आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 – टेलेफैक्स07926305136

DIN: 20230964SW00000580D6

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1595/2023 /6182 – 86

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-129/2023-24**
दिनाँक Date : **18-09-2023** 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/WSO7/O&A/OIO-170/AC-RAG/2022-23 दिनाँक: **07.11.2022** passed by The Assistant Commissioner, CGST, Division VII, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Ravi Rao,
B-302, Baleshwar Square,
Nr. Vasupujya Tower,
Opp. Iscon Temple, S.G. Road,
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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 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.

1ण 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. Ravi Rao, B-302, Baleshwar Square, Nr. Vasupujya Tower, Opp. Iscon Temple, S. G. Road, Ahmedabad, Gujarat 380 015 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WS07/O&A/OIO-170/AC-RAG/2022-23 dated 07.11.2022 (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 were holding Service Tax Registration No. ADAPR2014CSD001. The Appellant were engaged in the Management or business consultant service, other taxable service-other than 119 listed. The records/documents of the appellant for the F.Y. April- 2014 to June-2017 were scrutinized by the officers of Central Tax Audit, Ahmedabad in the course of which the following Revenue Paras remained unsettled.

2.1. **Revenue Para 1 :** Ineligible CENVAT Credit of Input Service for Car Rental and personal Car Service and Other ineligible credit in terms of Rule 2(1) of CENVAT Credit Rules, 2004.

2.2. **Revenue Para 2:** Reconciliation difference between the income shown in all the income ledgers/trial balance and total income shown in the ST-3 Returns.

2.3 The appellant were subsequently issued Show Cause Notice bearing No. 145/2019-20 dated 04.10.2019 from F.No.VI/1 (b)-353/C-IV/Audit/AP-24/2018-19 wherein recovery of demand was proposed Revenue Para wise which is shown as under:

a) **Revenue Para 1:** (i) Demand and recover an amount of Rs. 11,154/- under the proviso to Sub Section (1) of Section 73 of the

Finance Act, 1994 (hereinafter referred to as *'the Act'*) read with the Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 (hereinafter referred to as *'the Cenvat Rules'*).

(ii) Demand and recover interest amounting to Rs. 5,709/- under section 75 of the Act read with the Rule 14(1)(i) of the Cenvat Rules on the Cenvat amount of Rs. 11,154/-.

(iii) Impose penalty under the provisions of 78(1) of the Act read with the Rule 15(3) of the Cenvat Rules.

b) **Revenue Para 2:** (i) Demand and recover an amount of Rs. 1,64,818/- under the proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 (hereinafter referred to as *'the Act'*) read with the Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 (hereinafter referred to as *'the Cenvat Rules'*).

(ii) Demand and recover interest amounting to Rs. 1,03,821/- under section 75 of the Act read with the Rule 14(1)(i) of the Cenvat Rules on the Cenvat amount of Rs. 1,64,818/-.

(iii) Impose penalty under the provisions of 78(1) of the Act read with the Rule 15(3) of the Cenvat Rules.

3. The SCN was adjudicated vide the impugned order wherein the adjudicating authority had passed the order Revenue Para wise as under:

a) **Revenue Para 1:** (i) The demand of service tax amounting to Rs. 11,154/- was confirmed under the proviso to Sub Section (1) of Section 73 of the Act read with the Rule 14(1)(ii) of the Cenvat Rules. As the Service tax of Rs. 11,154/- was paid by the appellant the same was ordered to be appropriated.

(ii) Demand and recover interest amounting to Rs. 5,709/- was confirmed under section 75 of the Act.

(iii) Penalty amounting to Rs. 11,154/- was imposed under the provisions of 78(1) of the Act.

b) **Revenue Para 2: :** (i) The demand of service tax amounting to Rs. 1,64,818/- was confirmed under the proviso to Sub Section (1) of Section 73 of the Act read with the Rule 14(1)(ii) of the Cenvat Rules. As the Service tax of Rs. 1,64,818/- was paid by the appellant the same was ordered to be appropriated.

(ii) Demand and recover interest amounting to Rs. 1,03,821/- was confirmed under section 75 of the Act.

(iii) Penalty amounting to Rs. 1,64,818/- was imposed under the provisions of 78(1) 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:

- With respect to Revenue Para 02 service tax liability Rs. 1,64,818/- which was raised on account reconciliation of income shown in income ledgers/trial balance and income shown in ST-3 Returns as tabulated under. The same already paid under protest by the appellant are liable to be refunded on the basis of following ground:

Financial Year	Differential value	Service Tax Liability
2014-15	3,53,191	43,654
2015-16	2,61,373	37,899
2016-17	4,62,360	69,354
2017-18	92,735	13,910
Total	**11,69,659**	**1,64,818**

- The appellant submitted that the income of Rs. 3,53,191/- received in F.Y. 2014-15 was against export of service rendered to M/s Antarc Ltd., Kenya for value USD 5,975.00. The remittance of USD 5975.00 for such service was not received directly in the account of the appellant due to some technical error in the bank account of the appellant. On the direction of the appellant M/s Antarc Ltd. Kenya remitted the amount in the bank account of M/s Astro Vaastu Research Centre. Subsequently, after receiving the said export proceeds of USD 5975.00 from M/s Astro Vaastu Research Centre the appellant had accounted Rs. 3,49,221/- of the F.Y. 2014-15 under ledger "Export Lecture Fees" which is not other than export to M/s Anrarc Ltd., Kenya. Since the service tax is not liable to be paid on Export of Service in terms of Section 66B of the Act read with the Rule 6(A) of the Service Tax Rule, 1994.

- With respect to total income of Rs. 8,16,468/- (Rs. 2,61,373/- for F.Y. 2015-16, Rs. 4,62,360 for F.Y. 2016-17, and Rs. 92,735 for April-2017 to June-2017), the appellant submitted that these were received as re-imbursement of the expenditure incurred on behalf of service recipient, as pure agent. The said re-imbursement was accounted as an income in books of accounts, instead of netting off with the respective expenses. Therefore the amount of Rs. 8,16,468/- recovered from service receiver on account of "Pure Agent" would not be under the net of liability of Service Tax.

- Demand of Service Tax and other proposals deserves to be withdrawn as time barred as there is no justification in invoking larger period of limitation in this case.

- Plethora of judicial pronouncements have settle the law that no demand of service tax can be confirmed on the basis of amount is shown as receivables in the income tax returns In support of the above, they relied upon the following case laws:

- J.I. Jesudasan Vs. CCE 2015(38) S.T.R. 1099 (Tri. Chennai)
- Alpha Management Consultant P. Lt.d Vs. CCE 2007(5) STR 312 (Tri. Bang.)
- Turrent Industrial Secturity Vas. CCE 2008 (9)S.T.R. 564 (Tri. Kolkata)

➢ Since the appellant are not liable to make payment of service tax Interest under section 75 of the Act is not sustainable and liable to be dropped.

➢ Penalty under the provision of Section 78 of the Act is not imposable as the demand is beyond the normal period of limitation and therefore the same is not maintainable. 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. The appellant are of bonafide belief that they had not suppressed any facts with the intention to evade service tax. Every omission to disclose certain facts is not sufficient to invoke larger period of limitation on the ground of suppression of fact. 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.)]
- Ispat Industries Ltd. Vs. CCE-2006(199) E.L.T. 509m (T)
- Pushpam Pharmaceuticals Company Vs. CCE 1995 (78) E.L.T. 401 (SC)
- CCE Vs. Chemphar Drug and Liniments 1989 (40) E.L.T. 276 (SC)

➢ Extended period of limitation is not invocable in the present case in terms of section 73(1) of the Act and therefore demand is not sustainable. The Appellant have not suppressed any facts from the department and are therefore bonafide.

5. Personal hearing in the case was held on 18.08.2023 Shri Sourabh Singhal, CA, appeared on behalf of the appellant for personal hearing reiterated the submission in the appeal. He submitted that the appellant provided management consultancy service to foreign customer during F. Y. 2014-15, which being export of services income should be excluded from the taxable value. The remaining income relates to reimbursement of the expenses incurred by the appellant while travelling and delivering lectures relating to management service. Therefore, I requested to set aside the impugned order and to allow the appeal.

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 29 days 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 (already paid and appropriated) along with interest and penalty in respect of **Revenue Para 1:** Ineligible CENVAT Credit of Input Service for Car Rental and personal Car Service and Other ineligible credit in terms of Rule 2(1) of CENVAT Credit Rules, 2004,

and in respect of **Revenue Para 2:** During the Audit period April-2014 to June-2017 reconciliation difference between the income shown in all the income ledgers/trial balance and total income shown in the ST-3 Returns, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. April- 2014 to June-2017.

8. It is observed that the adjudicating authority confirmed the demand of Rs. 1,64,818/- under section 73(1) of the Act and ordered to appropriate the same with the service tax liability along with interest of Rs. 1,03,821/- under section 75 of the Act and penalty of Rs. 1,64,818/- under section 78 of the Act proposed under SCN (supra) on the issue raised against the Revenue Para 1 by the auditors for the period F.Y. April- 2014 to June-2017 in absence of any evidence produced by the appellant. The demand of Rs. 1,64,818/- during F.Y. 2014-15 to June 2017 is once again reproduced as under:

Financial Year	Differential value	Service Tax Liability
2014-15	3,53,191	43,654
2015-16	2,61,373	37,899
2016-17	4,62,360	69,354
2017-18	92,735	13,910
Total	11,69,659	1,64,818

9. Whether the order by the adjudicating authority in respect to confirming the demand of service tax and appropriating the same is legal, in context of which the Appellant submitted that during F.Y. 2014-15 the appellant has made export of service to M/s Antarc Ltd., incorporated in Kenya for value USD 5975.00 in the month of April 2014 on account of professional charges for lecture rendered by the appellant. The Appellant had submitted that the services rendered could not have been subjected to payment of service tax, as they were in the nature of export of service in terms of Section

66B of the Act read with the Rule 6(A) of Service Tax Rule, 1994. For ease of reference I reproduce the provision of 66B of the Act and Rule 6(A) of Service Tax Rule, 1994.

> *Section 66B: There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed;*

> *Rule 6(A) Export of Services. – (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, - (a) The provider of service is located in the taxable territory, (b) The recipient of the service is located outside India, (c) The service is not a service specified in the section 66D of the Act, (d) The place of provision of the service is outside India, (e) The payment for such services has been received by the provider of service in convertible foreign exchange, and (f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.*

10. Reading the aforesaid provision and conditions specified in Rule 6(A) required for the qualification of export of service and documents submitted by the appellant it is very much clear that the appellant are located in Taxable Territory; Recipient is located outside India; Service provided by the appellant are not specified in Section 66D of the Act; Place of provision of service is outside India; the payment for service rendered had been received by the appellant in convertible foreign exchange; the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act. Thus I am of the considered view that the said amount of Rs. 43,654/- in F.Y. 2014-15 confirmed and appropriated by the adjudicating authority is only the consideration received on

account of export of service rendered by the appellant and demand of Rs. 43,654/- in F.Y. 2014-15 is legally wrong and not sustainable.

11. In context to the demand confirmed and appropriated by the adjudicating authority against the proposed demand in SCN (supra) for the period F.Y. 2015-16 to June 2017, I find that the appellant had earened income as a re-imbursement for expenditure incurred on account of "Pure Agent" which would not be considered as taxable service. It is undisputed fact that the appellant are Pure Agent which is verified by the mentioned para-12 of SCN (supra) which is reproduced as under:

> *"12. For the subsequent years i.e. from 2015-16 to April to June 2017 it was found that the difference in reconciliation was due to non-payment of tax on travel re-imbursement from the clients"*

12. It is also observed that in terms of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 the the expenditure incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service. Considering the above facts and provision I find that the amount of Rs. 8,16,468/- recovered from service receiver on account of pure agent would not be considered as taxable service. Thus I am of the considered view that the service tax amount of Rs. 1,21,163/- on re-imbursement for expenditure for F.Y. 2015-16 to June 2017 confirmed and appropriated by the adjudicating authority is legally wrong and not sustainable.

13. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of revenue neutrality and limitation raised by the appellant. When the demand fails to survive, there does not arise any question of interest or penalty in the matter. It is directed to adjudicating authority to grant refund of Rs. 1,64,818/- already paid by the appellant under protest.

14. Coming to the demand of Rs. 11,154/- confirmed by the adjudicating authority under section 73(1) of the Act and ordered to appropriate the same with the service tax liability along with interest of Rs. 5,709/- under section 75 of the Act and penalty of Rs. 11,154/- under section 78 of the Act proposed under SCN (supra) on the issue raised against the Revenue Para 2 by the auditors for the impugned period I find that the appellant has not submitted any grounds in counter to the order by the adjudicating authority and the appellant are not disputing the demand of Rs. 11,154/- hence I consider that the appellant have accepted the said demand, they are required to deposit the entire amount of interest i.e. Rs. 5,709/- on the service tax which has already been paid by the appellant and penalty of Rs. 11,154/- imposed under Section 78 of the Act.

15. In the light of forgoing analysis, the impugned OIO is partly allowed.

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

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

18-9-23

(Shiv Pratap Singh)
Commissioner (Appeals)
Date : 18 .09.2023

Attested

(Amrendra Kumar)
Superintendent(Appeals)
CGST Ahmedabad.

By RPAD / SPEED POST

To,

M/s. Ravi Rao,, — Appellant
B-302, Baleshwar Square,
Nr. Vasupujya Tower,
Opp. Iscon Temple, S. G. Road,
Ahmedabad, Gujarat 380 015

The Assistant Commissioner, — Respondent
CGST, Division-VII,
Ahmedabad South

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