



सत्यमेव जयते

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

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



DIN : 20230564SW00000073E3

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2782/2022 / 1081 - 86
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-10/2023-24  
दिनांक Date : 28-04-2023 जारी करने की तारीख Date of Issue 04.05.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 21/WS08/AC/HKB/2022-23 दिनांक: 10.05.2022 passed by Assistant Commissioner, CGST, TAR Section, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Shree Nandan Courier Ltd  
B/1321, 13th Floor, Dev Atelier,  
Anand Nagar Cross Road, Satellite,  
Ahmedabad

Repondent

1. The Assistant Commissioner  
CGST, TAR Section, Ahmedabad South  
3rd Floor, GST Bhawan, Near Govt. Polytechnic,  
Ambawadi, Ahmedabad - 380015

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

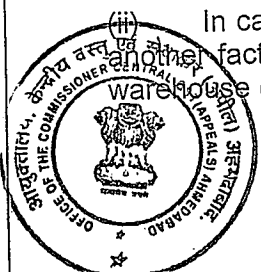
Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

- (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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :
- (ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

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



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

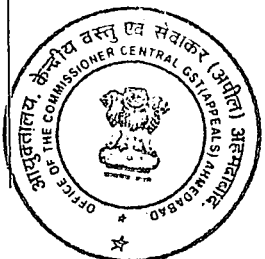
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

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

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

20प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- इप लिया गलत सेनवैट क्रेडिट की राशि;
- बप 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.

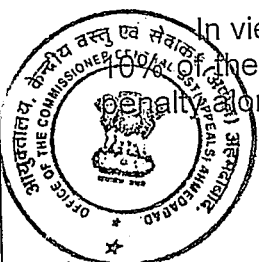
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxvi) amount determined under Section 11 D;
- (clxvii) amount of erroneous Cenvat Credit taken;
- (clxviii) 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 one is in dispute."



**ORDER IN APPEAL**

M/s. Shree Nandan Courier Ltd, B/1321, 13<sup>th</sup> Floor, Dev Atelier, Anand Nagar Cross Road, Satellite, Ahmedabad-380015 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 21/WS08/AC/HKB/2022-23, dated 10.05.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, TAR Section, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding Service Tax Registration No. AATCS9879DSD001.

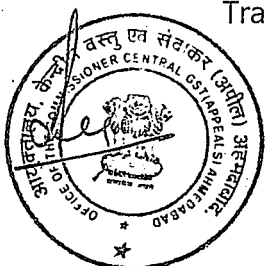
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the gross value of sale of services declared in the ST-3 Returns for the F.Y. 2015-16, filed by the appellant, was less than the gross value of sale of service declared in Income tax Return/TDS filed with the Income Tax department. As no service tax was paid on such differential income, letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 31,59,278/- was, thereafter, quantified considering the differential income of Rs. 2,17,88,130/- as taxable income, based on the data provided by the Income Tax Department.

2.1 Show Cause Notice (SCN) No. CGST/WS0803/O&A/TPD(15-16)/AATCS9879D/2020-21/5437 dated 21.12.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 31,59,278/- not paid on the value of differential income received during the F.Y. 2015-16 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein out of the total service tax demand of Rs. 31,59,278/-, the service tax liability of Rs. 24,77,864/- was confirmed alongwith interest, whereas the service tax liability of Rs. 6,81,414/- was dropped. Penalty proposed under Section 77(1) was not imposed, however, penalty of Rs. 24,77,864/- was imposed under Section 78.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal alongwith the application seeking condonation of delay, on the grounds elaborated below:-

- The SCN and the impugned order was not received by them as the same was delivered to address "*H-1109, Titanium City Centre, 100 Ft Road, Satellite*", whereas the address mentioned in the GST Registration Certificate since 26.04.2018 is "*2<sup>nd</sup> Floor I-240, Titanium City Centre Mall, 100 Ft. Road, Satellite, Ahmedabad-380015*". Thus, the impugned order was passed ignoring the natural justice hence should be dropped.
- The difference in income was due to the fact that the appellant were rendering Transport of Goods service covered under Negative List. This issue was raised



during Audit and was settled vide FAR No. ST/CE-454/2020-21 dated 01.12.2020, which was ignored by the adjudicating authority.

- Audit was conducted for the period from 2015-16 (upto June 2017) in October-November, 2020 wherein all records were examined. Therefore, suppression cannot be invoked in the present case. Even considering the relevant date, the SCN has been issued beyond the period of limitation. Hence the entire demand is time bared. They placed reliance on following case laws:
  - Continental Foundation Jt.Venture- 2007 (216) ELT 177 (SC)
  - Jaiprakash Industries Ltd.-2002(146) ELT 481 (SC)
  - Pahwa Chemicals Pvt. Ltd.- 2005 (189) ELT 257 (SC)
  - Hindustan Steel Ltd.- 1978 (2) ELT J 159 (SC)
  - Padmini Products- 1989 (043) ELT 0195 (SC)
- When there is no suppression of facts, extended period cannot be invoked and accordingly the demand of tax under Section 73(1) would not sustain. Accordingly, the interest and penalties imposed under section 78 also needs to be dropped.
- It is also a fit case to waive penalty as sufficient material has been placed before the Appellate Authority. Reliance placed on Ashish Vasantrao Patil-2008 (10) STR 8; Vinay Bale & Associates.

**4.1** On going through the appeal memorandum, it is noticed that the impugned order was issued on 10.05.2022 and the same was received by the appellant on 14.05.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 03.08.2022 i.e. after a delay of 20 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that the impugned order mentioned that the appeal is to be filed within three months. However, their legal counsel advised them that the appeal is to be filed within two months but till then the appeal period was over. Thus, there was a delay of 19 days in filing the appeal. As the delay is within the condonable period, they requested to condone the delay in terms of the proviso to Section 85 of the F.A., 1994.

**5.** Personal hearing in the matter relating to Condonation of Delay was held on 03.03.2023. Shri Gunjan Shah, Chartered Accountant, and Ms. Rumi Jhota, Advocate, appeared on behalf of the appellant. They reiterated the submissions made in the Miscellaneous Application seeking condonation of delay in filing the appeal.

**5.1** Subsequently, personal hearing was granted on 19.04.2023. Shri Gunjan Shah, Chartered Accountant, and Ms. Rumi Jhota, Advocate, appeared on behalf of the appellant. The advocate reiterated the submissions made in the appeal memorandum.

**6.** Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 20 days and take up the appeal for decision on merits.



7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issues to be decided in the present case are;

- a) Whether the service tax demand of Rs. 24,77,864/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?
- b) Whether the demand raised vide SCN dated 21.12.2020, is barred by limitation?

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

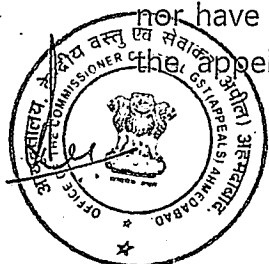
7.1 It is observed that the appellant are registered with the department and were filing ST-3 returns. However, the present demand has been raised based on ITR data provided by Income Tax Department. The SCN alleges that the appellant had not discharged the service tax liability on the differential income noticed on reconciliation of ITR and ST-3 Returns. No other detail for raising demand is available in the SCN.

7.2 The adjudicating authority has confirmed the demand based on the reconciliation of income, provided by the appellant. He has held that the present demand on differential income of Rs. 1,70,88,715/- does not pertain to Goods Transport Agency (GTA) service as the appellant was registered for providing Courier Service/Franchise service. He has on this sole argument denied the exemption claimed by the appellant for GTA service under negative list. The adjudicating authority admitted the fact that the appellant, as per the FAR No.ST/CE.454/2020-21 dated 01.12.2020 had discharged the service tax liability on the differential income mentioned at Sr. No-06 of Table-A below. However, he held that the present notice was issued for non-payment of service tax on the income of Rs. 1,70,88,715/- mentioned at Sr. No. 3 of Table -A below, is other than the short payment noticed by audit.

**Table-A**

Sr.No.	Particulars	Amount in Rs.
01	Annual Turnover	7,40,43,650
02	Less	-
03	Transportation	<b>17,088,715</b>
04	Taxable amount as approved in service tax audit	56,954,935
05	Taxable amount as per ST-3	52,255,521
06	Difference	<b>4,699,414</b>
07	Amount agreed and liability discharged	4,699,414
08	Pending Liability	-

7.2 I do not find any merit in the above argument of the adjudicating authority in as much as he has neither given any reasoning for arriving at the conclusion that transportation income shown in Table above was taxable and under which legal provision nor have verified the document of the audit. It is observed that the financial records of the appellant for the F.Y. 2015-16 & F.Y. 2016-17 were audited by the department



wherein total service tax liability of Rs. 12,62,222/- for said period was worked out on reconciliation of the income of Rs. 56,954,935/-. Details are furnished below;

**Table-B**

(Amount in Rs.)

Year	Taxable amount as per accounts	Taxable amount as per ST-3	Difference	S.Tax
2015-16	56,954,935	52,255,521	4,699,414	6,81,415
2016-17	56,720,988	52,848,944	3,872,044	5,81,807
			<b>Total</b>	<b>12,62,222/-</b>

On combined reading of Table-A & Table-B above, I find that the auditors, from the gross receipts of Rs. 7,40,43,650/- (as reflected in the financial records) have considered the income of Rs. 17,088,715/- (reflected under 'transportation') but excluded the same from taxable income. After excluding the transportation income, they have arrived at the differential income of Rs. 56,954,935/-, on which the tax liability of Rs. 6,81,415/- for the F.Y. 2015-16 was determined. However, the adjudicating authority, in the present case, again re-examined the transportation income while confirming the demand, though the same was already examined and excluded by audit, which, I find is not sustainable on merits. Firstly, the adjudicating authority has failed to establish as to why the income reflected under transportation does not fall under Clause (a) (iii) of the Negative list, defined under Section 66D. Secondly, he has not given any finding as to whether this income was considered by audit while arriving at tax liability on the gross receipts. Moreover, the findings of the adjudicating authority at Para 25, that out of the total tax liability of Rs. 31,59,278/-, the tax liability of Rs. 6,8,414/- was already discharged by the appellant at the time of audit is factually contradictory as the audit has raised the demand based on re-conciliation of the figures appearing in the ST-3 Returns with those filed with the Income Tax Department which also included the amount considered as taxable by adjudicating authority. No such allegation is made in the SCN nor is any corroboration appearing in the impugned order.

**7.3** From the above facts, it is clear that the financial records of the appellant for the F.Y. 2015-16 & 2016-2017 were already audited by the department. Based on the reconciliation of income (as reflected in their books of accounts and the ST-3 Returns), Revenue Para-1 was raised pointing out the service tax liability of Rs. 6,81,415/- & Rs. 5,80,807/- for the F.Y. 2015-16 and F.Y. 2016-17, respectively. As the said service tax liabilities were discharged by the appellant alongwith interest and 15% penalty, the issuance of SCN and adjudication order was waived in terms of Board Instruction dated 18-8-2015, issued vide F. No. 137/46/2015-S.T. Board, in the said instruction, had stated that in a case involving the extended period of limitation, if an assessee pays the Service Tax/Central Excise duty, interest and penalty equal to 15% of the tax/duty and makes a request in writing that a written SCN may not be issued to them, then in such cases the SCN can be oral and the representation (if he desires) against it also oral. In other words, an assessee can request for an informed waiver of a written SCN and the proceedings shall conclude and there is no need to issue an adjudication order. So, once the issue has been examined and disputed by the department, on which the short payment of Rs. 25,05,490/- was agreed and paid by the appellant, I find that on same issue and for the same period, department cannot raise a demand again merely on the grounds that the

data was provided by the I.T. department. I, therefore, find that the demand of Rs. 24,77,864/- is not maintainable on merits.

8. As regards the second issue, the appellant have vehemently contended that the entire demand is hit by limitation. It is observed that audit of appellant's records was undertaken by the officers of Audit Commissionerate, Ahmedabad on 12.10.2020 & 24.11.2020. During audit the statutory financial records maintained by the appellant for the F.Y. 2015-16 & F.Y. 2016-17 were scrutinized and short payment of Service Tax amounting to Rs. 12,62,222/- noticed on verification of financial records vis-à-vis the ST-3 returns was worked out. Subsequently, Final Audit Report (FAR) No. ST/CE-454/2020-21 dated 01.12.2020 was issued, where at Revenue Para-1, short payment of Service Tax amounting to Rs. 12,62,222/- was mentioned and the para was stated to be settled, as the appellant had discharged the entire tax liability alongwith interest and penalty. However, based on the income data shared by the Income Tax Department, a SCN dated 21.12.2020 was issued to the appellant subsequently, invoking extended period of limitation and proposing service tax demand of Rs. 31,59,278/- on the differential income noticed on analysis of the 'Gross Value of Sale of Services' declared in the ST-3 Returns filed by the appellant for the F.Y. 2015-16 vis-a-vis the 'Gross Value of Sale of Services' declared in Income tax Return/TDS filed with the Income Tax department.

8.1 I find that once the records were audited by the department and proceedings concluded, the department cannot invoke extended period, in the subsequent demand notice, raised on the same issue and for the same period. I find that the data provided by the Income Tax Department was considered by the audit officers while conducting audit of the appellant's record. Thus, I find the plea that the income of Rs. 1,70,88,715/- was suppressed by the appellant as misleading because the auditors themselves have excluded the transportation income while arriving the service tax liability for the F.Y. 2015-16.

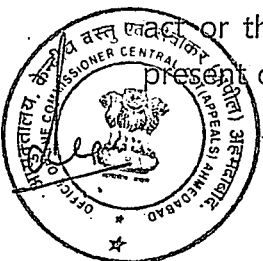
8.2 Hon'ble Supreme Court in *Duncan Industries Ltd. v. Commissioner of Central Excise, New Delhi* reported in 2006 (201) E.L.T. 517 (S.C.), had held that there could not be two assessments for the same period. Hon'ble Apex Court in the said decision held that;

*"23. It need not be emphasized that there could not be two assessments for the same period.*

XXX

*26. Thus, after the grant of certificate under the Kar Vivad Samadhan Scheme, 1998 as having settled the dispute and payment of the amount determined no further proceedings could be initiated or proceeded with for the period in question."*

8.3 When facts are known to the department, suppression of facts cannot be alleged for the demand, on which earlier an Audit Objection was issued and settled by the department. As the appellant agreed to the audit objection and made the payment, no issue can be raised by the Department pursuant to such audit for the same period. It is observed that extended period of limitation under Section 73(1) of the Finance Act can only be invoked if the service tax has not been paid by a person by reason of fraud, collusion, wilful misstatement or suppression of facts or contravention of any provision of the rules made thereunder with intent to evade payment of service tax. In the present case, the department was aware of the service income received by the appellant





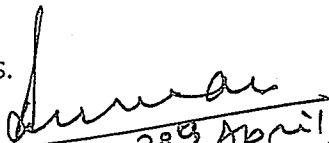
as all the financial records/documents were provided by the appellant during the course of audit. After the audit, since the proceedings were concluded, issuing SCN subsequently on same issue and for same period, invoking the extended period, without bringing on record any suppression/mis-statement of facts, is not sustainable in law on limitation. The impugned order is also silent as to how the appellant mis-declared the income and suppressed such income, when the same were made available during audit. It is observed that the show cause notice in the case issued based on the income data provided by the I.T. department was time barred as was issued beyond the normal period of limitation. Suppression of facts cannot be alleged in the instant case as the facts were definitely known to the department. It is also observed that in the case of **Continental Foundation Jt. Venture v. CCE, Chandigarh-I** [2007 (216) E.L.T. 177 (S.C.)], the Hon'ble Apex Court has held in para 10 as under:-

*"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*

8.4 Thus, applying the ratio of above decision and considering the facts of the case, I find that the demand raised in SCN dated 21.12.2020 invoking extended period of limitation is wrong and not sustainable.

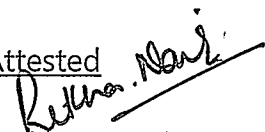
9. In view of our discussion above, I set aside the impugned order on merits as well as on limitation and allow the appeal filed by the appellant.

10. 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.

  
28<sup>th</sup> April,  
(अखिलेश कुमार) 2023..  
आयुक्त(अपील्स)

Date: 28.04.2023

Attested

  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

**By RPAD/SPEED POST**

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M/s. Shree Nandan Courier Ltd,  
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Anand Nagar Cross Road, Satellite,  
Ahmedabad-380015

**Appellant**



The Assistant Commissioner (TRC),  
CGST, Ahmedabad South  
Ahmedabad

Respondent

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division-VIII, Ahmedabad South.
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South.  
(For uploading the OIA)
- ✓ 5. Guard File.

