



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

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



DIN : 20220964SW000071767B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2030/2021 / 3419 - 73
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-043/2022-23**
दिनांक Date : **26-08-2022** जारी करने की तारीख Date of Issue 02-09-2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **34/AC/Div-I/RBB/2020-21** दिनांक: **31.03.2021** issued by
Assistant Commissioner, Central GST, Division I, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address:

- Appellant**
M/s Anoli Holding Pvt Ltd
10 Acre Mall, City Pulse Multiplex,
Opp. Big Bazaar, Raipur,
Ahmedabad - 380001

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 अधीनसचिव, 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 प्रक्रिया 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 दिनों के सेतीन मास के भीतर मूल-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 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 के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्त लिखित 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 यथा स्थिति 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 अनुसूची-1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रु.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

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) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (23) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

- (i) (Section) खंड 11D केतहतनिर्धारितराशि;
- (ii) लियागलतसेनवैटक्रेडिटकीराशि;
- (iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇒ यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.

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:

- (lii) amount determined under Section 11 D;
- (liiii) amount of erroneous Cenvat Credit taken;
- (liv) amount payable under Rule 6 of the Cenvat Credit Rules.

इसइस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

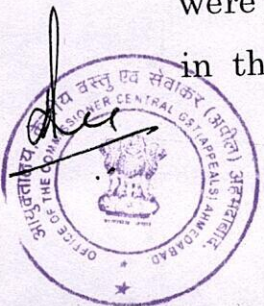


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Anoli Holding Pvt. Ltd., 10, Acre Mall, City Pulse Multiplex, Opposite Big Bazaar, Raipur, Ahmedabad – 380 001 (hereinafter referred to as the appellant) against Order in Original No. 34/AC/Div-I/RBB/2020-2021 dated 31.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AABCA2583LST001 and were engaged in providing Management or Business Consultant service, Manpower Recruitment/Supply Agency service, Selling of Space or Time Slots for Advertisements service, Business Support service, Renting of Immovable Property service, Works Contract service, Restaurant service. The records of the appellant was audited for the period from April, 2014 to June, 2017 by the Officers of CGST Audit, Ahmedabad. During the course of the audit five Revenue Paras were raised under Final Audit Report No. 191/2018-19 dated 10.10.2019. The Revenue Paras which are relevant to the present appeal are enumerated below.

2.1 **Revenue Para 3** : It was observed that the appellant had not paid service tax on the income received from supply of 3D Glass. The appellant was supplying 3D Glass for watching 3D movies and collecting them back after ending of the movie. The appellant were collecting charges for supply of the 3D Glass. The service appeared to be falling under Section 66E (f) of the Finance Act, 1994. The appellant were, accordingly, required to pay service tax amounting to Rs.3,26,029/- for the period from F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017). **Revenue Para 4** : It was observed that the appellant had not paid service tax on income shown in their books under 'Service Charge', which was collected from the customers. The appellant were providing various services like checking of tickets, security checks etc. in their Multiplexes to the movie goers and the same falls under the



definition of service. The appellant were, accordingly, required to pay service tax amounting to Rs.27,92,333/- for the period from F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

3. Based on the audit observations, the appellant was issued Show Cause Notice No. 175/2019-20 dated 17.10.2019 from F.No. VI/1(B)-342/C-I/AP-4/Audit/18-19 wherein it was proposed, among others, to :

- a) Demand and recover service tax amounting to Rs.31,18,362/- (Rs.3,26,029/- + Rs.27,92,333/-) under the proviso to Section 73 (1) of the Finance Act, 1994.
- b) Recover Interest under Section 75 of the Finance Act, 1994.
- c) Impose penalty under Section 78 (1) of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs.31,18,362/- (Rs.3,26,029/- + Rs.27,92,333/-) was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78 of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal, in respect of the demands confirmed, on the following grounds :

- i. The 3D Glasses are provided for those films which cannot be viewed without them. Therefore, a charge is added in the tickets. Hence, it is in course of providing entertainment services to the viewers and are naturally bundled in the ordinary course of business. Such amount is charged in the movie tickets itself. Sample copy of tickets is enclosed.
- ii. Therefore, such service charge for 3D glasses is incidental and integral part of entry ticket and the services of exhibition of cinematographic film. Being incidental services, the same are liable to service tax at the rate of its principal supplies in accordance with Section 66F (3) of the Finance Act, 1994. A perusal of the said provision shows that where two or more services are naturally



bundled, then the rate of tax of service which gives the bundle its essential character shall be applicable on the entire bundle.

- iii. To enjoy a 3D movie, they have to provide these 3D glasses without which the service of movie viewing cannot be delivered effectively. Accordingly, charging of 3D glasses together with movie tickets is naturally bundled in the ordinary course of business in which 3D glasses are incidental and 3D movie experience is the essential supply.
- iv. They rely upon the judgments in the case of KIMS Health Care Management Ltd. – 2018 (18) GSTL 831 (AAR GST); Sri Chaitanya Educational Committee Vs. C.C., C.Ex. & S.T., Guntur – 2019 (22) GSTL 67 (Tri.-Hyd); Raghava Estates & Properties Ltd. – 2016 (45) STR 573 (AAR).
- v. The services of 'Right to admission to exhibition of cinematographic film' is exempted vide Sr.No.47 of Notification No. 25/2012-ST dated 20.06.2012.
- vi. The income received from 3D glasses is shown under the major head of 'Revenue from Operations' in their books of accounts which also establishes that such income is part of their operation of exhibition of cinema and is incidental to the main service of admission to exhibition of cinematographic film which is exempt. Copy of relevant extract of the Profit and Loss Account is enclosed. Therefore, income received from providing 3D glasses is also exempt from levy of service tax.
- vii. They provide 3D glasses to customers whenever 3D movie is released. Such glasses are provided at the entry point of the theatre and during the entire duration of the movie, the same are in the exclusive possession and control of the customers. When the movie ends, the glasses are returned by the customers. During the movie, the customers are free to use such glasses in the way they want. It is in the exclusive possession of the customers and nobody can use these 3D glasses at the same time. Hence, effective control lies with the customers.
- viii. The transaction involved is 'transfer of right to use' which is a deemed sale and not 'supply of tangible goods' service. Deemed sale within the meaning of Article 366 (29A) of the Constitution is specifically



excluded from the definition of service as per Section 65B (44) of the Finance Act, 1994. Accordingly, the impugned services cannot be called as supply of tangible goods service. Hence, no service tax can be levied on the same.

- ix. They rely upon the judgment in the case of Araval India Pvt. Ltd. Vs. Principal Commissioner of S.T., Mumbai-IV – 2020 (41) GSTL 528 (Tri.-Mumbai); Great Eastern Shipping Company Ltd. Vs. State of Karnataka – 2020 (32) GSTL 3 (SC); GPL Polyfils Vs. Commissioner (Audit) GST, Cus. & C.Ex., Kanpur – 2019 (27) GSTL 395 (Tri.-All.); Commissioner of C.E., & S.T., Lucknow Vs. Brindavan Bottlers Ltd. – 2019 (27) GSTL 354 (Tri.-All.); Dynamic Enterprises Vs. Commissioner of C.E., & S.T., Jaipur – 2019 (22) GSTL 230 (Tri.-Del.).
- x. The demand has been confirmed by the adjudicating authority without considering their submissions.
- xi. Regarding collection of service charge, it is submitted that the service charges collected by them in ticket is part and parcel of cinema ticket pricing. There is no separate service provided against such charges. These charges are towards services incidental to movie exhibition services such as ticket checking, assistance in taking seats etc. These charges are charged in the ticket itself, which is evident from enclosed sample copies of tickets.
- xii. The adjudicating authority has simply held that the said service is also not covered by Notification No.25/2012-ST dated 20.06.2012. However, these service charges are nothing but towards cinema ticket and, hence, exempted vide the said notification.
- xiii. The judgments relied upon by the adjudicating authority are not relevant to the present issue as they relate to Event Management service, which is not the issue in the present matter.
- xiv. The submissions made in respect of 3D glasses may be considered for this issue too.
- xv. They have not contravened any of the provisions of the Act or Rules. Therefore, no interest is chargeable. They rely upon the judgment in the case of Prathibha Processors Vs. UOI – 1996 (11) SCC 101 (SC); Mahindra and Mahindra Ltd. Vs. CCE, Mumbai – 2010 (262) ELT 533



(Tri.-Mum.); Scorpio Engineering Pvt. Ltd. Vs. CCE, Bangalore – 2010 (261) ELT 423 (Tri.-Bang.); CCE, Belgaum Vs. Godavari Sugar Mills Ltd. – 2009-TIOL-1171-CESTAT-Bang.; Super Spinning Mills Ltd. – 2009 (246) ELT 789 (Commr. Appeal.).

- xvi. The dispute pertains to period 2014-15 to June, 2017 for which SCN was issued on 17.10.2019 by invoking extended period. The extended period of limitation cannot be invoked as the issue involved interpretation of law. They rely upon the judgment in the case of MR Utility Products Pvt. Ltd. Vs. Commissioner of C.Ex., Delhi-II – 2017 (7) GSTL 248 (Tri.-Del.); Commissioner of S.T., Mumbai Vs. Traffic Manager, Mumbai Port Trust – 2015 (37) STR 993 (Tri.-Mumbai); CCE, Tirunelveli Vs. Tuticorin Alkali Chem. & Fertilizers Ltd. – 2011 (23) STR 372 (Tri.-Chennai).
- xvii. When all transactions are recorded in the books of accounts, extended period cannot be invoked. They rely upon the judgment in the case of Valencia Construction Pvt. Ltd. Vs. Commissioner of C.Ex., Cus. & ST, Nagpur – 2016 (41) STR 436 (Tri.-Mumbai); Khandwala Securities Ltd. V. Commissioner of Service Tax, Mumbai-I – 2015 (40) STR 738 (Tri.-Mumbai); Kolety Gum Industries V. Commissioner of Central Excise, Vapi – 2005 (183) ELT 440 (Tri.-Mumbai).
- xviii. When the issue is revenue neutral, any charge of wilful suppression of facts with intent to evade payment of duty cannot sustain and extended period cannot be invoked. They rely upon the judgment in the case of Indian Oil Corporation Ltd. Vs. Commissioner of C.Ex., Mumbai-II – 2010 (262) ELT 751 (Tri.-Mumbai); Associated Drug Co. Vs. Commissioner of C.Ex., Bangalore-III – 2009 (245) ELT 252 (Tri.-Bang.); Deccan Enterprises Pvt. Ltd. Vs. CCE, Hyderabad – 2005 (190) ELT 241 (Tri.-Bang.).
- xix. On similar grounds penalty is not sustainable. They rely upon the judgment in the case of Jain Irrigation Systems Ltd. Vs. Commissioner of C.Ex., Nashik --2015 (40) STR 752 (Tri.-Mumbai); Commissioner of C.Ex., Ahmedabad Vs. Sagar Enterprises – 2010 (18) STR 212 (Tri.-Ahmd).



xx. The SCN and the impugned order are silent on any instance or details citing any of the elements necessary to invoke extended period and levy of penalty under Section 78 (1). They rely upon the judgment in the case of Cosmic Dye Chemical Vs. Collector of C.Ex., Bombay – 1995 (75) ELT 721 (SC). The view of the Hon'ble Supreme Court in the said case was also upheld by the CBIC by issuing Circular No. 1053/02/2017-CX dated 10.03.2017.

6. Personal Hearing in the case was held on 16.08.2022 through virtual mode. Ms. Rashmi Maloo, Chartered Accountant, appeared on behalf of appellant for the hearing. She reiterated the submissions made in appeal memorandum.

7. 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 material available on records. There are two issues before me for decision :

- A. Whether provision of 3D glasses to movie viewers in the facts of this case is Supply of Tangible Goods service and chargeable to Service Tax ?
- B. Whether the Service Charges collected from the movie viewers for services like checking of tickets, assistance in taking seats etc. is chargeable to Service Tax ?

The demand pertains to the period F.Y. 2014-15 to June, 2017.

8. The appellant have contested both the issues on the grounds that these services are part of the bundled services provided by them to the movie viewers and are incidental to the services of 'exhibition of cinematographic films'. I find that it is undisputed that the appellant are operating a Multiplex, where cinematographic films are exhibited and customers are allowed entry upon payment of the charges for purchase of tickets.



8.1 The adjudicating authority has vide the impugned order held that provision of 3D glasses to the movie goers is Supply of Tangible Goods in terms of Section 66E (f) of the Finance Act, 1994. It would, therefore, be relevant to refer to the provisions of Section 66E (f) of the Finance Act, 1994, which is reproduced below :

“ transfer of good by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods”.

8.2 From a plain reading of the above provisions of Section 66E (f) of the Finance Act, 1994, it is clear that to be covered under its ambit there has to be transfer of goods without transfer of right to use such goods. I find that the adjudicating authority has at Para 39 of the impugned order held that *“In the present case, the transaction of providing 3D glass to the viewers will not involve transfer of right to use such equipment as the possession and effective control over such equipment has not been transferred even though the custody is transferred along with permission to use such equipment, for a temporary period.”* The adjudicating authority has thereafter proceeded to hold that the said service was covered by clause (f) of Section 66E of the Finance Act, 1994.

8.3 I am of the view that the above finding of the adjudicating authority is not factually correct. The 3D glasses provided by the appellant to their customers is for the duration of the movie and during such period the physical possession as well as the right to use the 3D glasses is temporarily transferred to the customer. The adjudicating authority has contradicted himself in concluding that the transaction does not involve transfer of right to use and at the same time also holding that the custody of the 3D glasses is transferred along with permission to use such equipment for a temporary period.

8.4 I find that in the Taxation of Services : CBEC's Education Guide, it has been stated at Para 6.6.1 that :

“ Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. **‘Transfer of right of goods’ involves transfer of possession and effective control over such goods** in terms of the judgment of the Supreme Court in the case of *State of Andhra Pradesh v. Rashtriya Ispat Nigam Ltd.* [Judgment dated 6/2/2002 in Civil Appeal No. 31 of 1991].



Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control.”

8.5 In the instant case, I find that the 3D glasses are provided by the appellant to the persons who have come to watch the 3D movie. For the duration of the movie, the 3D glasses are in the custody of the movie goers for the only purpose of using it to watch the 3D movie and on conclusion of the movie, return it to the appellant. The 3D glasses provided for watching a 3D movie, without the right to use would render the entire transaction redundant. From the facts and circumstances of the case, I find that provision of 3D glasses by the appellant to their customers entails transfer of right to use for the duration of the movie. Therefore, I am of the considered view that the adjudicating authority has erred in arriving at the conclusion that the provision of 3D glasses does not involve transfer of right to use. Since the provision of 3G glasses involves transfer of right to use, the same goes out of the ambit of Section 66E (f) of the Finance Act, 1994. Consequently, the demand confirmed under supply of tangible good service is legally not sustainable and is liable to be set aside.

8.6 It is observed that the adjudicating authority has relied upon the judgments in the case of Stage 3 Ace Eventz Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai – 2021 (44) GSTL 77 (Tri.-Chennai) and Ayush Marketing Vs. Commissioner of Central Excise, Aurangabad – 2019 (21) GSTL 392 (Tri.-Mumbai). I have perused both these judgments and find that the case of Ayush Marketing involved renting of equipment without transfer of right of possession and effective control to the other party. The case of Stage 3 Ace Eventz Pvt Ltd. involved bifurcation of the Event Management service into two separate services viz. Event Management and Hiring of goods and in this regard it was held by the Hon'ble Tribunal that it is not permissible to artificially bifurcate the contracts so as to exclude the charges incurred in use of goods for providing the Event Management service. In the present appeal, it is the department which seek to bifurcate the bundled services into two separate services. Since the facts and issues involved in the aforesaid judgments relied upon by the adjudicating



authority are totally different from the facts of the present appeal, the said judgments have no applicability to the issue on hand.

9. I find that the appellant have contended that the provision of 3D glasses is part of the bundled services provided by them to the movie viewers and are incidental to the services of 'exhibition of cinematographic films'. It would, therefore, be pertinent to refer to the provisions of Section 66F (2) and (3) of the Finance Act, 1994, which is reproduced below :

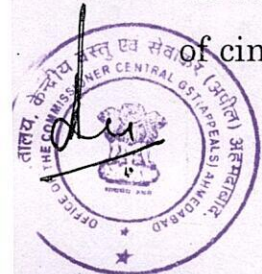
“(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner:-

- (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;
- (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.- For the purposes of sub-section (3), the expression “bundled service” means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

9.1 In the instant case, I find that the main service provided by the appellant is right of admission to exhibition of cinematographic film. The provision of 3D glasses to the customers for watching a 3D movie is incidental and ancillary to the main service. Further, provision of 3D glasses to the customer is a naturally bundled service and part of the service of right of admission to exhibition of cinematographic film. The provision of 3D glasses to the customers cannot be vivisected in to a separate service under Supply of Tangible Goods as it is totally connected to the viewing of 3D movies and, on its own, provision of 3D glasses has no utility inasmuch as only a person going to view a 3D movie would require a 3D glasses. It is also pertinent to mention that a person does not go to a multiplex or a cinema hall for the purpose of procuring 3D glasses. He is going there to watch a 3D movie for which the service provider provides him 3D glasses. The provision of 3D glasses is bundled in to the main service of movie viewing. Therefore, it is the main service i.e. right of admission to exhibition of cinematographic film which gives the essential character to the bundled



service. Consequently, it is held that the service provided in the case is not Supply of Tangible Goods, as held by the adjudicating authority, but it falls under the category of the service of Right of admission to exhibition of cinematographic film.

9.2 I also find it relevant to refer to the Taxation of Services : CBEC' s Education Guide. Para 9.2.4 of the Education Guide which is relevant to the issue on hand is reproduced below :

“Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -
 - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.”

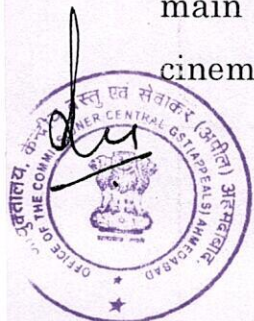
9.3 Applying the above Guidance issued by the CBIC to the facts of the present case, it is seen that provision of 3D glasses by the appellant is bundled with the service of Right of admission to exhibition of



cinematographic film. Further, the supply of 3D glasses is integral to the main service and non providing of 3D glasses would affect the provision of the main service i.e. Right of admission to exhibition of cinematographic film inasmuch as a 3D movie cannot be watched without 3D glasses. In view of the above provisions of Section 66F (2) and (3) of the Finance Act, 1994 and Para 9.2.4 of the Education Guide issued by CBIC, I am of the considered view that provision of 3D glasses cannot be considered as Supply of Tangible Goods service, as contended by the Department, but is incidental and ancillary to the main service and is a service which is naturally bundled in the ordinary course of business. Further, the bundled service derives its essential character from the main service i.e. Right of admission to exhibition of cinematographic film. Therefore, the service provided by the appellant is required to be treated as provision of a single service i.e. Right of admission to exhibition of cinematographic film. Consequently, the demand of service tax confirmed, vide the impugned order, by treating provision of 3D glasses as a separate Supply of Tangible Goods service is not legally sustainable.

10. Regarding the issue of confirmation of demand of service tax in respect of the Service Charges collected by the appellant from the movie viewers for services like checking of tickets, assistance in taking seats etc., it is observed that the SCN alleges that the appellant had provided services to the movie goers for a consideration and that the same would amount to provision of service as per Section 65B (44) of the Finance Act, 1994. The adjudicating authority has confirmed the demand of service tax by holding that the service provided by the appellant to the movie goers, for consideration, would amount to provision of service as per Section 65B (44) of the Finance Act, 1994. The adjudicating authority has relied upon two judgments of the Hon'ble Tribunal which are discussed in Para 8.6 above.

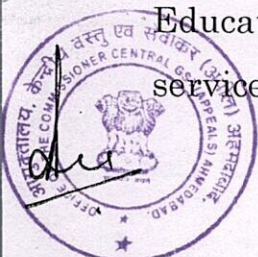
10.1 I find that the services provided by the appellant viz. checking of tickets, assistance in taking seats etc. are all provided in connection to the main service provided by the i.e. Right of admission to exhibition of cinematographic film. The service charges are collected by the appellant



from the customer who has purchased a ticket to watch a movie in the multiplex operated by the appellant. It is not the case of the department that the service charges are separately collected by the appellant from their customers. The appellant have submitted copies of a few tickets on sample basis and on going through the same, I find that the service charges collected from the customers are included in the tickets issued to the customers for the service provided to them i.e. Right of admission to exhibition of cinematographic film. This clearly indicates that no separate service is provided by the appellant to their customers and the service provided are in relation to the provision of the main service. Therefore, merely because the appellant are collecting service charges from their customers and have accounted for these service charges in their books of accounts under the head of 'Service Charge Income' would not *ipso facto* mean that the appellant are providing a different service other than the service of Right of admission to exhibition of cinematographic film. Further, as discussed in Para 8.6 above, the judgments relied upon by the adjudicating authority in the impugned order are not relevant to the facts and circumstances of the present case.

10.2 I further find that the service charges collected by the appellant are from the customers who have come to watch a movie. It is also not disputed by the Department that the services provided by the appellant, for which service charge is collected, are within their multiplex and provided to those persons who have come to watch a movie. The services provided within the multiplex to the movie goers are inalienably linked to the main service and, therefore, cannot be hived off into separate services independent of the main service, i.e. Right of admission to exhibition of cinematographic film, as these services are incidental and ancillary to the main service and are services which are naturally bundled in the normal course of business.

10.3 I further find that the facts and circumstances involved in the present case is covered by the illustrative indicators, given in Para 9.2.4 of the Education Guide issued by CBIC, which are indicative of bundling of services. The services viz. checking of tickets, assistance in taking seats etc.



are not available separately in the Multiplex but are a part of the main service i.e. Right of admission to exhibition of cinematographic film. It is also observed that the price for Right of admission to exhibition of cinematographic film paid by the customer is the same irrespective of the fact whether the customer avails the service of checking of tickets, assistance in taking seats etc. Further, services of checking of tickets, assistance in taking seats etc. are integral to the provision of the main service i.e. Right of admission to exhibition of cinematographic film. Therefore, in terms of the provisions of Section 66F (2) & (3) of the Finance Act, 1994 and the Para 9.2.4 of the Education Guide issued by CBIC, the said bundled service derives its essential character from the main service i.e. Right of admission to exhibition of cinematographic film. Consequently, the service provided by the appellant is required to be treated as provision of a single service i.e. Right of admission to exhibition of cinematographic film. Therefore, I am of the considered view that the confirmation of demand of service tax in this regard is not tenable and also not legally sustainable.

11. In view of the facts discussed herein above, the impugned order is set aside for not being legal and proper and the appeal filed by the appellant is allowed.

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

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

Akhilesh Kumar
 26th August, 2022.
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: .08.2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Anoli Holding Pvt. Ltd.,
 10, Acre Mall, City Pulse Multiplex,

Appellant

Opposite Big Bazaar,
Raipur, Ahmedabad – 380 001

The Assistant Commissioner,
CGST, Division- I,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

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



