



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: 20231164SW000022402F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3148/2023 17-10-23-22
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-165/2023-24**
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. WSO7/O&A/OIO-224/AC-KSZ/2022-23 दिनांक: **04.01.2023** passed by
The Assistant Commissioner, CGST, Division-VII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Sahil Arun Parihar,
1/10 Parisharan Appartments,
Satellite, Ahmedabad.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) 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 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 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.

- 1^प 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.

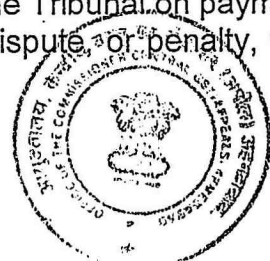
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

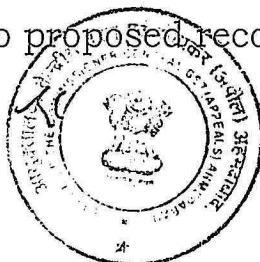


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Sahil Arun Parihar, 1/10, Parisharan Apartments, Satellite, Ahmedabad- 380015 (hereinafter referred to as "*the appellant*") against Order-in-Original No. WS07/O&A/OIO-224/AC-KSZ/2022-23 dated 04.01.2023 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the Appellant are holding PAN No. ASMPP5414F. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Years 2014-15 and 2015-16, it was noticed that the Appellant had earned an income of Rs. 15,07,500/- during the F.Y. 2014-15 and Rs. 17,33,290/- during the F.Y. 2015-16, which were reflected under the heads "Sales of Services under Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" filed with the Income Tax department. Accordingly, it appeared that the Appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The Appellant were called upon to submit copies of Balance Sheet, Profit & Loss Accounts, Income Tax Return, Form 26AS, 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. V/WS07/O&A/SCN-298/ASMPP5414F/2020-21 dated 29.09.2023 demanding Service Tax amounting to Rs. 4,46,321/- (Rs. 1,86,327/- for the period FY 2014-15 + Rs. 2,59,994/- 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(1) & 77(2) 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. 4,46,321/- 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 from F.Y. 2014-15 and 2015-16. Further, Penalty of Rs. 4,46,321/- was also imposed on the appellant under Section 78 of the Finance Act, 1994, Penalty of Rs. 10,000/- was imposed Section 77(1) of the Finance Act, 1994, 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 on the following grounds:

- The Appellant were engaged in providing the service as a business facilitator to the bank, the said service was eligible for exemption Notification No. 25/2012-ST dated 20.06.2012. The relevant extract of the said notification is 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 number 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,



29. Services by the following persons in respective capacities

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- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) ****;
- (d) ****;
- (e) ****;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to an insurance company in a rural area; or**
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

- Further, as per the said Notification, the definition of business facilitator is given as under:

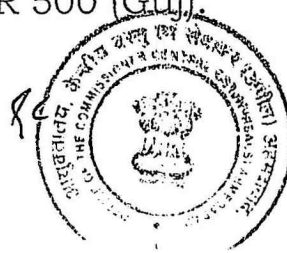
(i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

- Thus, from the above it is clear that the Appellant were exempt from service tax for the services provided by them as a bank facilitator to the banking company. So, the Appellant requested to drop the proceeding in the interest of law and justice. The Appellant also rely on the following case law;

- (i) 2013(31)STR 673 (Tri. Bang.) in the CESTAT, South-Zone Bench, Bangalore
- (ii) 2010 (20) STR 789 (Tri. Mumbai) in the CESTAT, West Zonal Bench, Mumbai



- (iii) 2010 (19) STR 242 (Tri. Ahmedabad) in the CESTAT, West Zonal Bench, Ahmedabad
- (iv) 2009(16)STR 63 (Tri. Chennai.) in the CESTAT, South-Zone Bench, Chennai
- (v) 2013 (30) STR 62 (Tri. Ahmd.) in the CESTAT, West Zonal Bench, Ahmedabad
- From above, the department has not taken factual fact in account & raised the demand of service tax, which has not been demandable & justifiable, so notice for the demand of service tax has to be quashed/dropped.
 - The Appellant submitted that the Show Cause Notice covers the period of 01.04.2014 to 31.03.2016 and the SCN has been issued on 29.09.2020. Thus the Show Cause Notice has invoked the extended period of limitation.
 - Further, the extended period of limitation cannot be invoked in the present case since there is no suppression, wilful misstatement on the part of the Appellant.
 - The Appellant submitted that the Show Cause Notice has not given any reason whatsoever for imposing the penalty under Section 78 of the Act. The Show Causes Notice merely alleging baldly that there is suppression on the part of the Appellant. The present notice has not brought any evidence/fact which can establish that the Appellant have suppressed anything from the department. Hence no case has been made out on the found of suppression of facts or wilful misstatement of facts with the intention to evade the payment of Service Tax. Hence penalty under section 78 of the Act cannot be imposed. The Show Cause notice is liable to be dropped on this ground also. The Appellant rely on Hon'ble Gujarat High Court decision in case of Steel Cast Ltd. 2011 (21) STR 500 (Guj).



- The Appellant submits that the penalty under Section 77 is not impossible since there is no short payment of Service Tax. As per the merits of the case, the Appellant are not liable for payment of Service Tax.
- It is a settled principle of law that if a dispute is arising out of interpretation of the provisions of statute or exemption notification, no penalty can be levied. If at all it is held that the service tax is payable as demanded by the Show Cause notice, then also it can be said that it is a dispute arising out of interpretation of the provisions of the law and not because of any intentional avoidance of tax. The appellant place reliance on the following case laws in this regard:

(a) Bharat wagon & Engg. Co. Ltd. Vs Commissioner of C.Ex., Patna (146) ELT 118.

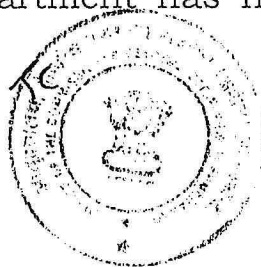
(b) Goenka Woollen Mills Ltd. Vs. Commissioner of C. Ex., Shillong, 2001 (135) ELT 873.

(c) Bhilwara Spinners Ltd. Vs Commissioner of Central Excise, Jaipur, 2001 (129) ELT 458.

- The Appellant prayer that the drop the demand of Service Tax 4,46,321/- and interest thereon and penalty, any other relief deem fit in this case.

3.1 The Appellant in their additional submission dated 10.10.2023, inter alia, made the following submission:

- The Appellant submitted that the department has computed demand of Service Tax for the period of 2014-15 & 2015-16 on the basis of income tax return data. Against which the appellant wants to state that while considering the income with books of accounts, the department has not taken into



factual details regarding the appellant was providing service of bank facilitator to the banking company which was exempt from service tax vide Sr. o. 29(g) of mega exemption notification no. 25/2012-ST dated 20.06.2012. Without considering the factual details, the department has raised the demand which is not justifiable at all.

- The Show Cause Notice covers the period of 01.04.2014 to 31.03.2016. The show cause notice has been issued on 29.09.2020. Thus, the Show Cause Notice has invoked the extended period of limitation.

4. Ongoing through the appeal memorandum, it is noticed that the impugned order was issued on 04.01.2023. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 06.03.2023, i.e. after a delay of 02 days from the last date of filing appeal. The Appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the delay was due to some problem in generating pre-deposit challan of Service Tax and thereby the appeal was filed on 06.03.2023 with delay of **02 days**.

4.1 Personal hearing in the case was held on 21.08.2023, 01.09.2023 and 11.09.2023 Due to change in Appellate authority next Personal hearing in the case was held on 10.10.2023. Shri Vipul Khandhar, CA, Authorised person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He reiterated the contents of the written submission and requested to allow their appeal. He further submitted additional submission.

4.2 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 dates 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 **02 days** and take up the appeal for decision on merits.

5. 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 2014-15 and 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 and F.Y. 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."

6.1 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 rising of demand of service tax.

7. I find that the Appellant have contended that the department has computed demand of Service Tax for the period of 2014-15 & 2015-16 on the basis of income tax return data. Against which the Appellant wants to state that while considering the income with books of accounts, the department has not taken into factual details regarding the appellant was providing service of bank facilitator to the banking company which was exempted from service tax vide Sr. No. 29(g) of mega exemption notification no. 25/2012-ST dated 20.06.2012. Without considering the factual details, the department has raised the demand which is not justifiable at all.



8. I further found that as per entry No. 29(g) of Notification No. 25/2012-ST dated 20.06.2012 which read 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 number 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:-

29. Services by the following persons in respective capacities

—

(a) sub-broker or an authorised person to a stock broker;

(b) authorised person to a member of a commodity exchange;

(c) ****;

(d) ****;

(e) ****;

(f) selling agent or a distributor of SIM cards or recharge coupon vouchers;

“(g) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;” substituted vide Notification 1/2017 –Service Tax

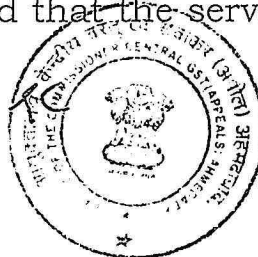
(ga) any person as an intermediary to a business facilitator or a business correspondent with

respect to services mentioned in clause (g);

(gb) business facilitator or a business correspondent to an insurance company in a rural area; or

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

8.1 I find that Appellant have claimed that the service provided by



them as bank facilitator to the banking company. The service provided to bank facilitator to the banking company only exempted if

“business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch”.

9. I find that it is not clear whether the Appellant are providing Business facilitator service or not and it is also not clear that the said service provided to rural area or in an urban area, which should be a matter of record. This aspect needs to be verified by the adjudicating authority.

10. In view of the above, I find that the impugned order passed by the adjudicating authority without verification of documents, since the demand was raised on the basis of third party date received from the Income Tax department. Therefore, in view of above facts and circumstances and in the interest of justice, I find it would be proper and just to remand back this appeal to the adjudicating authority with direction to pass order after considering the submission of the Appellant in the true spirit, by following the principles of natural justices. Accordingly the impugned order is set aside and the matter is remanded back for fresh adjudication.

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.



ज्ञानचंद जैन

आयुक्त (अपील्स)

Date : 31.10.2023

Attested



(Signature)
(अ. वि. कुमार)
अधीक्षक (अपील्स)
सी. जी. एस. टी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s. SahilArunParihar,
1/10 Parisharan Appartments,
Satellite, Ahmedabad, Gujarat

Appellant

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
- 5) Guard File
- 6) PA file

