) provides for valuation wherein consideration paid in money, be the gross amount charged by the service provider. The phrase "gross amount charged" also is explained in the said Section. Reading holistically, we find that Section 67(i) very clear mandates for discharging the Service Tax liability amount which is charged by the service provider is the amount.

8. Service Tax Valuation Rules, 2006 before amendment by Notification No. 24/2012-S.T., specifically Rule 7 needs to be read to arrive at the correct value of taxable service provided from outside India relevant Rule is reproduced : -

"7. Actual consideration to be the value of taxable service provided from outside India

(1) The value of taxable service received under the provisions of Section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

(2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India."

It can be seen from the above reproduced Rule that for the purpose of discharge of Service Tax for the service provided from outside India, the value is equal to the actual consideration charged for the services provided or to be provided. In the case in hand, we specifically asked for the invoice/bill raised by the service provider and on perusal of the same, we find that appellant had discharged the consideration as raised in the said invoice/bill. There is nothing on record that indicates that the appellant had recovered that amount of Income Tax paid by them on such amount paid to the service provider from the outside India and any other material to hold that this amount is paid as consideration for services received from service provider."

8.3 It is observed that in the present appeal, there is no dispute as regards the fact that the appellant had only made payment of the invoice value to the overseas service provider. It is, therefore, apparent that the TDS paid by the appellant is out of his own account. Considering these facts, I find that the judgment of the Hon'ble Tribunal, Mumbai in the Magarpatta Township supra, is squarely applicable to the facts and circumstances of the present case.

8.4 It is further observed that the above judgment was followed in the case of Garware Polyester Ltd. Vs. Commissioner of C.Ex. & Cus., Aurangabad – 2017 (5) GSTL 274 (Tri.-Mumbai) and Hindustan Oil Exploration Co. Ltd. V. Commissioner of GST & C.Ex., Chennai – 2019 (25) GSTL 252 (Tri.-Chennai). Accordingly, by following the above judgments of the Hon'ble Tribunal, I am of the considered view that service tax is not leviable in respect of the TDS amount paid by the appellant and, therefore, the impugned order confirming demand in this regard is set aside.

9. Regarding the issue as to whether the appellant had had short paid Service Tax amounting to Rs.5,03,762/- in respect of the payment made to agents abroad towards Brokerage and Commission, it is observed that the appellant have contested the confirmation of demand on the grounds that the difference in taxable value between the ST-3 returns and their Trial Balance is on account of the fact that the services were recorded in the Trial Balance on accrual basis, while the same is reflected in their ST-3 returns when service tax is paid. The appellant have also contended that during F.Y. 2014-15 and F.Y. 2015-16, they have also received services from domestic Commission Agents in respect of which reverse charge is not applicable. However, these facts have not been considered by the adjudicating authority.

9.1 It is observed that the adjudicating authority has rejected the submissions of the appellant on the grounds that no supporting documents such as certificate of the Chartered Accountant has been submitted by them. The adjudicating authority has vaguely recorded that the CERA party has some reasons to raise the demand, but has not specified the grounds in his findings. The adjudicating authority has also not given any finding on the submission of the appellant explaining the reasons for the difference in the taxable value. Since this issue requires reconciliation of the taxable value as

well as verification of the relevant documents, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for a decision afresh after considering the submissions of the appellant as well as the relevant documents. The appellant is directed to submit before the adjudicating authority all the relevant documents relied upon by them in support of their contention within 15 days of the receipt of this order.

10. Regarding the issue as to whether the appellant had short paid service tax amounting to Rs.1,27,982/-, under reverse charge in respect of the Manpower Service received by them during April, 2015, it is observed that till 31.03.2015, service tax on Manpower Supply Service was payable to the extent of 75%, under reverse charge, by the service recipient. However, from 01.04.2015, the service recipient was liable to pay 100% service tax under reverse charge.

10.1 The appellant have contended that the services were received by them in the month of March, 2015 and the bills too were raised in the month of March, 2015. However, the payment was made only in April, 2015 and, therefore, in terms of the statutory provisions prevailing prior to 01.04.2015, they had discharged service tax on 75% of the value of services. The appellant have also contended that an amount of Rs.5,09,843/- pertains to service providers involved in garden maintenance, housekeeping etc. which are not manpower supply and these service providers are not registered with the service tax department as they are not providing manpower supply services and, therefore, no service tax is leviable on such activities. It is observed that the adjudicating authority has rejected the submissions of the appellant on the grounds that the summary submitted by them for an amount of Rs.41,41,802/- does not tally with the amount of Rs.46,51,645/- mentioned in the SCN. The adjudicating authority has further observed that three invoices submitted by the appellant are dated 02.04.2015 but have been corrected by the hand written date of 31.03.2015.

10.2 It is observed that the appellant had submitted details of invoices amounting to Rs.41,41,802/-. The differential amount is Rs.5,09,843/- for which it is the contention of the appellant that it pertains to services other than Manpower Supply service. It is further contended by the appellant that the

adjudicating authority has given his findings only in respect of three invoices and neither examined nor given any findings in respect of the remaining invoices. Even in respect of the three invoices, the dates of which are under dispute, it cannot be overlooked that the service provider has paid 25% of the service tax chargeable and the appellant had paid 75% of the service tax chargeable. Therefore, if the appellant is again asked to make payment of 25% of the service tax chargeable, it would amount to double taxation, which is not permissible by law. Be that as it may, since the adjudicating authority has not examined or given any findings on all the invoices involved in the dispute, I am of the considered view that it would be in the fitness of things to remand the matter back to the adjudicating authority to decide the matter afresh by considering the submissions of the appellant as well as after examining all invoices submitted by them and record his clear findings on all aspects involved in the issue. The appellant is directed to provide all documents required by the adjudicating authority in the remand proceedings.

11. In view of the facts discussed hereinabove, the demand of service tax amounting to Rs.5,70,088/- in respect of Technical Engineer Service received from abroad is set aside and the appeal is allowed to this extent. The impugned order insofar as it pertains to demand of service tax amounting to Rs.5,03,762/- and Rs.1,27,982/- is set aside and remanded back to the adjudicating authority for denovo adjudication in light of the observations and directions contained in Para 9.1 and 10.2 above.

12. अपीलकर्ता 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.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 05.01.2023.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Maize Products,
Kathwada, Ahmedabad — Appellant

The Assistant Commissioner,
CGST, Division- V,
Commissionerate : Ahmedabad South. — Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. ~~Guard~~ File.
5. P.A. File.