



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: 20231164SW000000FC36

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1550/2023 / १०११ - १३.
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-160/2023-24**  
दिनांक Date : 31-10-2023 जारी करने की तारीख Date of Issue 07.11.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. 140/WSO8/AC/KSZ/2022-23 दिनांक: 15.12.2022 passed by The Assistant Commissioner, CGST, Division VIII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**  
**M/s. Value Edge Solutions,**  
**F-2, Maruti Complex, Near Subhash Chowk,**  
**Memnagar, Ahmedabad-380052.**

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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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.

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.

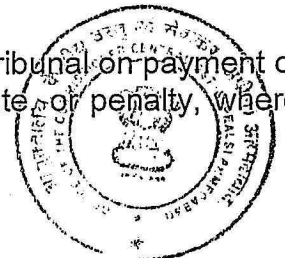
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Value Edge Solutions, F-2, Maruti Complex, Near Subhash Chowk, Memnagar, Ahmedabad, Gujarat-380052 (hereinafter referred to as "*the appellant*") against Order in Original No. 140/WS08/AC/KSZ/2022-23 dated 16-12-2022 hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division VIII, CGST Commissionerate Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, as per the information received from Income Tax Department the Appellant were engaged in providing service namely Professional (others) and were registered with Service Tax department under Service Tax Registration No. AAJFV5781CSD001. As per the information received from the Income Tax Department/TDS Returns and Service Tax Returns (ST-3) for the F.Y. 2015-16, it was found the gross value of sales of service was less declared in ST-3 Returns by the Appellant as compared to the sales of service declared in Income Tax Returns/TDS Returns. It appeared the Appellant had mis-declared the gross value of sales of service in the ST-3 Returns and thus short paid/not paid the applicable service tax. They were called upon to submit the documents, however, they failed to submit the required details / documents. Therefore, the Appellant were issued Show Cause Notice bearing No. CGST/WS0801/O&A/TPD(15-16)AAJFV5781C/2020-21 dated 21-12-2020, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 6,58,950/- under proviso to Sub Section (1) of Section 73 of the Act 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, and 78 of the Act.

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

a) The demand of service tax amounting to Rs. 6,58,950/- was confirmed under section 73(1) of the Act by invoking extended period of 5 years along with interest under section 75 of the Act.

b) Penalty amounting to Rs. 10,000/- was imposed under 77(2) of the Act for failure to assess the tax due on the service provided and failure to furnish ST-3 Return.

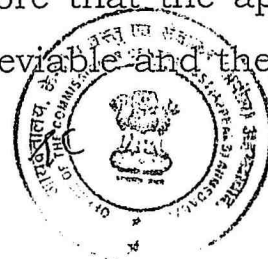
c) Penalty amounting to Rs. 6,58,950/- was imposed under 78 of the Act.

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

➤ The ld. Assistant Commisisoner erred in the Law as well as fact as the Ld. Assistant Commissioner has not considered the fact that the department Audit has been conducted for the financial year 2015-16 to June 2017 and there was no liability to pay the service tax during any of the year and more particularly for the FY 2015-16.

➤ The ld. Assistant Commissioner erred in the law by invoking extended period of limitation as stated in proviso to Section 73 of the Act. SCN covering period of five years is to be issue only when there is fraud, collusion, suppression of facts, willful mis-statements, with intent to evade payment of service tax. In support of the above, they relied upon the case CC Vs. MMK Jewellers (2008) 225 ELT 3 SC).

➤ Intention to evade payment of duty is not mere failure to pay duty it must be something more that the appellant must be aware that the duty was leviable and they must



deliberately avoid payment of duty. In support of the fact the appellant relied upon the case laws Padmini Products V. CCE 1989 (43) E.L.T. 195

- Intention to evade duty is built into the expression 'fraud and collusion', but misstatement and suppression is qualified with the word willful'. Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for invoking the proviso to section 11A- Sarabhai M Chemicals v CCE 2005 179 ELT 3 (SC 3 member bench).
- The SCN also does not clearly states how there is suppression of facts. In this regard, CBEC has issued Circular No. 312/28/97-CX dated 22/04/1997 which states that The Supreme Court has ruled in the case of M/s Padmini Products, and Chemphar Drugs, etc. that mere non-declaration is not sufficient for invoking the longer period, but a positive mis-declaration is necessary.
- The appellant submitted Circular No. 268/ 102/96-CX CBEC which states that

*It has been observed by the Board that CEGAT, in some cases, had held that show Cause Notice are time barred in as much as ingredients of suppression of fact, willful mis-statement, etc. have either not been stated in the SCN or have not been substantiated as laid down by the Supreme court in the case of Commissioner of Central Excise us. H.M.M. Ltd. -1995 (76) ELT 497. As per the existing instructions SCNs for extended period are required to be issued by the Commissioner. It is absolutely necessary that the SCNs should clearly state the grounds for extended period of demand.'*

- The Appellant further submitted that the Hon'ble Supreme Court in Rainbow Industries v CCE (1994) (74) ELT 3 SC = AIR 1994 SC 2783 have held that in order for the extended period to apply, apply, two ingredients must be present- willful suppression, mis-declaration etc. and



intention to evade duty. This judgment was followed in ONGC V. CCE-1995 (79) E.L.T. 117 (CEGAT)

➤ The impugned OIO passed by the ld. Assistant Commissioner arising out of SCN is required to be set aside as the same is vague in nature. In their support they relied upon the following cases laws;

- M/s Pepsi Food Private Limited Vs. C.S.T.-Delhi (2020(6) TMI 554-CESTAT Chandigarh.
- M/s Micromatic Grinding Technologies Ltd. Vs. CCE & ST, Ghaziabad [2019(8) TMI 320- CESTAT Allahabad.
- CCE Bangalore VS brindayan Beverages (p) Ltd. [2007 (6) TMI 4-S.C.
- CCE Vs. M/s Indian Oil Corporation CESTAT [2017 (6) TMI 573-Madras High Court.
- Mahindra & Mahindra V. CCE 2001 (129 E.L.T. 188 (CEGAT)

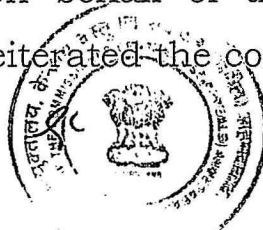
➤ The Impugned OIO passed by the Ld. Assistant Commissioner arising out of SCN is required to be set aside as the order so passed is not a speaking order. The appellant relied upon following case laws in support of the said facts:

- Aspinwall & Co. Ltd Vs. CCE Mangalore-2010(10)TMI 321 - CESTAT Bangalore
- Anil Products Ltd. Vs CCE Ahmedabad-II-2010 (2) TMI 662-Gujarat High Court.

➤ The Appellant submitted that as the extended period of limitation is not invocable in the present case on the basis of above mentioned paras the penalty under section 78 cannot be charged.

➤ The payment of interest is not required as the tax is not required to be paid.

5. Personal Hearing in the case was held on 09.10.2023. Shri Rohan Thakkar CA, appeal on behalf of the appellant appeared for personal hearing and reiterated the contents of the



written submission and requested to allow their appeal. He submitted Bank statement and reconciliation statement at the time of Personal Hearing.

6. The Appellant have submitted copy of (1) P & L Account for F.Y. 2014-15 and 2015-16 (2) Export Invoices (3) Mails in support of the evidence for the income received from the foreign service recipient (4) Bank statement showing the income has been received in foreign exchange.

7. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 6,58,950/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

8. 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 Act, 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. It is also not specified as to under which category of service, the non/short payment of service tax is alleged 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.





8.1 I find in 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."

8.2 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.

9. The Appellant submitted that CGST Audit Commissionerate, Ahmedabad has already conducted audit under EA-2000 for the period January- 2016 to June- 2017 and no objection was raised by the audit officers vide the issued Final Audit Report ST-883/2018-19-Service Tax dated 28.01.2019. Looking to the above contention of the Appellant, I have the considered view that the invocation of extended period is not legal and hence the impugned demand and recovery of service tax along with interest and penalty is not sustainable.

10. The adjudicating authority confirmed the demand of Service Tax in the impugned order ex-parte, as the appellant had not appeared for submission reply against the SCN before the



adjudicating authority. I find that the Appellant were engaged in the business of web designing service and were providing export of service as well as domestic service. On the basis of sales registers for the F.Y. 2014-15 and F.Y. 2015-16 submitted by the Appellant it is evident that the Appellant are having consideration of income from export of service and from the service provided in India, the figures are given as under:

Type of service	F.Y. 2014-15	F.Y. 2015-16
Export of Service	35,65,743/-	39,00,542/-
Domestic Service	9,97,492/-	13,06,702/-
Total	45,63,235/-	52,07,244/-

11. The Appellant were registered with Service Tax department from 04<sup>th</sup> January, 2016 and started filing ST-3 Return from the period October-2015 to March-2016. The Appellant have paid Service Tax after deducting the benefit of Rs. 10 lakhs from the taxable value earned from the service rendered in the taxable territory in the light of Notification No.33/2012-ST dated 20.06.2012. The adjudicating authority erred in confirming demand by deducting only the amount of Rs. 6,62,760/- reflected in ST-3 Return (October 2015 to March 2016) from gross value of Rs. 52,07,244/- as declared in ITR/TDS Return for F.Y. 2015-16. As such the adjudicating authority did not consider that the Appellant had earned the remaining amount of Rs. 6,43,942/- (Rs. 13,06,702 (-) Rs. 6,62,760) during April-2015 to September- 2015 from taxable service, which was also claimed as exempted income by the Appellant under Notification No. 33/2012-ST dated 20<sup>th</sup> June, 2012 . I find that their taxable service income for the preceding F.Y. 2014-15 was Rs. 9,97,492/- out of gross value amounting to 45,63,236/-, which is also below the threshold limit and therefore the Appellant are eligible for taking the benefit of threshold exemption on income of Rs. 9,97,492/- for the F.Y. 2014-15 and therefore not liable to pay Service tax in terms of Notification No. 33/2012-ST dated 20.06.2012 for F.Y. 2014-



15. For ease of reference Notification No. 33/2012-ST dated 20<sup>th</sup> June, 2012 are produced, which read as under:

**Notification No. 33/2012 - Service Tax**

*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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakhs rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:*

(i).....

(ii)-----

*(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakhs rupees in the preceding financial year.*

12. As regard to the income amounting to Rs. 39,00,542/- whether the appellant were liable to pay service tax thereon, in context of which the Appellant have contested that the this income pertains to Export of Service which are exempted under Rule 6A of the Service Tax Rule, 1994 and hence they were not showing the same in ST-3 Returns. For clarification extract of Rule 6A is reproduced as under:

*RULE 6A. (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 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 service 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 2 [Explanation 3] of clause (44) of section 65B of the Act*

*(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]*

13. In view of the above I find that the amount of 39,00,542/- was collected against the service in respect of software development to the various foreign service recipient. I have gone through invoice copies regarding service rendered outside the territory of India submitted in support of the export of service. Looking to the evidences in support of their submission provided by the Appellant I find that the Appellant, which are located in Taxable Territory are providing service, which are not specified in 66D of the Act to the recipient of service located outside India and for the service rendered by the Appellant they were collecting payment in convertible foreign exchange. Thus I am of the considered view that the said amount of Rs. 39,00,542/- in F.Y. 2015-16 is only the consideration received on account of export of service rendered by the Appellant and demand accordingly is legally wrong and not sustainable. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

14. Thus I find that the domestic supply of service amounts to Rs. 13,06,702/-. After deduction of value based exemption of Rs. 10 Lakhs, the taxable value comes to Rs. 3,06,702, on which tax has been paid. Audit has already been conducted by the department and no confirmed or unconfirmed demand or any tax liability has been found.

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

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

*G.C.J.*  
31.10.23

ज्ञानचंद जैन  
आयुक्त (अपील्स)

Date : 31.10.2023

Attested

*अमरेंद्र कुमार*

(अमरेंद्र कुमार)  
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

**BY RPAD/ SPEED POST**



To  
M/s. Value Edge Solutions,  
F-2, Maruti Complex,  
Near Subhash Chowk,  
Memnagar, Ahmedabad,  
Gujarat-380052

Appellant

The Assistant Commissioner  
CGST & Central Excise  
Division VIII, Ahmedabad.

Respondent

Copy to :

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

- ✓ 5. Guard File.
6. P.A. File.

