



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20230264SW0000818910

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2682/2022 *18613-12*
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-156/2022-23
दिनांक Date : 08-02-2023 जारी करने की तारीख Date of Issue 21.02.2023.
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WS07/O&A/OIO-067/AC-RAG/2022-23 दिनांक: 22.07.2022
passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Manan Bharat Shah
402, Soumya - 4,
Opposite Mona Nagar Society,
Near Navyug Society, Nehrunagar,
Ahmedabad - 380015

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 :

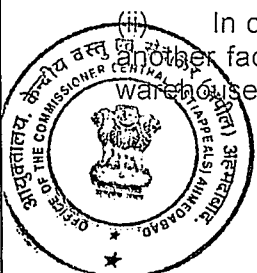
Revision application to Government of India:

(i) 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 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 में हो माल की प्रकिया के दौरान हुई हो।

(iii) 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 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 रुपये या उससे कम होतो 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 सेवा कर 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 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.

- 5^प 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.

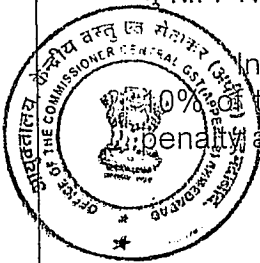
⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

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:

- (xxii) amount determined under Section 11 D;
(xxiii) amount of erroneous Cenvat Credit taken;
(xxiv) 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 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. Manan Bharat Shah, 402, Soumya-4, Opposite Mona Nagar Society, Near Navyug Society, Nehrunagar, Ahmedabad – 380 015 (hereinafter referred to as the “appellant”) against Order in Original No. CGST/WS07/O&A/OIO-067/AC-RAG/2022-23 dated 22.07.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division-VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. ACOPS3378RSD001. On perusal of the data received from Income Tax department it was observed that the appellant had declared different values in the ST-3 returns and the ITR/Form 26AS during F.Y. 2015-16. It was observed that the appellant had declared the income from sale of services amounting to Rs.12,97,720/- in the ITR and declared taxable value amounting to Rs.4,47,720/- in the ST-3 returns. It, therefore, appeared that the appellant had short declared taxable value amounting to Rs.8,50,000/- in their ST-3 returns and short paid service tax amounting to Rs.1,23,250/-. The appellant were called upon to submit documents relating to the income earned by them. However, the appellant failed to submit the required details/documents. Therefore, the appellant was issued Show Cause Notice bearing No. V/WS07/IV/O&A/SCN-911/2015-16/REG/2020 dated 24.12.2020 wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.1,2,250/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

B. Impose penalty under Sections 77(1)(c), 77(2) and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein :

a) The demand of service tax amounting to Rs.1,23,250/- was confirmed along with interest.



b) Penalty amounting to Rs.1,23,250/- was imposed under Section 78(1) of the Finance Act, 1994.

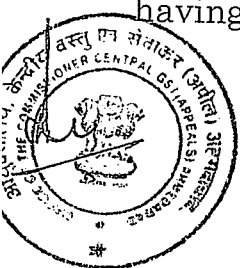
4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

- i. They had started pre-primary school in 2011 by taking premises on rent from M/s.Vimlaba Cordial Camp managed by Shri V.R. Shah Smruti Adarsh Education Trust. Copy of the Leave and License Agreement dated 09.03.2011 is submitted.
- ii. They had taken master franchisee of 'SHANTI'S HOPSKOTCH' from Shanti's Educational Initiative Limited (SEIL) on 10.03.2015 and were eligible for selling franchisee across Gujarat. Copy of the agreement is submitted.
- iii. During F.Y. 2015-16, they had received Franchisee Fees amounting to Rs.4,47,720/- on which they had paid service tax, which can be verified from the ST-3 returns filed by them.
- iv. They had claimed exemption in respect of the amount of Rs.8,50,000/- which was received by them relating to admission of students to Educational Institution namely, K.M. Enterprise running pre-school education. Exemption was claimed as per Entry No.9 of Notification No.25/2012-ST dated 20.06.2012.
- v. The adjudicating authority rejected their claim on the ground that the same was not supported by any documentary evidence that M/s. K.M. Enterprise is running pre-school.
- vi. They are submitting evidences which proves that the amount of Rs.8,50,000/- was received for admission of students in pre-primary school from M/s.K.M. Enterprise.
- vii. They had entered into agreement as Master Franchisee of Shanti's Hopskotch pre-school with K.M. Enterprise for setting up via selling franchisee and doing admission process of students on 14.05.2015.
- viii. For starting pre-school, K.M. Enterprise had taken premises on rent and entered in to Lease Agreement wherein it is clearly mentioned that the premises is allowed to be only to run and operate pre-primary school. Copy of the agreement is submitted.



- ix. They also submit copy of registration of K.M. Enterprise issued by District Industries Centre, Ahmedabad which clearly shown that K.M. Enterprise is registered as pre-primary school.
- x. Copy of the ledger of K.M. Enterprise and bank statement showing receipt from K.M. Enterprise are submitted.
- xi. The SCN has been issued by invoking the extended period of limitation. However, from the above facts, it is established that they were not liable to pay service tax. Hence, charging suppression and invoking extended period for levy of service tax is not valid. There is no evidence as to how they had suppressed any fact.
- xii. The adjudicating authority has erred in confirming the demand merely based on assumption that the income declared in the ITR becomes taxable under service tax despite the fact that such income is relating to exempted services provided.
- xiii. The demand has been confirmed merely because the recipient of services had not deducted TDS and, hence, not reflecting in Form 26AS without any investigation whether such recipient is liable for deducting TDS as per the provisions of Income Tax Act, 1961.
- xiv. The demand has been confirmed by creating a doubt that they had no experience in the field of education, so how could they have earned income out of admission of students, without considering the fact that they had already started pre-primary school from the year 2011.
- xv. The adjudicating authority had not followed natural justice and not given any opportunity of personal hearing before confirming the demand.
- xvi. The adjudicating authority has erred in imposing penalty under Section 78 (1) of the Finance Act, 1994 despite there being no suppression on their part.

5. Personal Hearing in the case was held on 18.01.2023. Shri Punit Prajapati, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted a certificate dated 03.01.2023 from K.M. Enterprise in support of having received an amount of Rs.8,50,000/- from their firm during F.Y.



2015-16 for helping in getting students for pre-school and smoothen the admission process. He also submitted a reconciliation statement and copy of Form 26AS.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing and the materials available on records. The issue before me for decision is whether the impugned order denying the benefit of exemption under Entry No. 9 of Notification No. 25/2012-ST dated 20.06.2012 to the appellant, in the facts and circumstances of the case, is legal and proper. The demand pertains to the period F.Y. 2015-16.

7. It is observed from the findings recorded by the adjudicating authority at Para 5.2 of the impugned order, it emerges that the adjudicating authority has, *per se*, not doubted the eligibility of the services provided by the appellant to exemption under the said Notification. However, the adjudicating authority has rejected the claim of the appellant for exemption under Entry No. 9 of Notification No.25/2012-ST dated 20.06.2012 on the grounds that the Ledger Account of M/s. K.M. Enterprise, showing royalty charges for admission of students, is not certified and that the appellant was not having experience in the field of education and that the appellant had not given any documentary proof like Shops and Establishment Certificate issued by the Municipal Corporation.

7.1 It is observed from the documents submitted by the appellant as part of their appeal memorandum that the appellant are holding Master Franchisee rights of Shanti's Hopskotch in terms of Agreement dated 10.03.2015 with M/s. Shanti Educational Initiatives Limited (SEIL). Further, the appellant had entered into a Memorandum of Understanding on 14.03.2015 with M/s.K.M. Enterprise for setting up Shanti's Hopskotch Pre-school for Play Group, Nursery, Junior K.G and Senior K.G. As per Clause 4 of the MOU, the appellant would help M/s.K.M. Enterprise in the admission process for which they would get 10% of the admission fees collected during the year as Royalty Income. M/s.K.M. Enterprise have



entered in to a Lease Agreement dated 14.05.2015 with the owners of Growell Preschool & Daycare, Block A, Devnandan Avenue, Motera, Ahmedabad – 380005 for running and operating Shanti's Hopskotch centre. The appellant have also submitted a copy of the Ledger Account of M/s.K.M. Enterprise for F.Y. 2015-16 wherein an amount of Rs.8,50,000/- is shown towards the service provided by the appellant relating to admission procedure in the pre-school of M/s.K.M. Enterprise. It, therefore, is evident that the income received by the appellant is relating to the services provided by them to K.M. Enterprise for admission of students to pre-school operated by K.M. Enterprises.

7.2 It is observed that Entry No. 9 of Notification No. 25/2012-ST dated 20.06.2012 exempts the following :

“ Services provided, -

(a).....

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

(i)

(ii)...

(iii) ...

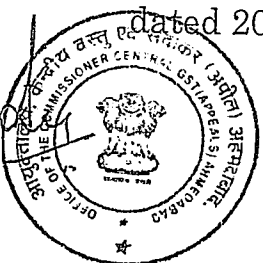
(iv) services relating to admission, to or conduct of examination by, such institution:”

7.3 The above entry was inserted in the said Notification w.e.f. 11.07.2014 by virtue of Notification No. 6/2014-ST dated 11.07.2014. Further, during the period under dispute, 'educational institution' was defined at Para 2 (oa) of the said Notification to mean an institution providing services specified in clause (l) of Section 66D of the Finance Act, 1994. Clause (l) of Section 66D of the Finance Act, 1994, prior to its omission w.e.f 14.05.2016 by virtue of Finance Act, 2016, read as under :

“(l) services by way of –

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as part of a curriculum for obtaining qualification recognised by any law for the time being in force;
- (iii) education as part of an approved vocational course;”

7.4 In the instant case, the appellant had provided services relating to admission in a pre-school. Accordingly, the services provided by the appellant falls within the ambit of Entry No. 9 of Notification 25/2012-ST dated 20.06.2012 and is, hence, exempted.



8. In view of the above, I am of the considered view that the adjudicating authority has erred in confirming the demand of service tax against the appellant by erroneously denying the benefit of exemption in terms of the said Notification. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

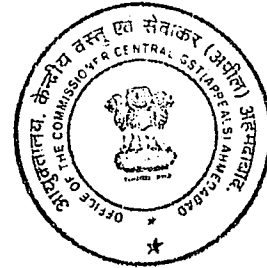
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

Akhilish Kumar
 08 February,
 (Akhilish Kumar) 2023..
 Commissioner (Appeals)
 Date: 08.02.2023.

Attested:

(Signature)
 (N.Suryanarayanan. Iyer)
 Assistant Commissioner (In situ),
 CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Manan Bharat Shah,
 402, Soumya-4,
 Opposite Mona Nagar Society,
 Near Navyug Society,
 Nehrunagar, Ahmedabad – 380 015
 The Assistant Commissioner,
 CGST, Division- VII,
 Commissionerate : Ahmedabad South.

Appellant

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.

