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

☎ 26305065-079 : टेलेफैक्स26305136 - 079 :

DIN- 20220764SW000000BCD4

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/123/2021/2849 - 2853

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-036/2022-23**
दिनाँक Date : 30.06.2022 जारी करने की तारीख Date of Issue : 29.07.2022

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

ग Arising out of Order-in-Original No.CGST-VI/Dem-17/Brijesh/DC/NS/2020-21 dated 10.02.2021 passed by the Deputy Commissioner, Division-VI, Central GST, Ahmedabad South Commissionerate, Ahmedabad.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant : The Deputy Commissioner,
Central GST, Division-VI,
Ahmedabad South Commissionerate,
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad.

Respondent: Shri Brijesh Babulal Shah,
Proprietor of M/s Aldwyn Overseas,
19,3, Ratna Business Square,
Old Natraj Cinema,
Ashram Road, Ahmedabad-380009.

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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गतः–

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.

(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 adjudicating authority shall bear 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) 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:

(iv) amount determined under Section 11 D;
(v) amount of erroneous Cenvat Credit taken;
(vi) 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

This order arises out of an appeal filed by the Deputy Commissioner, Central GST, Division-VI, Ahmedabad South Commissionerate (hereinafter referred to as '*the appellant*') in terms of Review Order No.08/2021-22 dated 10.05.2021 passed under Section 84(1) of the Finance Act, 1994 (hereinafter referred to as '*the Act*' in short) by the Reviewing Authority, the Principal Commissioner, Central GST, Ahmedabad South, against Order-in-Original No.CGST-VI/Dem-17/Brijesh/DC/NS/2020-21 dated 10.02.2021 (hereinafter referred to as '*the impugned order*') passed by the Deputy Commissioner, Division-VI, Central GST, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*') in the case of Shri Brijesh Babulal Shah, Proprietor of M/s Aldwyn Overseas, 19,3, Ratna Business Square, Old Natraj Cinema, Ashram Road, Ahmedabad-380009 (hereinafter referred to as '*the respondent*').

2. Briefly stated, the facts are that the respondent, having PAN No. BDPPS7359B, are engaged in providing services related to students admission to various foreign universities. An analysis of 'Total Amount paid / credited under Section 194C, 194H, 194I, 194J' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, and the details of said analysis was shared by them with the Central Board of Indirect Taxes & Customs. On perusal of the said analysis, it appeared that the respondent has earned Commission Income from various Foreign Universities. Further enquiry and scrutiny of the balance sheet for the Financial Years 2015-16, 2016-17 and 2017-18 (upto June, 2017) revealed that they have provided services of student's admission to various Universities of Canada and received Commission on it which was shown as income of foreign consultancy in their Profit & Loss account. It appeared that the services provided by the respondent falls under the category of 'services by intermediary'/'Business Auxiliary Services' and such services were liable to service tax under Section 66B of the Act as the place of provision of services in the case of intermediary services being the location of the service provider. The respondent was neither registered under the service tax law nor was paying any service tax on their aforesaid activities. It was observed that during the period from Financial Year 2015-16 to Financial Year 2017-18 (upto June, 2017), the respondent had earned Commission Income from foreign universities amounting to Rs.88,94,791/- on which service tax amounting to Rs.13,23,258/- was payable by them. Accordingly, a show cause notice F.No.V/WS06/O&A/SCN-591/Brijesh/2020-21 dated 31.12.2020 was issued to the respondent proposing recovery of the service tax not paid, along with interest and imposition of penalties under Section 77 and 78 of the Act.

2.1 The said show cause notice was decided by the adjudicating authority vide the impugned order wherein she had dropped the demand/recovery proceedings initiated therein

holding that (i) the services provided by the respondent in the case were exempted under Sr.No.9 of Notification No.25/2012-ST dated 20.06.2012 as amended and hence the demand of service tax is not sustainable; (ii) the respondent was not covered under the term 'intermediary' and therefore, the provision of Rule 9 of the Place of Provision of Services Rules, 2012 would not be applicable to the facts of the case; (iii) the services provided by the respondent in the case also qualifies as export of service for fulfilling the conditions stipulated in Rule 6A of the Service Tax Rules, 1994 and no service tax is leviable on such services; and (iv) the services have not been rendered in a taxable territory and, therefore, the service tax would not be leviable in terms of Section 66B of the Act.

3. Being aggrieved with the above order of the adjudicating authority dropping the demand, the department, through the appellant, has filed the present appeal on the following grounds:

- The Adjudicating Authority has held that since degrees awarded by Canadian universities are equivalent to Indian degree and therefore, it can be held that they are also recognized under Indian law. This inference is totally void of logic and not legal on the ground that the adjudicating authority has firstly not discussed as to which degrees provided by the Canadian Universities are considered equivalent to the India degrees. The authority has not considered the pre conditions required for considering equivalence of the degrees provided by the Canadian Universities. Even if it is assumed that there is equivalence of degree, it would not mean that the degree provided by the Canadian Universities are recognized by Indian laws which is an important parameter to avail exemption under Sr.No.9 to the Notification No.25/2012-ST dated 20.06.2012, as amended. In terms of the provisions of Section 93 of the Act, the power to grant exemption is of the Central Government of India and, therefore, the applicability of exemption would be limited to the degrees recognized by Indian laws and not by any other country. There can be equivalence of a particular degree or course in comparison with the degree given through an Indian law. However, it remains to be seen that whether that equivalent degree is recognised by any law made in India. It appears that the adjudicating authority has erred in interpreting the definition of 'education institution' in order to establish that the assessee was eligible for the exemption under Sr.No.9 to Notification No.25/2012-ST dated 20.06.2012, as amended. It also appears that the adjudicating authority has wrongly interpreted the equivalence of the degree of a Canadian University with recognition of the degree within the Indian law;
- "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or supply of goods, between two or more persons, but does not include a person who provides the main service on his account.

- It appears from the detailed analysis of the agreement made by the assessee with the different colleges, they have the obligation to market the colleges and try enrol students in India to these colleges. It appears that the assessee acts as a facilitator between the student and the college by providing admission related services in order to get the respective student admitted in the college located overseas. The assessee arranges these services between two persons (principal and the third party) without any alteration in the main service. For this, the assessee is getting varied commissions depending on the terms of the agreements made by them. It appears that the assessee cannot alter the nature of value of service which he arranges or facilitates between the student and the college. It is also seen that the service provided by the assessee is clearly identifiable from the main service provided by the college to the student. It also appears that the service provided is on behalf of the principal (colleges). The main service is being provided by the college and not the assessee. From the above, it appears that the assessee is an intermediary who has arranged or facilitated a provision of service between the college and the student;
- It also appears that the assessee has obtained a single registration in the taxable territory for providing intermediary services and, therefore, the place of provision of service will be the location of the service provider in this case, as per (c) to Rule 9 of the Place of Provision of Services Rules, 2012. Accordingly, the assess is liable for payment of service tax for the intermediary services provided by them. The activity would amount to service within the ambit of the definition of 'service' in terms of Section 65B(44) of the Act. The activity appears to be taxable also defined under Section 65B(51) of the Act. It appears that the adjudicating authority has erred in her findings on this count; and
- It is also seen that the adjudicating authority has not given a reasoned finding to come to the conclusion that the degree for the courses awarded by the Canadian Universities are recognized by any India law. The findings blindly state that the law does not specify that the qualification should be recognized by Indian law but it remains a fact that the provisions of the Finance Act, 1994 are only applicable to laws governed by the Constitution of India and not of any other country. Therefore, the adjudicating authority has erred in not coming to a reasonable and lawful conclusion in saying that the assessee is eligible for the exemption under Sr.No.9 to Notification No.25/2012-ST dated 20.06.2012 as amended.

4. Personal Hearing in the matter was granted on 18.01.2022, 20.04.2022, 14.06.2022 and 21.06.2022. No one attended the hearing from either side viz. the appellant's side or the respondent's side. However, the respondent vide their letter dated 28.06.2022 filed their submissions with reference to the appeal filed by the department.

5. Vide their letter dated 28.06.2012, the respondent has made the following submissions on the departmental appeal:

- As per clause (b)(iv) of the Entry at serial number 9 of the Notification No.25/2012-ST dated 20.06.2012 as amended, the services provided relating to admission to an educational institute have been exempted from payment of service tax. The definition of educational institution provided in the said Notification indicates that any institution which is providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law is an educational institution. The words 'any law' are of utmost importance. The construction of the sentence stops at the word 'any law' and does not proceed to add the words 'in India'. In other words, the language of the statute does not specify that the qualification should be recognized by any law in India;
- It is a well settled principle of law that interpretation of a Notification involves reading the same in its plain language and no addition or deletion of any words in the Notification is permissible. The department is seeking to add the words 'in India' in the Notification which are not expressly mentioned and as such the grounds raised does not meet the legal requirements;
- Even otherwise, it needs to be taken on records that the degree courses and the qualifications awarded by the Canadian Universities are recognized by Indian law also. This is evident from Gazette Notification (45) dated 13.03.1995 which specifically stipulates that the foreign qualifications which are recognized by Association of Indian Universities (AIU) are treated as recognized for the purpose of employment to the posts and services under the Central Government. It needs no deliberation to understand that Gazette Notification (45) dated 13.03.1995 is issued under the India law and it has been specified under such Indian law that foreign qualifications recognized by Association of Indian Universities (AIU) are recognized by the Indian law. Thus, if the AIU has recognized some foreign degree course, it is deemed to be recognized under the Indian law;
- Association of Indian Universities has recognized the Bachelor and Higher Degree Programmes which is evident from the 'Equivalence of Degrees' issued by the Association of Indian Universities of which a copy is enclosed. A conjoint reading of the 'Equivalence of Degrees' issued by the Association of Indian Universities and Gazette Notification (45) dated 13.03.1995 clearly indicates that the universities of Canada are educational institutions as per the prevailing provisions of India law. Thus, the argument of the department that the degree courses should be recognized by the Indian law stands satisfied;
- The respondents are not covered under the category of intermediary as mentioned in the grounds of appeal. The term '*intermediary*', as defined at Rule 2(f) of the Place of Provision of Services Rules, 2012, *means a broker, an agent or any other person,*

by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account.

- The above definition amply demonstrates that a person who provides the main service is excluded from being an intermediary. In this case, the main and only service provided is admission of student and the respondents have directly provided the said service to the foreign university. Thus, the respondents are covered under the exclusion category of 'intermediary'. Further, they have not arranged or facilitated a service between two persons. In the instant case, the respondents have rendered the main service of admission to the university and therefore, the question of intermediary does not arise. This is supported by the ruling in the case of M/s Godaddy India Web Services Pvt. Ltd. reported at 2016 (46) STR (A.A.R.). The facts of the above case are similar to the facts of the instant case since the respondents have provided the main service of admission of student directly to the foreign university on their account. Thus, the grounds raised in the appeal are not sustainable and Rule 9 of the Place of Provision of Services Rules, 2012 will not be applicable in the instant case;
- Even otherwise, the services are falling under the category of Export of Services as specified under Rule 6A of the Service Tax Rules, 1994 since the services have been provided to Canadian Universities for which the consideration has been received in foreign currency. The fact that the consideration has been received in convertible foreign currency has not been disputed by the department. In the instant case, the services are solely being consumed in a non-taxable territory. The respondents are located in the taxable territory and their clients i.e., Universities of Canada are located outside India. The activity undertaken is not covered under Section 66D of the Finance Act, 1994 and the consideration has been received in freely convertible foreign currency;
- As per Rule 3 of the Place of Provision of Services Rules, 2012, the place of provision shall be the location of the service recipient. In this case the service recipient is located in Canada i.e., outside India. Further, the nature of activity undertaken by us is not a performance based service and not covered under Rule 4 to 13 of the Place of Provision of Services Rules, 2012. Thus, the provisions of Rule 3 would be applicable and the place of provision is outside India. Thus, all the conditions stipulated in Rule 6A of the Service Tax Rules, 1994 are fulfilled and the services qualify as Export of Services and no service tax is leviable on such services;
- Further, as per Section 66B of the Act, service tax is leviable only if the services have been provided in a taxable territory. In the instant case, the services have been provided to overseas clients who are not in the taxable territory and the place of

service in terms of the provisions of Place of Provision of Services Rules, 2012 is not in the taxable territory. The taxable territory is the whole of India except Jammu & Kashmir as stipulated under Section 65B(52) read with Section 64 of the Finance Act, 1994. Thus, the services rendered by them are not liable to service tax on the above count also;

- It is further submitted that the Department has not relied on any documentary evidence to prove the allegation contained in the impugned SCN. The impugned SCN is proceeding on erroneous presumptions which is contrary to the settled legal position that allegations and proposals made in a show cause notice must be clear so as to provide an appropriate opportunity to an assessee to defend his case. A show cause notice forms the foundation of any proceedings. The SCN is issued to an assessee asking him to show cause against the allegations which are made thereunder, and which are based on prima-facie reasoning. Once the SCN has been issued, the scope of allegations against the Noticees therein is restricted to what has been alleged thereunder. The allegations in the SCN are expected to be based on a prima-facie exercise by the department, which is requirement of the principles of natural justice as in the absence of it, the subsequent proceedings would be rendered a nullity. If the allegations in the SCN are based on violation of provisions which are not even applicable to the subject case, the whole proceedings lose their validity;
- A show cause notice is not merely an empty formality. The opportunity to show cause must be the real and substantive which means the Noticees concerned must know as to why the issuing authority is holding the view of Noticees being liable to pay tax. It will enable the Noticees to meet the case sought to be made out against him. When an obligation is cast upon the authority to give notice to show cause before reaching the conclusion against the person affected by its action, the purpose and requirement to issue show cause notice is two-fold (i) the Noticees must get an opportunity to meet the case against him and (ii) he must have an opportunity to set forth his own case to show as to why an adverse order should not be passed against him. Thus, unless and until prima-facie reasons and materials are recorded in the SCN, no opportunity can even be given to the Noticees to meet his case. The respondents have relied upon a number of cases in support of their above contentions; and
- The charges are liable to be dropped for being vague, unreasoned and violative of principles of natural justice as it does not establish the tax liability on part of the Noticees.

6. I have carefully gone through the facts of the case and submissions made by the appellant department in the Appeal Memorandum, the reply to the appeal filed by the respondent and evidences available on records. The issue to be decided in the case is as to whether the services relating to student admission provided by the respondent to the foreign universities viz. various universities of Canada and the consideration in the form of commission received from such universities are taxable and exigible to levy of service tax under the provisions of the Act or not.

7. It is observed that the demand in the case has been raised in the SCN on the ground that the services provided by the respondent to the Universities of Canada in relation to student admission to such universities falls under the category of 'intermediary services' and hence the same are taxable under the provisions of the Act for the place of provision of service in such cases being the location of the service provider. However, the adjudicating authority has held that no service tax is leviable on the impugned services provided by the respondents owing to the reasons that: (i) the impugned services were exempted under Entry at Sr.No.9 of Notification No.25/2012-ST as amended as the degree courses and the qualifications awarded by the Canadian Universities are recognized by Indian Law also in view of the Gazette Notification (45) dated 13.03.1995 issued by the Department of Education, Ministry of Human Resource Development, Government of India read with 'Equivalence of Degrees' issued by the Association of Indian Universities and, therefore, the universities of Canada are educational institutions as per the prevailing provisions of law and the services provided were relating to admission of students; (ii) since the respondent had provided the main service of admission of students on their own account, they are not covered under the term 'intermediary' as defined at Rule 2(f) of the Place of Provision of Services Rules, 2012. Therefore, the provision of Rule 9 of the Rules ibid would not be applicable to the facts of the case; (iii) the services provided in the case qualify as Export of Services as service recipients were in non-taxable territory and the consideration for the services provided were received in freely convertible foreign currency and the place of provision of service being outside India and thus all the conditions stipulated in Rule 6A of the Service Tax Rules, 1994 were fulfilled; and (iv) as per Section 66B of the Act, service tax is leviable only if the services have been provided in a taxable territory. In the instant case, since the place of provision of service was not in the taxable territory, the services have not been rendered in a taxable territory and, therefore, the service would not be leviable in terms of Section 66 B ibid.

7.1 I find that the adjudicating authority's view that the impugned services were exempted vide Entry at Sr.No.9 of the Notification No.25/2012-ST dated 20.06.2012, as amended, is borne out of the inference drawn from the Gazette Notification (45) dated 13.03.1995 issued by the Department of Education, Ministry of Human Resource

Development, Government of India read with 'Equivalence of Degrees' issued by the Association of Indian Universities (in short '*AIU*'). It has been observed by the adjudicating authority that as per the above documents, the degree courses and the qualifications awarded by the Canadian Universities are recognized by Indian Law and accordingly, the Canadian Universities would fall within the ambit of 'educational institution' as defined under the Notification No.25/2012-ST ibid. However, after going through the said documents, I find that what is recognized under the Gazette referred is those foreign qualifications which are recognized/equated by the AIU. The 'Equivalence of Degrees' issued by the AIU very expressly makes it clear that not all degrees of foreign universities are accorded equivalence certificates by them. In the facts of the case, there is nothing on records which evidences the degree courses and the qualification awarded by the Canadian Universities as having accorded equivalence certificates by the AIU. Nothing is forthcoming from the records as to which universities of Canada and for what courses offered by them, the respondents were providing services to and were receiving commission from them and how many of such courses/degrees were accorded equivalence by the AIU. Neither is there any elaborate or detailed discussion nor any findings recorded by the adjudicating authority in this regard. Since all degrees of foreign universities are not accorded equivalence certificate by the AIU, it is very important to examine and see as to which courses or degrees of which of the universities of Canada are considered equivalent to the qualification recognized by Indian law. The discussion and findings in the impugned order does not in any manner indicate such proper verification and examination of the actual facts and necessary vital documentary evidences required in the case. Therefore, the inference drawn by the adjudicating authority in the facts of the case cannot be said to be justified in absence of proper and valid evidences. Besides, the issue as to whether the equivalent degrees can be considered as recognized by any law in India for the purpose of any tax exemption in India also needs to be specifically examined as observed by the appellant in the appeal. The contention by the adjudicating authority that the law does not specify that qualification should be recognised by Indian law is also devoid of any merits as the provisions of the Act and the exemptions envisaged therein are with reference to laws governed by the Constitution of India. In view thereof, the admissibility of the exemption claimed by the respondent and granted by the adjudicating authority in terms of Entry at Sr.No.9 of the Notification No.25/2012-ST, as amended, cannot be held to be satisfactorily established beyond any doubt as per the discussion held in the impugned order. The admissibility of the exemption claimed in the case has not been properly examined in its right perspective by the adjudicating authority. It is settled law that in the case of exemption claimed, the onus to prove the admissibility of the exemption claimed is purely and solely on the claimant. The Hon'ble Supreme Court in their decision in the case of Commissioner of Customs (Import), Mumbai Vs. M/s Dilipkumar & Company [2018 (361) E.L.T. 577 (SC)] has settled the legal position in this regard wherein it was held that *"Exemption notification should be interpreted*

strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification".

7.2 It is further observed that with regard to the main allegation in the SCN that the impugned services provided by the respondent in the case fall within the ambit of 'intermediary' as defined under Rule 2(f) of the Place of Provision of Services Rules, 2012 also, there is no proper discussion on the evidences available on records based on which the adjudicating authority has arrived at the conclusion. It is simply stated that as per the case records, the respondent have provided the main service of admission of students on their own account and, therefore, the same is covered under the exclusion category of 'intermediary'. Similarly, the appellant department is raising contentions in their appeal stated to be on the basis of detailed analysis of the agreement made by the respondent with the different colleges but no details of the agreement they are relying have been made available as part of their appeal in any manner either by producing the relevant documents or by way of quoting of the relevant portions of the same in their contentions. Further, the contentions raised in the appeal were not raised or discussed in the SCN issued in the case. It is observed that the portion of the 'International Student Agency Arrangement' between the respondent and Georgian Canada mentioned in the SCN does not in any way seem to be establishing the allegation of intermediary made in the case. Needless to say, being a taxability issue, the onus to prove the charge in the SCN is on the department. It is not forthcoming from either the SCN or the impugned order or the appeal memorandum as to what all documents/evidences are available in the case based on which the allegations in the SCN, findings in the impugned order and the contentions in the appeals are made. In absence of the said vital evidences, it is not possible to ascertain the exact nature of the services provided by the respondent and consequently to decide the legal sustainability of the allegation in the SCN and the findings of the adjudicating authority in the impugned order.

7.3 Under the circumstances, I find that it would be prudent in the interest of justice to remand the case to the original adjudicating authority to decide the case afresh, including the issue of admissibility of the exemption claimed by the respondent, after proper examination and verification of the facts and evidences available on records and pass a well reasoned order with proper discussion and clear findings on the evidences examined and verified.

7.4 I am not delving into the other aspects/contentions raised in the case as they would hold relevance only after ascertaining the exact nature of service provided by the respondent for which the matter is being remanded to the adjudicating authority.

8. In view of the above discussions, the impugned order passed by the adjudicating authority is set aside and the appeal of the appellant department is allowed by way of remand to the adjudicating authority for deciding the case afresh in terms of this order. The respondent is free to produce all necessary documents/details and further evidences, if any, in support of their contentions before the adjudicating authority. The adjudicating authority after necessary recording and verification of the evidences/documents available on records and those submitted by the respondent in the matter shall pass a fresh reasoned order at the earliest.

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

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

(Akhilesh Kumar) 30th June, 2022.
Commissioner (Appeals)
Date: 30.06.2022.

Attested

(Anilkumar P.)
Superintendent,
CGST (Appeals),
Ahmedabad.

BY R.P.A.D. / SPEED POST TO :

To

The Deputy Commissioner, — Appellant
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Ahmedabad South Commissionerate,
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad.

Shri Brijesh Babulal Shah, — Respondent
Proprietor of M/s Aldwyn Overseas,
19,3, Ratna Business Square,
Old Natraj Cinema,
Ashram Road, Ahmedabad-380009.

Copy To:-

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