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

सत्यमेव जयते

NATION TAX MARKET

DIN: 20231064SW0000414464

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1232/2023 / 6457 - 75

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-139/2023-24**
दिनाँक Date : **25-09-2023** जारी करने की तारीख Date of Issue 03.10.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of OIO No. 159/WSO8/AC/KSZ/2022-23 दिनाँक: **16.12.2022** passed by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Jayrambhai Shivabhai Makwana,
GF 1 A2, Om Shivalay Society,
Opposite Ishwar Amikrupa Society,
Vejalpur, Ahmedabad-380051.

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 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. 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.**

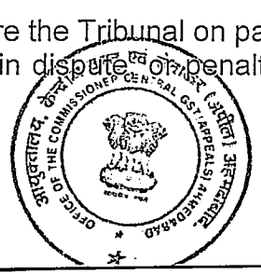
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Jayrambhai Shivabhai Makwana, GF1 A2, Om Shivalay Society, Opposite Ishwar Amikrupa Society, Vejalpur, Ahmedabad – 380051 (hereinafter referred to as "the appellant") against Order-in-Original No. 159/WS08/AC/KSZ/2022-23 dated 16.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VIII, 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. AMCPM9686QSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 34,39,598/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, 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. CGST/WS0802/ O&A/TPD(15-16)/AMCPM9686Q/2020-21/5370 dated 21.12.2020 demanding Service Tax amounting to Rs. 4,98,741/- for the period 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 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. 4,98,741/- 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 2015-16. Further (i) Penalty of Rs. 4,98,741/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

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

- The appellant are engaged into providing manpower supply service and also engaged in the providing construction services.

- During FY 2015-16, Turnover of the appellant mentioned in Service tax returns is Rs. 1,34,89,825/- and as per Income tax return is 1,60,76,467/-. The difference in turnover between ITR and STR is 25,86,642/-, out of which manpower supply services on which Service Tax is payable under Reverse Charge Mechanism by the recipient of Service is Rs.19,86,543/- and on the balance amount of Rs. 6,00,099/- Service Tax had already been paid at the rate of 14.5% i.e. Rs. 87,000/-. Since there was delay in payment of service tax, the appellant had also paid applicable interest amounting to Rs. 4,676/- vide Challan having Serial No. 00192 dated 18.07.2016.

- The appellant submitted that turnover as reflected in Form 26AS cannot be the base to determine the liability of service tax. In their case, the turnover reported in 26AS are higher than actual turnover, since many of their suppliers have deducted TDS on Invoice Amount (i.e. Basic Value plus Service Tax), rather than deducting only on the basic amount. Their correct turnover is reflected in their books of accounts; which they have already shown in their Income Tax Return as well as Service Tax Returns.

- The adjudicating authority has treated the difference between the turnover as per 26AS and that of Service Tax Returns as short payment / evasion of tax liability by the appellant, without simply looking into or examining the reasons for difference between the two on his own. As such, there is no difference between the turnover reported in Books of Accounts of the appellant and turnover declared in Service Tax Returns. Some of the parties of the appellant, to whom it provides services, have incorrectly reported turnover while filling their TDS Returns. They had deducted tax at source on full Invoice Value (i.e. Basic Value plus Service Tax), rather than deducting it only on the Basic Value. As a result of this, the turnover reflected in 26AS is higher then the actual turnover. Hence, there is no additional tax liability of the appellant, apart from that which has already been disclosed in the service tax returns and on which tax has already been deposited.

- The appellant have submitted the reconciliation of the same, which is as under:

Particulars	Turnover as per STR	Turnover as per ITR	Difference
Turnover	1,34,89,825/-	1,60,76,467/-	25,86,642/-
Income on which ST is	19,86,543/-	-	19,86,543/-

payable by recipient under Reverse Charge Mechanism			
Total	1,54,76,368/-	1,60,76,467/-	6,00,099/-
Service Tax @ 14.5%			87,000/-
Interest paid on ST			4,676/-
Total amount paid			91,676/-
Challan No. & Date			192 dated 18.07.2016

- They have submitted challan dated 18.07.2016 along with appeal memorandum. They have also submitted copy of invoice showing TDS on Basic plus Service Tax amount, Income Tax Return, Profit & Loss Account, Balance Sheet, Service Tax Return and Form 26AS for the FY 2015-16 along with appeal memorandum.

- The appellant submitted that it is trite law that figures of Form 26AS cannot be used for determining the Service Tax liability unless there is an evidence to substantiate that it was received for taxable service. In this regard they relied upon the following case laws:

  a) Kush Constructions Vs. CGST NACIN – 2019 (34) GSTL 606
  b) Synergy Audio Visual Workshop Pvt. Ltd. Vs. Commissioner of Service Tax Bangalore – 2008 (10) STR 578
  c) CCE Ludhiana Vs. Deluxe Enterprises – 2011 (22) STR 203

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 16.12.2022 and received by the appellant on 16.12.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 22.02.2023, i.e. after a delay of 6 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the the appellant was not in the town and he had gone to his native village to perform some social commitments, thus and there is delay in filing of appeal.

4.1 Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, 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 given in application as genuine, I condone the delay of 6 days and take up the appeal for decision on merits.

5. Personal hearing in the case was held on 28.08.2023. Shri Utkarsh Desai, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submissions made in appeal memorandum. He submitted that the appellant provided labour services to corporate, where the tax liability was on the recipient of service on reverse charge basis. All the supporting documents have been attached with the appeal. He requested to set aside the impugned order.

5.1 The appellant vide their letter dated 13.09.2023, submitted additional documents viz. income ledgers, another challan dated 06.02.2016 for payment of service tax of Rs. 6,583/- in the Manpower Supply Service, copies of ST-3 returns for the FY 2015-16 & FY 2016-17

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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.

7. It is observed that the main contentions of the appellant are that (i) they have paid applicable service tax and there is no amount required to be paid by them; (ii) the difference between ITR and STR are related to Manpower Supply Services provided by them on which service tax is payable by the recipient on Reverse Charge Mechanism basis; and (iii) the turnover reported in Form 26AS are higher than actual turnover as per P&L Account and ITR, due to reason that many of their suppliers have deducted TDS on Invoice Amount (i.e. Basic Value plus Service Tax), rather than deducting only on the basic amount.

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

8. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 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 26.10.2021, 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."*

8.1 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, specifically in the present case, where the appellant is already registered with the service tax department, filed their ST-3 Returns regularly.

9. On verification of the documents submitted by the appellant, it is observed that the amount on which the TDS under Section 194C has been deducted is Rs. 1,69,29,423/- as per Form 26AS, whereas the turnover of the appellant is Rs. 1,60,76,467/- as per the ITR, P&L Account and Income Ledger. On verification of the sample invoice, income ledger and Form 26AS, submitted by the appellant, I find that the difference due to some of the customer of the appellant had deducted tax at source on full invoice value i.e. inclusive of service tax instead of on basic invoice vale. Thus, I find that the actual turnover of the appellant is Rs. 1,60,76,467/- as reflected in the ITR, P&L Account and Income Ledger for the FY 2015-16.

9.1 On verification of the Profit & Loss Account for the FY 2015-16, I find that the appellant earned total income of Rs. 1,60,76,467/- during the FY 2015-16, out of which Rs. 1,40,89,822/- shown by them as Construction Service and Rs. 19,86,645/- shown as Manpower Supply Service. On verification of the income ledger for Manpower Supply Service, I also find that the appellant had provided services amounting to Rs. 17,94,525/- to

the clients, viz. Nila Infrastructure Ltd. and Gala Infrastructure Pvt. Ltd., both the entity registered as Body Corporate and therefore, the service tax liability were on them as per provisions of Reverse Charge Mechanism in the Notification No. 30/2012-ST dated 20.06.2012.

9.2 On verification of the Service Tax Return for the FY 2015-16 filed by the appellant, I find that the appellant filed the Service Tax Returns in form ST-3 for the category of Construction of Residential Complex Services and Manpower Supply Services. However, the appellant shown the Gross Taxable Income of Rs. 1,34,89,825/- only in the category of Construction of Residential Complex Services and paid appropriate Service Tax on the same. The appellant not shown any income form Manpower Supply Services in their ST-3 Returns. The quarter wise breakup of taxable income shown by the appellant is as detailed below:

April-15 to June-2015	:	Rs. 29,99,950/-
July-15 to September-2015	:	Rs. 17,57,830/-
October-2015 to December-2015	:	Rs. 39,89,777/-
January-2016 to March-2016	:	Rs. 47,42,268/-
Total	:	Rs. 1,34,89,825/-

9.3 I also find that the appellant submitted a challan dated 18.07.2016 for payment of Service tax of Rs. 87,000/- along with interest of Rs. 4,676/- in respect of Construction service and a challan dated 06.02.2016 for payment of Service tax of Rs. 5,921/- along with interest of Rs. 662/- in respect of Manpower Supply service along with the appeal memorandum. The appellant submitted they have paid the service tax on differential amount as and when noticed, however, the said challans not reflected in their ST-3 returns. Hence, there is no additional tax liability on the appellant arise, apart from that which has already been disclosed in the service tax returns and on which tax has already been deposited vide the aforesaid two challans.

9.4 In view of the above, I find that the appellant have paid applicable service tax at the material time, and the difference arise in the ITR and STR due to they have not shown two challans and respective taxable value in their ST-3 returns for the said period.

10. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax amounting to Rs. 4,98,741/- in respect of FY 2015-16, is not legal and proper and deserve to be set aside. When the demand fails, there does not arise any question of charging interest or imposing penalty in the case. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. 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.

25-9-23

(Shiv Pratap Singh)
Commissioner (Appeals)

Attested

Date : 25-9-23

Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Jayrambhai Shivabhai Makwana,
GF1 A2, Om Shivalay Society,
Opposite Ishwar Amikrupa Society,
Vejalpur, Ahmedabad – 380051

Appellant

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