



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 - टेलीफैक्स 07926305136



DIN: 20230964SW0000333D4E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3198/2023 / 5330-35
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-109/2023-24
दिनांक Date : 25-08-2023 जारी करने की तारीख Date of Issue 04.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 158/AC/sam Maneckshaw Palia/Div-I/A'bad-South/JDM/2022-23 दिनांक:
29.12.2022 passed by Assistant Commissioner, CGST, Division-I, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. sam Maneckshaw Palia,
"Disha", 16, Ruchir Bunglows,
Beyond sarathi Hotel,
Bodakdev, 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, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

(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 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 हों।

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

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

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

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

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

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

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

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

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

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



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

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

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

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

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

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

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

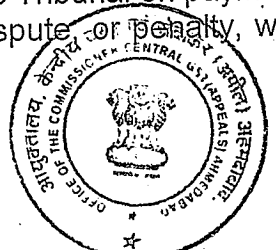
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

The present appeal has been filed by M/s. Sam Maneckshaw Palia, "Disha", 16, Ruchir Bungalows, Beyond Sarathi Hotel, Bodakdev, Ahmedabad – 380015 (hereinafter referred to as "the appellant") against Order-in-Original No. 158/AC/Sam Maneckshaw Palia /Div-I/A'bad-South/JDM/2022-23 dated 29.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division II, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AABPP2138D. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that the appellant had earned an income of Rs. 29,61,191/- during the FY 2015-16, Rs. 30,86,000/- during the FY 2016-17, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

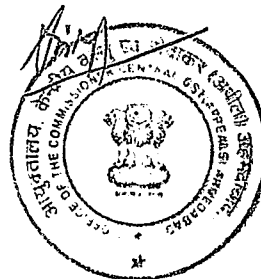
2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS06/O&A/SCN-581/2020-21 dated 30.12.2020 demanding Service Tax amounting to Rs. 9,07,078/- for the period FY 2014-15 and FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 9,07,078/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2014-15 and FY 2015-16. Further (i) Penalty of Rs. 9,07,078/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:



- The appellant had been working as a Non-Executive Independent Director in listed public limited companies since many years. His Director Identification Number issued by the Ministry of Corporate Affairs is 00031145.
- As per the provisions of erstwhile Companies Act., 1956 and current Companies Act, 2013, every listed public limited company must have at least 1/3rd of total number of directors as independent directors. Section 149(6) of the Companies Act., 2013 has defined "Independent Director".
- An independent director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards. He/ She does not have any kind of relationship with the company that may affect the independence of his/ her judgment. In other words, he his neither the promoter nor an employee of the company.
- Independent Director acts as a guide, coach, and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. Independent directors are responsible for ensuring better governance by actively involving in various committees set up by company.
- It is the duty of the independent director to attend Board Meetings, Committee Meetings, General Meetings of the company but not involve himself in day-to-day affairs of the company. The day-to-day affairs of the company are required to be managed by Executive and Whole-time Directors.
- For the performing his role as an independent director, person shall receive an agreed fee for attending various meetings and such fees are known as "Sitting Fees". In addition to sitting fees, independent directors are also entitled to receive profit related commission or remuneration as per the provisions of section 197(5) of the Companies Act., 2013.
- The sitting fees as well as remuneration so received by the independent directors is show as income received for providing services to the companies from whom the said sitting fees as well as remuneration so received in the income tax return filled by the said independent directors.



- As per the provisions of section 194J of the Income Tax Act, 1961, the companies deduct income tax at source-on the said sitting fees as well as remuneration so paid.
- It is submitted that the appellant was an independent non-executive director on the board of the following companies for FY 2015-16 and FY 2016-17:

FY 2015-16

Sr. No.	Name of the company
1	Gruh Finance Limited (Now known as Bandhan Bank Limited on account of merger of Gruh Finance Limited with Bandhan Bank Limited)
2	The Bombay Dyeing & Manufacturing Co. Ltd.
3	AI Champdany Industries Limited
4	Saline Area Vitalization Enterprise Limited

FY 2016-17

Sr. No.	Name of the company
1	Gruh Finance Limited (Now known as Bandhan Bank Limited on account of merger of Gruh Finance Limited with Bandhan Bank Limited)
2	The Bombay Dyeing & Manufacturing Co. Ltd.
3	AI Champdany Industries Limited
4	Saline Area Vitalization Enterprise Limited

- It is further submitted that the appellant has received the following sitting fees for attending various meetings and remuneration for rendering services as non-executive independent director to the above-named companies.

FY 2015-16

Sr. No.	Name of the company	Sitting Fees	Remuneration	Total
1	Gruh Finance Limited	5,20,000/-	10,00,000/-	15,20,000/-
2	The Bombay Dyeing & Manufacturing Co. Ltd.	10,80,000/-	NIL	10,80,000/-
3	AI Champdany Industries Limited	50,000/-	NIL	50,000/-
4	Saline Area Vitalization Enterprise Limited	1,000/-	NIL	1,000/-
5	ACC Limited*	NIL	3,10,192/-	3,10,192/-
	Total	16,51,000/-	13,10,192/-	29,61,192/-

* In relation to ACC Limited, the appellant had step down as director on 07/02/2014. However, ACC Limited has paid remuneration for the calendar year ended on 31/12/2014 on 31/03/2015 which is amounting to Rs. 3,44,657/- and since the same was received by the appellant on 08/04/2015 after deducting income tax at source Rs. 34,466/-, the said income is reflecting in the books of the appellant in FY 2015-16. Please note that appellant is following cash system of accounting and as per the said

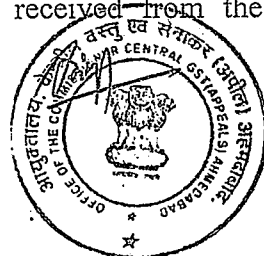


system, income is recorded only in the year of receipt irrespective of its actual accrual date.

FY 2016-17

Sr. No.	Name of the company	Sitting Fees	Remuneration	Total
1	Gruh Finance Limited	5,20,000/-	12,00,000/-	17,20,000/-
2	The Bombay Dyeing & Manufacturing Co. Ltd.	12,40,000/-	NIL	12,40,000/-
3	AI Champdany Industries Limited	1,25,000/-	NIL	1,25,000/-
4	Saline Area Vitalization Enterprise Limited	1,000/-	NIL	1,000/-
	Total	18,86,000/-	12,00,000/-	30,86,000/-

- The above incomes were reflected as service income in the Income Tax Return filed by the appellant for FY 2015-16 and FY 2016-17.
- The appellant vide his letter dated 01/12/2020 and 15/12/2020 submitted all the details sought by your good office which include (a) Profit & Loss Account and Balance Sheet, (b) Income Tax Returns, (c) Form 26AS and (d) Bank Statement. The appellant has also mentioned that the service income reported in Income & Expenditure Account is in relation to services provided by him as a director to various companies and as per Notification No. 30/2012-ST dated 20.06.2012, the liability to pay service tax on the said income is that of the recipient and not on the appellant. Without considering the reply and evidences filled by the appellant, show cause notice dated 30.12.2020 issued to the appellant.
- The appellant also filled his written submission along with all the evidences with the office of Dy./Asstt. Commissioner CGST, DIV-VI(VASTRAPUR), Ahmedabad South on 05/02/2021. However, without considering the same, the adjudicating authority passed the impugned order ex-parte.
- The adjudicating authority has erred in passing an ex-parte order whereas the fact is appellant has not only filled the reply to the Show Cause Notice but also produce several documentary evidences which clearly indicates that the Service Tax on Services rendered by the appellant is to be paid on Reverse Charge Mechanism (RCM) and the Companies who have paid for the services rendered by the appellant have actually paid service tax on the said services on RCM basis.
- The demand of service tax has been raised merely on the basis of the data received from the Income Tax Department but the data received from the Income Tax



Department cannot form the sole ground for raising of demand of service tax. Instruction dated 26.10.2021 issued by the CBIC has not been followed in letter and spirit and therefore SCN issued is bad in the eyes of law.

- SCN has been issued on the basis of information received from Income Tax Department. The said information has been provided in the Income Tax Return by the appellant himself and therefore there is no case of Wilful Mis-statement and therefore the SCN issued invoking extended period is bad in the eyes of law.
- The appellant requested to drop the proceeding on the grounds mentioned above.

4. Personal hearing in the case was held on 21.08.2023. Shri Umesh Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum and in the additional submission dated 21.08.2023 handed over at the time of personal hearing along with the supporting documents. He submitted that the appellant had replied to the notices prior to the show cause notice and also had replied to the show cause notice and appeared for personal hearing too. However, the adjudicating authority has ignored all the submissions and has passed the impugned order ex-parte. It is submitted that the appellant received income in the form of sitting fees for the director from a few companies wherein the tax liability is discharged by the recipient of service on reverse charge basis. They have submitted all the supporting documents with the appeal and requested to set aside the impugned order.

4.1 The appellant vide their additional written submission dated 21.08.2023, inter alia, reiterated the submissions made in the appeal memorandum. The appellant also submitted copies of income ledger and following certificates:

- i) Certificate dated 30.12.2020 issued by M/s. Bandhan Bank Limited certifying that the appellant appointed as independent director on the Board of Gruh Finance Ltd. for the period from 01.04.2014 to 31.03.2017.
- ii) Certificate dated 04.02.2021 issued by M/s. Bandhan Bank Limited certifying that erstwhile Gruh Finance Ltd. had discharged service tax liability for payment of sitting fees and commission paid to the appellant.
- iii) Certificate dated 30.12.2020 issued by M/s. Bombay Dying and Manufacturing Co. Ltd. certifying that the appellant appointed as Non-executive independent director on the Board of their company for the period from 30.05.2006 to 08.08.2018.
- iv) Certificate dated 31.03.2016 issued by M/s. Bombay Dying and Manufacturing Co. Ltd. certifying that the appellant were paid Rs. 10,80,000/- as sitting fees during the FY 2015-16.



v) Certificate dated 03.04.2017 issued by M/s. Bombay Dying and Manufacturing Co. Ltd. certifying that the appellant were paid Rs. 12,40,000/- as sitting fees during the FY 2016-17.

vi) Certificate dated 21.01.2021 issued by M/s. Al Champdany Ind. Ltd. certifying that the appellant appointed as Non-executive independent director on the Board of their company for the period from 31.05.2006 to 13.08.2018.

vii) Certificate dated 04.02.2021 issued by M/s. Al Champdany Ind. Ltd. certifying that the appellant were paid Rs. 50,000/- during the FY 2015-16 and Rs. 1,25,000/- during the FY 2016-17 as sitting fees and the service tax has been paid on the same under the reversed charge mechanism.

viii) Certificate dated 21.01.2021 issued by M/s. ACC Ltd. certifying that the appellant appointed as Non-executive independent director on the Board of their company for the period from 25.01.2002 to 07.02.2014 and also certifying that the appellant were paid Rs. 3,44,657/- towards commission in the March-2015.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; in the additional submission; during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16 and FY 2016-17.

6. It is observed that the main contentions of the appellant is that he was working as director in various companies during the FY 2015-16 & FY 2016-17 and received director sitting fees and director remuneration, on which the liability to pay service tax is on the companies paying the said amount and not on the appellant on reversed charge basis as per Notification No. 30/2012-ST dated 20.06.2012.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order passed ex-parte.

7. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 and FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2024 directed that:



"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

7.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.

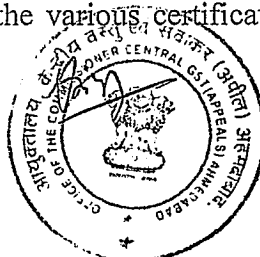
8. Further, for ease of reference, I reproduce the relevant provision for reverse charge mechanism contained under Notification No. 30/2012-ST dated 20.06.2012, as amended, which reads as under:

Notification No. 30/2012-Service Tax dated 20.6.2012, as amended vide Notification No. 45/2012-ST dated 07.08.2012

Table

<i>Sl. No.</i>	<i>Description of a service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by any person liable for paying service Tax other than the service provider</i>
5A.	in respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate	NIL	100%

8.1 In view of the legal provision under the Notification No. 30/2012-ST dated 20.06.2012, as amended, and from verification of the various certificates submitted by the



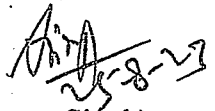
appellant, I find that the appellant is not liable to pay service tax on income of Rs. 29,61,191/- during the FY 2015-16, Rs. 30,86,000/- during the FY 2016-17, from the various companies as director sitting fees and remuneration to the director, and the service tax on the said amounts is payable by the service recipient i.e. various companies, on RCM basis and not by the appellant.

9. In view of the above discussion, I am of the considered view that the appellant is not liable to pay Service Tax on the income received by them during the FY 2015-16 and FY 2016-17. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.


10. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of job work income received by the appellant during the FY 2015-16 and FY 2016-17, is not legal and proper and deserve to be set aside.

11: Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

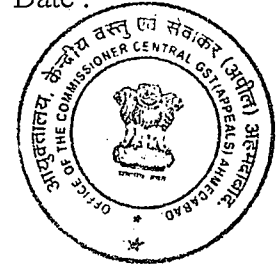
12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
The appeal filed by the appellant stands disposed of in above terms.


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date :



By RPAD / SPEED POST

To,
M/s. Sam Maneckshaw Palia,
"Disha", 16, Ruchir Bunglows,
Beyond Sarathi Hotel,
Bodakdev, Ahmedabad – 380015

Appellant

The Assistant Commissioner,
CGST, Division-I,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- 5) Guard File
- 6) PA file

