



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 - टेलीफैक्स 07926305136



DIN: 20230964SW0000415775

5352-56

स्पीड पोस्ट

- क फाइल संख्या : File No : Commissioner (Appeals) GAPPL/COM/STP/1582/2023
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-119/2023-24
दिनांक Date : 08-09-2023 जारी करने की तारीख Date of Issue 08.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. WSO7/O&A/OIO-190/AC-RAG/2022-23 दिनांक: 22.11.2022 passed by
Assistant Commissioner, CGST, Division VII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Tarun Hasmukh Shah,
11, Naminath Society,
Near Shantivan Bus Stop,
Narayan Nagar Road, Paldi,
Ahmedabad.

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 :

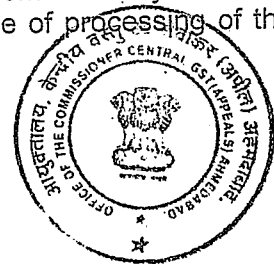
Revision application to Government of India:

(1) केंद्रीय 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 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 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.

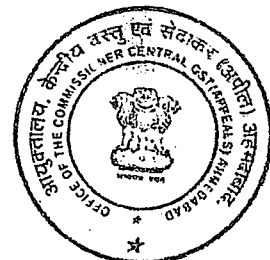
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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.

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.

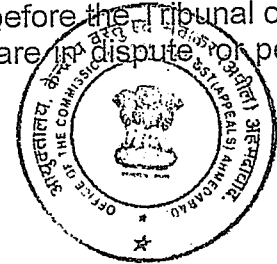
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Tarun Hamukh Shah, 11, Naminath Society, Near Shantivan Bus Stop, Narayan Nagar Road, Paldi, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. WS07/O&A/OIO-190/AC-RAG/2022-23 dated 22.11.2022 issued on 23.11.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VII, 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. AFVVPV0143H. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 to FY 2016-17, it was noticed that the appellant had earned income of Rs. 17,82,737/- during the FY 2014-15; Rs. 29,25,576/- during the FY 2015-16; Rs. 27,37,258/- 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 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. Subsequently, the appellant were issued Show Cause Notice No. V/WS07/O&A/SCN-255/AIFPS9221G/2020-21 dated 23.09.2020 wherein it was proposed to:

- a) Demand and recover an amount of Rs. 7,00,242/- for the period FY 2014-15 to FY 2016-17 under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994; read with relaxation



provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020(No.2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as 'the Act').

b) Impose penalty under the provisions of Section 70, 77 (1) and 78 of the Act.

3. The SCN was adjudicated vide the impugned order wherein:

a) The demand of service tax amounting to Rs. 10,69,771/- was confirmed along with interest.

b) Penalty amounting to Rs. 10,69,771/- was imposed under section 78(l) of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under section 77(l) (a) of the Act.

d) Penalty amounting to Rs. 1,20,000/- was imposed under section 70 of the Act.

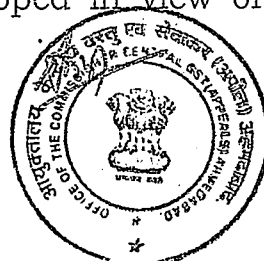
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

➤ The appellant submitted that the impugned order passed by the authority is even otherwise bad, incorrect, erroneous, without any authority in law and jurisdiction and therefore, it deserves to be set aside.

➤ The adjudicating authority have erred in law and on facts in issuing the impugned order without considering appellant reply, without granting sufficient opportunity of being heard and thereby order so passed, is liable to be quashed without going into merits.

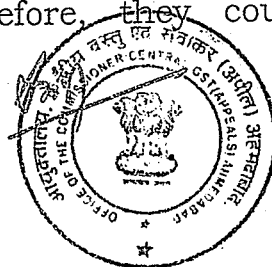


- The show cause notice is issued after the period of limitation was over, there is no application of /relaxation as contemplated in section 6 of Chapter V of the Taxation and other laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020) in this case where department is also failed in justifying the extended period of issue of the notice and therefore deserves to be rejected in toto.
- The adjudicating authority has erred in interpreting the Services received by appellant company as liable for Service Tax merely based on Income Tax Return as well as 26AS, without appreciating the facts in proper perspective and without granting appropriate opportunity before issue of Show cause Notice as well as before issue of impugned order.
- The adjudicating authority has passed SCN as well as impugned order disregarding, the fact whereby amount realized as Pure Agent is not falling within taxable value of services. Further Income/Commission received from Agriculture produce covered under exemption Notification cannot be fall part of taxable value of services and accordingly, while working out Service Tax liability the adjudicating authority disregard initial exemption up to Rs. 10,00,000/- as available to small service Provider and working out Service Tax liability of Rs. 10,69,771/- merely based on ITR figures value, is unjustified and required to be dropped.
- The appellant did not pay tax under bona fide belief of consultant advise where amount received are covered by Exemption notification as well as received in course of providing service as pure Agent and accordingly cannot be said that it acted deliberately in defiance of law and in view thereof harsh penalty of 100% equivalent Tax under Section 78 is unjustified and accordingly deserves to be dropped in view of ruling of various higher Courts.



- The appellant Company is covered within small service provider having income below Rs. 10,00,000/- and not require to be registered for service tax and, hence penalty for non-registration under the service tax is not applicable and the preposition for levy of penalty under section 77(1)(a) need to be quashed.
- Since the Income of appellant is below threshold limit and not required to be registered under the Provision and accordingly levying penalty under Section 70 read with Rule 7C of Service Tax Rules, is unwarranted when already penalty under Section 78 is levied equivalent to amount of Tax.
- They have also submitted copies of Annual Audit Report for the FY 2014-15 to FY 2016-17; Income Tax Return for the FY 2014-15 to FY 2016-17; Profit & Loss Account and Balance Sheet for the FY 2014-15 to FY 2016-17; Form 26AS for the FY 2014-15 to FY 2016-17, copy of Bank Statement for the FY 2014-15 to FY 2016-17 along with appeal memorandum.

5. Personal hearing in the case was held on 11.08.2023. Shri Aatish Shah, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated submission made in the appeal. He submitted that the appellant was having income from sale of agricultural produce as well as from commission on agricultural operations. However, while filing ITR, owing to ignorance they included such income in the value of services regarding coaching and services for immigration. If the income from agriculture is excluded, the remaining income in each of the years is less than Rs. 10 lakhs. He submitted that they had filed reply to the show cause notice on 15 April 2022. As the three hearings mentioned in para five of the impugned order, were through a single letter. They were told that they would be given another hearing post submission of the reply which was never granted and the impugned order was passed. Therefore, they could not get an



opportunity to explain their case properly. He requested to allow one week time to submit further documents regarding their claim for income from agriculture produce sale and commission from agricultural operations. Based on the same, he requested to set aside the impugned order.

6. The appellant vide letter dated 18.08.2023 submitted copies of Annual Audit Report, Profit & Loss Account and Balance Sheet, Income Tax Return for the F.Y. 2013-14 for demonstrating the fact that the income of the appellant in immediate preceding year of F.Y. 2014-15 is below the Taxable limit and thereby the appellant is not liable to service tax. The appellant also submitted supporting documents for income from Agricultural produce sale as well as Commission Income from Agricultural Operation for the impugned period.

7. Before taking up the issue on merits, I will first decide the Application filed seeking condonation of delay. As per Section 85 of the Act an appeal should be 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 8 days and take up the appeal on the merit.

8. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 2014-15 to FY 2016-17.

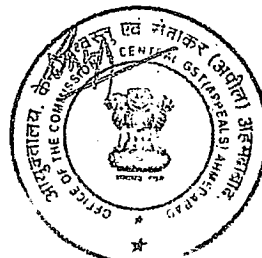
9. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the nature of the activities carried out by the appellant as a service provider appears to be covered under the definition of service; appears to be not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Finance Act, 1994, as amended. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Act. No cogent reason or justification is forthcoming for raising the demand against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising the demand of service tax.

9.1 I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was 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."

9.2 However, in the instant case, I find that no such exercise, as

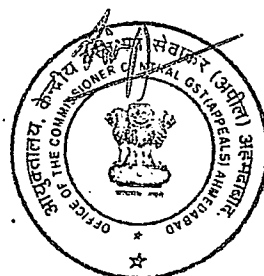


instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

10. Coming to the merit of the case I find that the main contention of the appellant are that (i) the appellant were agriculturist and providing services relating to agriculture produce by way of agricultural operation including cultivation, harvesting etc. and Income earned for services related thereto shall not be liable for VAT/Service Tax since the same is covered under Negative List of Services; (ii) the appellant were also carrying out consulting for Visa and Immigration services under the name SWEC Education and Immigration Services and for the year referred in SCN, gross receipt as mentioned and taken from Income Tax return also include Income received in capacity as Pure Agent, whereby the appellant have received and paid Visa fees on behalf of Students/Travelers and if the same are excluded from the Gross receipt of their Income, the same will not exceed gross amount of Rs. 10 Lacs as liable for service Tax registration and service tax payment.

11. I also find that the adjudicating authority had passed the impugned order confirmed the demand of service tax observing as under:

"6.1 I have carefully gone through the Show Cause Notice and relevant case papers. I find that the Show Cause Notice recovery of Service Tax on the income shown by the noticee in their ITR of FY 2014-15 and 2016-17 towards income from sale of Services. I find that The noticee is running a firm in the Name of SWEC EDUCATION AND IMMIGRATION SERVICES and they have shown the income from Sales of Services in the respective columns of ITR filed by them and they have paid income tax on the amount earned by them as per IT ACT and they have shown NIL income from Agriculture, whereas they have submitted Profit and Loss Account of the respective years in which they have shown Agricultural income, It is evident that the noticee has misled the department with an intent to evade the service tax. I find that



the noticee have earned their amount from Coaching income, Commission Income. consultancy services on which they have not paid any service tax."

12. On verification of the documents submitted by the appellant viz. copies of Annual Audit Report for the FY 2013-14 to FY 2016-17; Income Tax Return for the FY 2013-14 to FY 2016-17; Profit & Loss Account and Balance Sheet for the FY 2013-14 to FY 2016-17; Form 26AS for the FY 2014-15 to FY 2016-17, copy of Bank Statement for the FY 2014-15 to FY 2016-17, supporting documents for income from Agricultural produce sale as well as Commission Income from Agricultural Operation for the impugned period, I find that the appellant is engaged in the activity of agriculturist and providing services relating to agriculture produce by way of agri operation including cultivation, harvesting etc. Income earned for services related thereto shall not be liable for VAT/Service Tax since the same is covered under Negative List of Services under 66D(d) of the Finance Act, 1994 which specifies the negative list of services relating to agriculture or agricultural produce which are not liable to service tax. The relevant text of the statute is reproduced under:

(d) services relating to agriculture or agricultural produce by way of-

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing

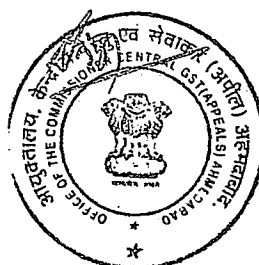
13. On verification of the above mentioned documents submitted by the appellant, it is observed that the adjudicating authority had included agricultural income in the value of services regarding coaching and services provided for immigration. Similarly, it is also observed that the appellant had been carrying out consulting for Visa and Immigration services under the name SWEC Education and Immigration Services. It is observed that for the impugned period, gross



receipt taken from Income Tax Return by the adjudicating authority was inclusive of income received in the capacity as Pure Agent, whereby the appellant had received and paid Visa Fees on behalf of Students/Travelers and if the same were excluded from the gross receipt of their income, the same will not exceed gross amount of Rs. 10 Lacs as liable for service Tax registration and service tax liability. On the basis of documents I find that the appellant's non taxable income viz. agriculture income and income received as pure agent which was included in gross taxable value by the adjudicating authority in the impugned period is illustrated as under:

Sr. No.	Description	2014-15	2015-16	2016-17
1.	Total Income as per OIO	17,82,737	29,25,576	27,37,258
2.	Less-Non-taxable value (Agriculture income)	9,10,625	18,80,310	16,89,738
3.	Income received as Pure Agent	65,407	1,06,553	1,17,605
4.	Net Taxable value (SSI exemption as per Notification No. 33 of 2012)	8,06,705	9,38,713	9,29,915

14. Accordingly, the total taxable value of the appellant from providing taxable services during F.Y. 2014-15, 2015-16 and 2016-17 is amounting to Rs. 8,06,705/-, Rs. 9,38,713/- and Rs. 9,29,915/- which is below the threshold exemption limit of Rs. 10 lakhs as per Notification No. 33/2012-ST dated 20.06.2012. It is also observed the Appellant income in the F.Y. 2013-14 is also below the threshold exemption limit Rs. 10 Lakhs. Consequently, the appellant are not liable to pay service tax on the income. In view thereof, I am of the considered view that the adjudicating authority has erred in confirming the demand of service tax amounting to Rs. 10,69,771/- for FY. 2014-15 to 2016-17.



15. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

16. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

17. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

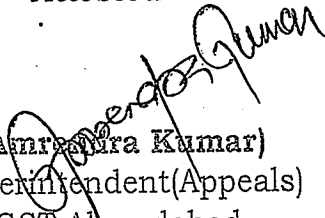
The appeal filed by the appellant stands disposed of in above terms.


(Shiv Pratap Singh)

Commissioner (Appeals)

Dated: 08.09.2023

Attested


(Anand Kumar)
Superintendent (Appeals)
CGST Ahmedabad.



By RPAD / SPEED POST

To,
M/s. Tarun Hamukh Shah,
11, Naminath Society,
Near Shntivan Bus Stop,
Narayan Nagar Road, Paldi,
Ahmedabad

Appellant

The Assistant Commissioner,
CGST, Division-VII,
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 VII, Ahmedabad South
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)
5. Guard File
6. PA file

