



सत्यमेव जयते

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 :

टेलीफैक्स 26305136 - 079 :

DIN-20220964SW000000CB1C

स्पीड पोस्ट

- क फाइल संख्या : File No :GAPPL/COM/STP/2034/2021 /3521-25
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-042/2022-23**
दिनांक Date : 25.08.2022 जारी करने की तारीख Date of Issue : 06.09.2022.
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.03/AC/Div-I/RBB/2021-22 dated 26.04.2021
passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad South
Commissionerate.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Skyjet Aviation Pvt. Ltd.,
13, Asryans Corporate,
Near Shilaj Railway Crossing,
Thaltej - Shilaj,
Ahmedabad -380059.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

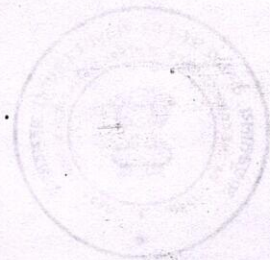
- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-
- 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. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the 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 is invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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 .

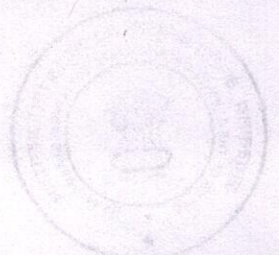
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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

M/s Skyjet Aviation Pvt. Ltd., Lal Darwaja, 36, Nehru Bridge Corner, Ashram Road, GPO, Ahmedabad Gujarat - 380001 [current address at 13, Asryans Corporate, Near Shilaj Railway Crossing, Thaltej - Shilaj, Ahmedabad -380059] (here-in-after referred to as '*the appellant*') has filed the present appeal against the Order-in-OriginalNo.03/AC/Div-I/RBB/2021-22 dated 26.04.2021 (here-in-after referred to as '*the impugned order*') passed by the Assistant Commissioner, Central GST, Division - I, Ahmedabad South (here-in-after referred to as '*the adjudicating authority*').

2. Audit of the records of the appellant was conducted by the officers of Central GST Audit, Ahmedabad for the period April, 2014 to June, 2017. The observations of the audit were contained under Revenue Paras 1 to 5 under FAR No. 192/18-19 dated 10.10.2019 issued by the Assistant Commissioner, Central Tax Audit, Ahmedabad, details of which are elaborated in paras below.

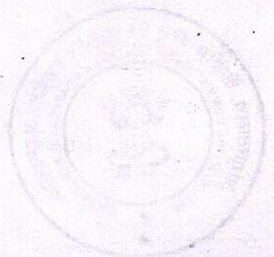
Revenue Para 1: On comparison of the revenue from operations shown in the Balance Sheet for the F.Y. 2014-15 to 2017-18 (upto June 17) vis-a-vis the value on which service tax liability had been discharged, as shown in ST-3 returns under the category of Business Auxiliary Services, it was alleged that the appellant had short paid Service Tax amount of Rs. 22,60,277/- as per the details given below:-

(Amount in Rs.)

F.Y.	Value as per Balance Sheet	Value as per ST-3 returns	Differential Value	Tax Payable
2014-15	80,73,631	20,46,346	60,27,285	7,44,972
2015-16	95,92,604	53,18,606	42,83,998	6,19,730
2016-17	1,13,16,819	65,23,674	47,93,145	7,18,972
2017-18 (upto June 17)	21,40,060	9,62,708	11,77,352	1,76,602
TOTAL				22,60,277

Revenue Para 2:- On scrutiny of the ledgers of Hotel Booking and Rent-a-Cab services for the Financial Years 2014-15, 2016-17 and 2017-18 (upto June 17), it was observed that the appellant had also provided tour package services on which Service Tax liability amounting to Rs. 1,03,210/- was not discharged.

F.Y.	Value as per Ledgers (in Rs.)	Tax Payable (in Rs.)
2014-15	25,66,386	1,01,972
2016-17	6,000	270
2017-18(upto Jun 17)	6,456	968
Total	25,78,842	1,03,210



Revenue Para 3:- The appellant had not produced the documents prescribed under Rule 9(1) of the Cenvat Credit Rules, 2004 for Cenvat credit amount of Rs. 33,380/- and Rs. 1,34,597/- in the F.Y. 2015-16 and 2016-17 respectively. Hence, the availment and utilization of Cenvat to that extent was irregular.

Revenue Para 4:- The appellant had claimed exemption on taxable value in respect of tour operator services amounting to Rs. 17,53,925/- in terms of Sl. No. 9(a) of Notification No. 25/2012 dated 20.06.2012 in their ST-3 returns for the F.Y. 2016-17. It was claimed by them that they had provided tour operator services in relation to admissions to many universities/colleges across many countries and Canada based educational institutions. However, they could not produce any documents in this regard to examine the eligibility of exemption. The audit officers were of the view that the appellant had provided tour operator services for admissions to foreign universities. As the appellant had provided services to the students aspiring for admissions to foreign universities and not to educational institutions, they were not eligible for exemption under Sl. No. 9(a) of Notification No. 25/2012 dated. 20.06.2012. The amount of service tax short paid on this count was ascertained at Rs. 2,56,070/-.

Revenue Para 5:- The appellant had not filed/ late filed their ST-3 Returns as detailed below in contravention of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994:

F.Y.		Status/Date of Return filed	Delay by days	Penalty (in Rs.)
2014-15	April - September (1 st Half)	Not Filed	-	20,000
	October-March (2 nd Half)	08.09.15	136	11,800
2015-16	April - September (1 st Half)	30.11.15	36	1,600
2016-17	April - September (1 st Half)	23.01.17	90	7,000
	October-March (2 nd Half)	24.06.17	55	3,500
TOTAL				43,700

2.1. The appellant were issued a Show Cause Notice under F. No. VI/1(B)-57/C-I/AP-I/Audit/Ahd/18-19 dated 16.10.2029 proposing to demand and recover short paid/unpaid Service Tax amounting to Rs. 23,63,487/- in respect of Revenue Para 1 and 2 (inclusive of Education Cess and Higher Education Cess) under proviso to Section 73(1) of the Finance



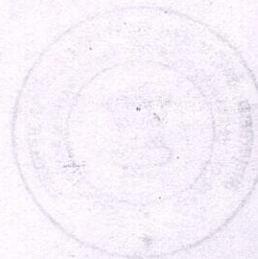
Act, 1994; disallow and recover wrongly taken and utilized cenvat credit amount of Rs. 1,67,977/- in respect of Revenue Para 3 under the proviso to Section 73(1) of the Finance Act, 1994 read with Rule 14(1) (ii) of the Cenvat Credit Rules, 2004; deny claim of exemption for an amount of Rs. 17,53,925/- under Clause 9(a) of Mega Exemption Notification No. 25/2012 dated 20.06.2012 and recovery of Service Tax amount of Rs. 2,56,070/- as per Revenue Para 4 under the proviso to Section 73(1) of the Finance Act, 1994. It was proposed to recover these amount along with interest under Section 75 of the Act. The SCN also proposed recovery of penalty/late fee amount of Rs. 43,700/- as per Revenue Para 5 for non-filing and late filing of ST-3 returns under the proviso to Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. It was also proposed to impose penalty under Section 78(1) of the Finance Act, 1994.

2.2. The aforesaid SCN was adjudicated by the adjudicating authority vide the impugned order wherein the proposals made in the SCN were confirmed against the appellant.

3. Being aggrieved with the impugned order, the appellant has preferred instant appeal on various grounds which are elaborated in subsequent paragraphs.

3.1. The Adjudicating Authority has decided the impugned SCN without following the PRINCIPALS OF NATURAL JUSTICE as it was decided ex-parte. The adjudicating authority did not consider the prevailing COVID-19 in the county from March-2020 till date. Though in para 11 & 12 of the impugned order, the letter dated 28.01.2021 and 04.03.2021 were discussed which are not received by the Appellant for the reason that due to pandemic of COVID-19, the office of the Appellant was closed since March-2020. Further, the adjudicating authority has not considered the reply dated 08.10.2019 to the SCN.

3.2. The demand of service tax amount of Rs.23,63,487/- (BAS Rs.22,60,277/- and Hotel Booking/Rent a Cub Service Rs.1,03,210/-) is not sustainable. They have not provided the service of BAS but on behalf of client, purchased/arranged the Air-Ticket from Air lines who, while issuing air ticket paid service tax, as applicable, which was collected from the Appellant and subsequently the Appellant had issued invoice to the client wherein the service charge and reimbursement of value of Air Ticket is reflected/mentioned/claimed from the client. The Appellant had paid the service tax on an amount of service charge only whereas the amount related to Air flight Ticket, no service tax was paid by the Appellant for the reason the service tax on an air flight has already been paid by the airlines to the Government. However, as the amount of service tax paid on air flight by airlines and collected from the Appellant on behalf of the PAX, this amount of service tax is not availed as credit by the Appellant, the demand pertains to the amount of invoice value of air ticket is appeared to be double taxation which is not permitted under the constitution of India but at

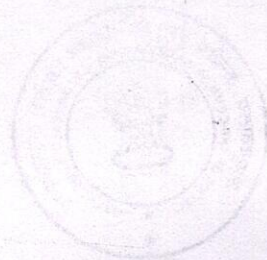


the same time as per principle of accountancy, the total invoice value of air ticket is taken in to account in the Appellant's balance sheet of respective year but for the purpose of submission of service return only an amount pertaining to service charge on which service tax paid by the Appellant is reported therefore the difference reported by audit officer is not proper and just.

3.3. The officers of audit has not examined the above facts and concluded that total invoice value, which include air fright + service tax on air fright + service charge + service tax on service charge = total invoice value, but the value of air fright + service tax is reimbursement from the client by the Appellant is not reported in ST-3, however in rare case sometime the freight charge claim in invoice may vary which is nothing but trade profit and not COMMISSION the appellant is agreed to pay service tax but not agreed to pay service tax on the air freight amount reimburse from the client hence the activity carried out does not fall under the category of BAS but such activity is considered as a Trading Service which fall under NEGATIVE LIST OF SERVICES under section 66D (e) of the Finance Act, 1994.

3.4. Accordingly, while submitting the periodical ST-3 returns, they had not disclosed the value of Trading Air Tickets, though the realised value of Air Tickets has been incorporated in Profit & Loss Account under the head of Sale Account. Therefore, the Audit Officers of the Department has observed the difference in value while comparing the ST-3 return & Balance sheet of the respective years of disputed period. They are prepared for detailed verification/examination of all invoices (purchase & Sale) of disputed period, if Adjudicating Authority is not satisfied with sample invoices submitted with the statement.

3.5. The demand of service tax amount of Rs. 1,03,210/- confirmed by the Adjudicating Authority pertains to service of hotel booking in hotels situated out of India on behalf of client, who intended to travel out of India, and the amount of hotel tariff is paid by the Appellant which is subsequently collected from the client through invoice issue to the client wherein over and above room tariff, the appellant added profit margin in form of HANDLING CHARGES and pay service tax on the amount of handling charges. Since the amount of room tariff of the hotel situated outside India and the client is receive this service outside the India on room tariff, however, the Appellant has paid service tax on the amount of handling charges and reported in ST-3 return whereas in compliance to principle of the accountancy the total invoice value issued to the client is taken in to books of Account hence therefore obviously there is deference to the amount appeared in profit and loss account and ST-3 return for the disputed period. However, they have already paid service tax on handling charges, the present demand of Rs. 1,03,210/- deserves to be quashed.



3.6. The Adjudicating Authority has, in his findings in the impugned order, not discussed the reply to SCN, wherein it is categorically explained the activity of booking of air-ticket on behalf of client and reimbursement of air freight from the client as well as payment of service on air freight by the airlines and issue invoice only for service charge Amount on which service tax as applicable paid by the Appellant. These facts are not discussed in impugned order but simply concluded that *"the assessee is liable to pay service tax to the tune of Rs.22,60,277/-of the deferential income and as they failed to disclose the same to the department from time to time, this is a fit case for invoking extended period of demand. "*

3.7. The extended period cannot be invoked for the reason that the appellant, being a Pvt. Ltd. Company, is required to submit the audited balance sheet to the ROC. This document is publicly available with the ROC so the conclusion of non-disclosure of income, which is not taxable being service tax paid by the airlines or service provider, appeared to be prejudice mind.

3.8. As regards the service tax on handling charges, the Appellant is not accepted the finding of adjudicating authority as it appears that availment of Cenvat Credit of service tax paid by the hotel and (Service provided) might have availed, this finding is based on presumption and assumption, and means neither the audit officer nor Adjudicating Authority has confirmed the avaiement of service tax credit by the Appellant. It is a settled law by the higher forum of judiciary that no demand is sustainable on the basis of assumption and presumption.

3.9. The Appellant is not accepting the findings of the adjudicating authority at Para 19.1 of the impugned order for the reason that he has not followed the principals of natural justice by passing order without giving an opportunity for submission of the statement of Cenvat credit along with relevant documents but in finding it is discussed that the Appellant has not submitted the statement and relevant documents and disallowed the credit.

3.10. The adjudicating authority has in Para 20 of the impugned order grossly erred in interpreting the text of Sr. No. 9(a) of Notification no. 25/2012-S.T. dt. 20.06.2012 and without applying mind discussed the clause (i) of Section 66 D of the Finance Act, 1994. The definition of auxiliary education service provided under 2(f) of Notification No.25/2012-ST dated 20.06.2012 are not relevant in the present case in so far as the definition provided under 2(f) of the Notification No.25/2012-ST Dated 20.06.2012 has been omitted vide Notification No.6/2014-ST (with effect from 11.07.2014). Prior to 11.07.2014, it states that auxiliary service means any service to imparting any skill, knowledge, education or development of course content or any it other knowledge-enhancement activity whether for students of faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other



person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution. However, after 11.07.2014, the new entry was inserted which effect from 12.07.2014 and its states that service provided –

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

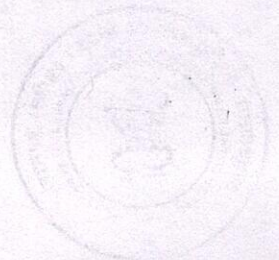
(b) to an educational institution,

by way of , - (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution.

Accordingly, in the present case, the provision inserted with effect from 12.07.2014 is applicable. Therefore, the finding, which is discussed in impugned order on the provisions applicable prior to 12.07.2014, and deliberately not considered the provision in force after 11.07.2014 with prejudiced mind hence the impugned order deserved to be set aside.

3.11. As per the provision with effect from 12.07.2014 and under the Gujarat Technological University (G.T.U.) Act, 2007 and correspondence made between G.T.U. and Canadian High Commission, New Delhi letter dated 07.04.2016, for VISA to a participant student for international experience programme - 2016. They are of the view that the service of air ticket booking, insurance of the student and VISA of the student, provided to the student whose name were nominated by Government of India from G.T.U. to participate in respective overseas universities under the INTER STUDENT EXCHANGE AND JOINT RESEARCH PROGRAMME SPONSORED BY INDIAN GOVERNMENT AND OVERSEES COUNTRY; this service falls within the purview of the provision inserted with effect from 12.07.2014 that is under Sr. No. 9(b)(i) of Notification No. 25/2012- ST dt. 20.06.2012 amended by Notification No. 6/2014-ST dt. 11.07.2014; the tax of such amendment discuss in foregoing para. Service of transportation of the student from India to aboard that is booking of Air Ticket, Visa & Medical Insurance of the student, therefore to the extent of the services provided to the student for participating in IEP do not covered under the taxable service in terms of Notification no. 06/2014-ST dt 11.07.2014.

3.12. The Department has grossly mis-understood the Notification No. 25/2012-ST DT 20.06.2012 as amended by Notification No 09/2016-ST DT 01.03.2016 (oa) (discussed in para 8 of SCN) which relates to the meaning of " Educational Institute " not relates to the present case for the reason, it is not disputed by the Department that the GTU is not recognized university by the Government, hence, the reason for non-availability of exemption from Service Tax on services provided by the Noticee in SCN is not sustainable in law.



3.13. The appellant accepts the contraventions pointed out in Revenue Para 5 and is going to pay an amount of Rs. 43,700/- towards fee for non/short filing of ST-3 returns.

4. Personal hearing in the case was held on 29.07.2022 in virtual mode. Shri R. R. Dave, Consultant, appeared on behalf of the appellant. He stated that the impugned order was passed without giving opportunity to present their case during COVID -19. He requested to remand the case.

5. I have gone through the facts of the case, appeal memorandum as well as submissions made by the appellant. The issue to be decided in the present case is whether the impugned order passed by the adjudicating authority confirming the proposals made in the SCN dated 16.10.2019 is legal and proper or otherwise. The demand has been confirmed in respect of five Revenue Para and they pertain to period F.Y. 2014-15 to June 2017.

5.1. I find that the appellant has, in Para 8 of the Appeal Memorandum under Grounds of Appeal, accepted the confirmation of late fee for non-filing of ST-3 Returns. Hence, the confirmation of demand to that extent is held to be proved as not contested.

6. The appellant has during the course of personal hearing vehemently argued that the demand has been confirmed without affording them an opportunity to present their case. It was stated that during the COVID – 19, their premises were closed and hence they could not receive the intimations for personal hearing. I also find from the appeal memorandum that the appellant has contested the demand confirmed by arguing that the defense reply dated 08.10.2019 filed by them was not considered by the adjudicating authority,

7. It is observed from Para 11, 12 and 13 of the impugned order that the appellant was issued letters dated 28.01.2021, 04.03.2021 and 15.03.2021 but no one turned up for hearing. I find that the opportunities for personal hearing were granted during the pandemic situation and hence the adjudicating authority should have been sympathetic towards the appellant and granted further opportunities to present their case. Further, it is also observed from the impugned order that the appellant had filed defense reply to the SCN but the same has not been considered by the adjudicating authority. Hence, I find merits in the contention of the appellant that the impugned order has been passed in violation of natural justice. I find that the demand in the case has arisen on account of audit of records of the appellant and one of the reasons for confirmation of demand is non-submission of documents before the audit as well as before the adjudicating authority. The appellant has in their appeal memorandum contested the issues raised in four revenue paras on merits and stated that they have got the relevant documents. Hence, I am of the considered view that the appellant needs to be granted an opportunity to explain their case before the adjudicating authority. Accordingly, the matter needs to be remanded back to the adjudicating authority for deciding the issues

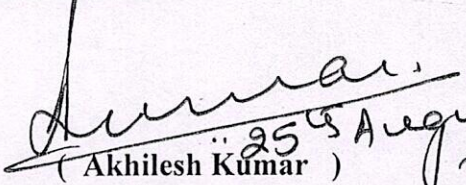


raised in remaining four revenue para after according the appellat opportunity to present their case.

8. In view thereof, I set aside the impugned order to the extent it was challenged under this appeal and remand the matter to the adjudicating authority with a direction to decide the matter afresh after following principles of natural justice and considering the submissions of the appellat and the relevant records produced by them. The appellat is at liberty to make any further submissions or to produce documents/evidences, if any, which they intend to rely on in support of their contentions in the case during the remand proceedings. Accordingly, the appeal of the appellat is allowed by way of remand.

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

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


(Akhilesh Kumar)
Commissioner (Appeals) 25th August, 2022.

Date: 25.08.2022.

Attested:



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

By Speed Post/ RPAD.

To

M/s Skyjet Aviation Pvt. Ltd.,
13, Asryans Corporate,
Near Shilaj Railway Crossing,
Thaltej - Shilaj,
Ahmedabad -380059.

Copy To:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad-South.
3. The Assistant Commissioner, CGST&Central Excise, Division-I, Ahmedabad-South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.

(for uploading the OIA)

~~5.~~ Guard file

6. P.A. File



