



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: 20230964SW0000111AF1

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1575/2023 / 6172 - 76
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-124/2023-24
दिनांक Date : 15-09-2023 जारी करने की तारीख Date of Issue 20.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-119/NISHITH/AC/DAP/2022-23 दिनांक: 15.12.2022
passed by The Assistant Commissioner, CGST, Div-VI, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Nishith Pramod Mehta,
D-16, Jayanmt Smruti,
Rajhans Society,
St. Xavier's College Corner,
Ellisbridge, Ahmedabad-380006.

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 :

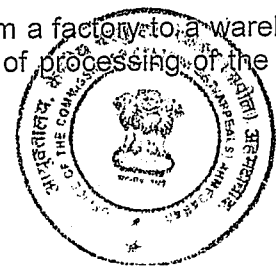
Revision application to Government of India:

(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 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 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.

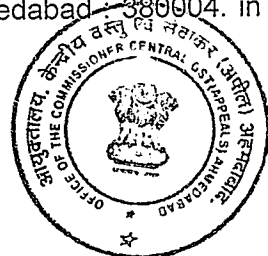
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 पढ़ी 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.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.

- 1प 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 हैं।(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.

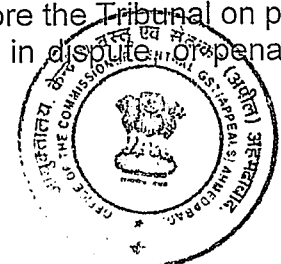
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



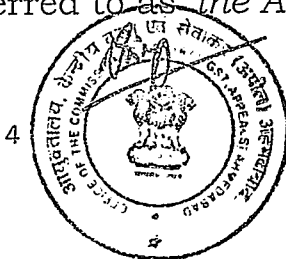
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Nishith Pramod Mehta, D-16, Jayanmt Smruti, Rajhans Society, St. Xavier's College Corner, Ellisbridge, Ahmedabad 380 006 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST-VI/Dem-119/NISHITH/AC/DAP/2022-23 dated 15.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AFCPM9523MST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the gross value declared by them in their Income Tax Return (ITR)/TDS Returns. Accordingly, it appeared that the appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1. Subsequently, the appellant were issued Show Cause Notice No. V/WS06/O&A/SCN-326/2020-21 dated 26.12.2020 wherein it was proposed to:

a) Demand and recover an amount of Rs. 3,84,678/- for F.Y. 2015-16 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 (hereinafter referred to as 'the Act').



b) Impose penalty under the provisions of Section 77 (1) (c), 77(2) and 78 of the Act.

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

a) The demand of service tax amounting to Rs. 3,84,678/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2015-16.

b) Penalty amounting to Rs. 3,84,678/- was imposed under section 78 of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) (c) of the Act for failure to taking Service Tax Registration.

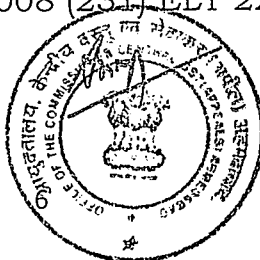
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

➤ The Respondent erred in confirming the demand of service tax and imposing penalty equal amount of tax under section 78 of the said Act and Rs.10,000/- under Section 77(2) of the said Act. The Respondent erred in denying benefit of exemption under Notification No. 25/2012 (supra) even though the Appellant provided substantial services to Government. The impugned order passed by the Respondent is misconceived both on the facts and in law and therefore, the same is required to be quashed and set aside in the interest of justice.

➤ The Appellant ought to have submitted that the Appellant received Rs. 5,04,375/- from Doordarshan Kendra and Rs.15,00,000/- from District Sports Officer, Ahmedabad City. Since the Appellant provided folk and cultural music service, services provided by them were exempted from service tax.



- The Appellant submits that the Respondent issued the Show Cause Notice on 26.12.2020 for the period 01.04.2015 to 31.03.2016. Proviso to Section 73(1) provides that where service tax has not been paid by willful mis-statement or suppression of facts or any contravention with intent to evade payment of service tax, the Show Cause Notice should be issued within a period of 5 years from the relevant date. Relevant date has been defined in Section 73(6) which means in case of taxable service in respect of service tax has not been paid, the last date on which periodical return was required to be filed would be considered as relevant date for computation of larger period.
- In the present case, the Show Cause Notice has not disclosed any reason to show that the Appellant had intent to evade payment of service tax. In the absence of any malafide intention, larger period ought not to have been invoked. In this regard reliance is placed on the circular No. 1053/02/2017 CX dated 10.03.2017 issued by the Central Board of Excise and Customs wherein it was clearly stated that extended period of limitation can be invoked by the Revenue when there are ingredients necessary to justify the demand for extended period in a case leading to short payment or non-payment of tax. In support of the above, upon the judgment of Apex Court in the case of M/s Cosmic Dye Chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)]. The Respondent ought to have considered that the department in the present case issued the SCN without complying with the instruction laid down in the aforesaid Circular. In this regard it is submitted that the aforesaid Circular is binding on the department in terms of settled position upheld by the Apex Court in a series of decisions including the following decisions:
- Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries (2008 (231) ELT 22 (SC)).



- Kalyani Packaging Industry vs. Union of India (UOI) (2004 (168) ELT 145 (SC))
 - Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries [2002 (139) ELT 3 (SC)]
- The Respondent ought to have considered that the Show Cause notice in the current proceedings was issued by invoking extended period of limitation of 5 years by alleging that the Applicant had suppressed the information with the intent to evade payment of tax. In support of the above, they relied upon the following case laws:
- Pahwa Chemicals Private Limited Vs. CCE Delhi [2005 (189) E.L.T. 257 (S.C.)]
 - Anand Nishikawa Co. Ltd. vs. CCE, Meerut [2005 (188) E.L.T. 149 (S.C.)]
 - CCE Daman (Vapi) Vs. Mafatlal Industries Ltd. [2009 (245) E.L.T. 265 (Tri. Ahmed.)]
- It is submitted that the extended period of limitation cannot be invoked where there is a bona fide belief that Service tax was not payable. Reliance in this regard is placed on the following decisions.
- Secretary, Town Hall Committee vs. CCE [2007 (8) STR 170 (Tri-Bang)]
 - Bharat Aluminium Co. Ltd. vs. CCE [2007 (8) STR 27 (Tri Delhi)]
 - Bindas Duplex Ltd. vs. CCE [2007 (7) STR 561 (Tri-Delhi)] Homa Engineering Works vs. CCE (2007 (7) STR S546 (Tri Mum)]
- Penalty ought not to have been imposed under Section 78 of the Finance Act in light of the above. There is no instance of fraud, collusion, willful misstatement or suppression on the part of the Appellant.



- In terms of Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, the assessee was required to file half yearly returns for the months covered in the half yearly return by 25th of month of following month. Accordingly, return for the period of 01.04.2015 to 30.09.2015 was required to be filled on or before 25th October 2015. Accordingly, the SCN issued for first half of the F.Y. 2015-16 was required to be issued on 25.10.2015. In the present case, the SCN was issued on 26.12.2020 and therefore, it is beyond the period of 5 years. Accordingly, demand for the first half of the year ought not to have been confirmed.
- The Respondent erred in imposing equal amount of service tax under proviso to Section 78(1). The proviso of Section 78(1) says that maximum amount of penalty should be 50% of the service tax in a case where the details relating to the transactions are recording in the specified records for the period beginning with 08.04.2011. Specified records has been defined in Explanation 2 of Section 73(1) which is as under:-

For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.
- The Appellant submitted that they declared all the income in his books of Account. The Appellant declared the income in their specified records and therefore, the Respondent ought not to have imposed penalty equal amount of tax.
- The Appellant erred in imposing penalty under Section 77(2). The appellant has not contravened any of the provisions and



therefore, Penalty under Section 77(2) ought not to have been imposed.

5. Personal hearing in the case was held on 14.08.2023. Ms. Shewta Garge, Advocate, appeared on behalf of the appellant for personal hearing and handed over original submissions in the form of compilation of case law and circular relied by them. She reiterated the contents in the appeal. She submitted that the appellant was under bonafide belief that the service provided by them regarding composition of Music falls under exemption, for that, they have never collected service tax from the government separately. In the absence of any suppression and due to bonafide belief regarding the exemption, she contended that extended period cannot be invoked. She relied upon the circular and various case laws. Therefore, she requested to set aside the impugned order on the ground of limitation.

6. 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 1 day and take up the appeal on the merit.

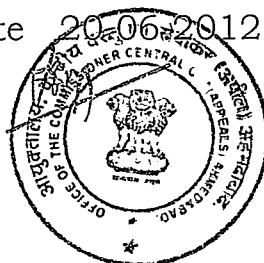
7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether 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.

8. 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.

9. Whether the appellant are liable to pay service tax on differential income arrived due to reconciliation of Income declared by the Appellant in Service Tax Returns and ITR data provided by Income Tax Department, in context of which the Appellant has held that the present demand on differential Income of Rs. 25,64,519/- pertains to Musical services provided to the Government Department and others and received consideration thereon. The Appellant submitted that they are engaged in profession of music composition and direction and provided service to Government of Gujarat/ Central Government as music director and as judge of various folk and cultural musical events organized by the government. The Appellant claimed that they had been performing professional activities with various departments of the government and received professional fees. Going through the P & L Account and Professional Income, Sales professional-1 ledgers account, I find that the income has been received by the appellant against the service provided to Government of Gujarat and Door Darshan Kendra, however nowhere does it clarify that the appellant had provided service which could be exempted under notification No. 25/2012-ST dated 20.06.2012. The appellant has stated they were entitled to take benefit of exemption provided at St. No 8 and 10 of the Notification No. 25/2012-ST date 20.06.2012 as service



provided by them to government is exempted. For ease of reference I reproduce the relevant provision of Sr. No. 8 and 10 of the Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 06/2015 dated 01.03.2015 (effective from 01.04.2015), which reads as under:

Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

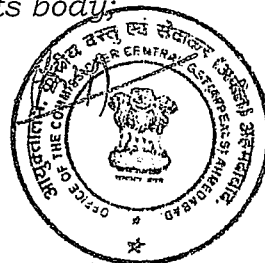
3.....

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

10. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;

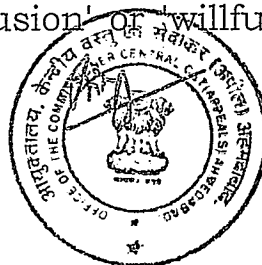
(b) another recognized sports body;



10. Reading the aforesaid provision it is very much clear that the service provided by the appellant does not fall under the Sr. No. 8 and 10 of the Notification No. 25/2012-ST dated 20.06.2012 as amended accordingly the service provided by the appellant is taxable and therefore I uphold the demand as justifiable and sustainable on merits.

11. On the issue whether Show Cause Notice for the period 01.04.2015 to 31.03.2016 was issued beyond the period of 5 years as the due date of filing of first half of ST-3 Return was 25th October 2015, the contention of the appellant is that as the SCN was issued on 26.12.2020 it is beyond the period of 5 years limitation and demand of the first half of the year ought not to have been confirmed by the adjudicating authority. I do not find so because in terms of relaxation provision of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government had extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the period from 20th March, 2020 to 29th September, 2020, the same shall stand extended to 31st March, 2021. In the instant case, the due date for issuing SCN was 25th October, 2020, but the same was issued on 26th December 2020. Considering the relaxation provided vide above Ordinance in the time limit for issuance of SCN, I find that the notice covering the period from April-2015 to September, 2015 was issued well within extended period of limitation of five years and is legally sustainable under proviso to Section 73(1) of the Finance Act, 1994.

12. I find that the penalty imposed under Section 78, is also justifiable as it provides penalty for suppressing the value of taxable services. The crucial words in Section 78(1) of the Finance Act, 1994, are 'by reason of fraud or collusion' or 'willful misstatement'



or 'suppression of facts' should be read in conjunction with 'the intent to evade payment of service tax'. The Hon'ble Supreme Court in case of Union of India v/s Dharamendra Textile Processors reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find it is the responsibility of the appellant to correctly assess and discharge their tax liability. The suppression of taxable value, nonpayment and short payment of tax, clearly show that they were aware of their tax liability but chose not to discharge it correctly instead tried to mislead the department which undoubtedly bring out the willful mis-statement and fraud with an intent to evade payment of service tax. Thus, if any of the circumstances referred to in Section 78 of the Act are established, the person liable to pay duty would also be liable to pay a penalty equal to the duty so determined.

13. When the demand sustains there is no provision of escape from interest under section 75 of the Act and Appellant failing to pay service tax on the taxable service are liable to pay the tax along with interest at the applicable rate such willful suppression automatically attracts mandatory penalty.

13. Accordingly, in view of my foregoing discussions and finding, the impugned OIO is upheld and the appeal filed by the appellant stands rejected in above terms.

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

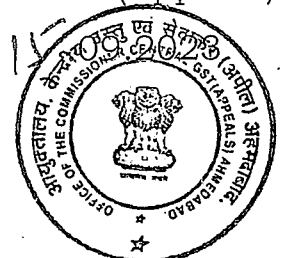
The appeal filed by the appellant stands disposed of in above terms.

Shiv Pratap Singh
15/9/23

(Shiv Pratap Singh)

Commissioner (Appeals)

Date : 15/9/23



Attested

(Signature)
 (Anrendra Kumar)
 Superintendent(Appeals)
 CGST Ahmedabad.

By RPAD / SPEED POST

To,

M/s. Nishith Pramod Mehta,
 D-16, Jayanmt Smruti
 Rajhans Society,
 St. Xavier's College Corner,
 Ellisbridge, Ahmedabad 380 006

Appellant

The Assistant Commissioner,
 CGST, Division-VI,
 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

