आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000888F3A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/364/2023 / 184 - 84
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-001-APP-195/23-24 and 18.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/DEM-208/TORNADO/AC/DAP/2022-23 dated 12.01.2023 passed by The The Assistant Commissioner, CGST Division-VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner, Central GST, Division-VI, Ahmedabad South.
(छ)	रेसपोंदेड का नाम और पता / Name and Address of the Responded	Tornado Software Pvt. Ltd., F-41, Satellite Centre, Vastrapur, 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 : -

(क) 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।

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.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 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 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 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 शुल्क अधिनियम 1970 यथा संषोधित 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 का न्यायालय 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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 following appeal has been filed under section 84(1) of the Finance Act (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division – VI, Ahmedabad South Commissionerate (hereinafter referred as 'the appellants') in compliance to Order-in-Review No. 75/2021-22 dated 25.04.2023 passed by Principal Commissioner, Central GST, Ahmedabad South (hereinafter referred to as. the "the reviewing authority" also) against Order-in-Original No. CGST-VI/Dem-208/Tornado/DAP/2022-23 dated 12.01.2023 (hereinafter referred as "the impugned order") passed by the Assistant Commissioner, CGST, Division – VI, Ahmedabad South (hereinafter referred as "the adjudicating authority") in the case of M/s. Tornado Software Pvt. Ltd., F-41, Satellite Center, Vastrapur, Ahmedabad (hereinafter referred as "the respondent').

Appeal No. & Date	**Review Order No. & Date**	**Order-In-Original No. & Date**
GAPPL/ADC/GSTD/364/2023-APPEAL Dated 18.04.2023	75/2021-22 dated 25.04.2023	CGST-VI/Dem-208/Tornado/DAP/ 2022-23 dated 12.01.2023

2. Briefly stated, the facts of the case are that the respondents, having PAN No. AAECT4877B were not found to have been registered with the service tax department. As per information received from the Income Tax Department, the respondent had earned substantial service income during the F.Y. 2014-15, 2015-16 & 2016-17, however they did not obtain service tax registration and did not pay service tax thereon. The respondent were called upon to submit copies of required documents for assessment for the said period. However, the respondent had not responded to the letters issued by the department.

2.1 Subsequently, the respondents were issued Show Cause Notice No. V/WS06/O&A/SCN-29/2020-21 dated 23.09.2020 wherein:

a) Demand and recover an amount of Rs. 14,61,940/- under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act, 1994 (hereinafter referred to as *'the Act'*).

b) Impose penalty under the provisions of Section 70, 77(1), and 78 of the Act.

2.2. After considering the submission of the respondent vide their letter dated 23.11.2020, the adjudicating authority passed the order CGST-VI/Dem-208/Tornado/DAP/2022-23 dated 12.01.2023 wherein:

a) Confirmed and appropriate the demand of service tax amounting to Rs. 5,72,175/- under section 73(1) of the Act, which was already paid by the respondent.

b) Confirmed and appropriated the amount of interest Rs. 3,85,274/- on (a) above under the provision of 75 of the Act.

c) Confirmed and appropriated the amount of penalty Rs. 85,826 on (a) under the provisions of Section 78 of the Act.

3. The Principal Commissioner, Central GST, Ahmedabad South, in exercise of the power conferred on him under subsection 1 of Section 84 of the Act in order to satisfy himself as to the legality and propriety of the impugned order, directed the adjudicating authority vide review order No. 75/2021-22 dated 25.04.2023 to file an appeal before undersigned within stipulated period for determination of the legality and correctness of the impugned order on the following grounds:

➢ It appears that the adjudicating authority has deducted the reimbursement of expenses received by the notice during the F.Y. 2014-15 to 2016-17 for arriving at the Service tax payable,

as mentioned at Table- A in Para 11 of the OIO, which appears to be not proper and legal.

➢ In view of the Section 67 of the Act w.e.f. 14.05.2015 any reimbursable expenses or cost incurred by the service provide and charges in the course of providing a taxable service needs to be included in assessable value for arriving at the Service Tax payable.

➢ On the issue of reimbursement, the appellant rely on the Judgment of the Hon'ble Apex Court in the case of UoI vs. Intercontinental Consultants and Technocrats Pvt. Ltd. In the said case the Hon'ble Supreme Court held that w.e.f. 14.05.2015 by amendment of Section 67 wherein the definition of 'consideration' was amended, reimbursable expenditure or cost would also form part of the value of taxable services.

➢ In view of the amended section 67 of the Act, it is clear that reimbursable expenses or cost would also form part of the value of taxable services w.e.f. 14.05.2015. Therefore, the reduction of reimbursable expenses granted by the adjudicating authority while passing the subject order is not legal and proper. In view of the above the calculation of demand of Service tax is to be taken as under:

F.Y.	*Taxable value as per IT data*	*Reimbursement of expenses deducted*	*Net Income*	*Service Tax rate*	*Service Tax payable*
2014-15	*2267200*	*1283985*	*983215*	*12.36*	*121525*
2015-16	*2799337*	*0*	*2798337*	*14.5*	*405759*
2016-17	*5079757*	*0*	*5079757*	*15*	*761964*
Total					*1289248*

➢ Further, from the Table A mentioned at Para 11 of the Order, it appears that the adjudicating authority has extended the exemption benefit under Notification No. 33/2012-ST dated 20.06.2012 to the noticee for the F.Y. 2014-15. Though he has not discussed anything about the said exemption notification, he

has not shown any amount of Service Tax payable against the Net income of Rs. 9,83,215 in Table-A.

➢ One of the conditions for allowing the exemption benefit of the notification no. 33/2012-ST dated 20.06.2012 the aggregate value of taxable services of the taxpayer should not exceed ten lakh rupees in the preceding financial year.

➢ However the adjudicating authority has not discussed the value of taxable service rendered by the notice during the preceding financial year i.e. F.Y. 2013-14 before extending the said exemption benefit cannot be granted for the F.Y. 2014-15.

➢ In view of above, the contention of the adjudicating authority that the Service tax liability along with interest and penalty has already been discharged in the instant case at Para 13 of the OIO and therefore not imposed penalty under Section 77(1) and 78 of the Finance Act, 1994, does not appear to be correct and proper. (i) Also the contention of the adjudicating authority at Para 14 of the OIO that the noticee had a bona fide belief that no Service Tax becomes payable by him, therefore he did not apply for Service Tax registration and as there was no requirement of Service Tax registration, no question of - filling of ST-3 returns arises as well, is also appear to be not correct. (iii) the contention of the adjudicating authority at Para 15 of the OIO that it is proved that the service provider had no malafide intention not to supply the information to the Central Excise Officer to evade payment of Service Tax and therefore, not imposed penalty on him under Section 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994, is also not proper.

➢ Further, it is trite law that exemption notifications are to be strictly interpreted. Words cannot be imported into a notification. Further, it has also been held by the Hon'ble Apex Court that in case of ambiguity in a section/ rule, it is to be interpreted in favour of the assessee. However, if there is any ambiguity in an exemption notification, it is to be interpreted in favour of the Revenue.

➢ The Constitution Bench of the Hon'ble Supreme Court in the case of Dilip Kumar and Company reported at 2018-TIOL-302-SC CUS-CB), on the question of interpretation of an exemption notification, held as follows: (relevant extracts)

> *To sum up, we answer the reference holding as under*
> *(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*
>
> *(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.*

➢ The Hon'ble Supreme Court in the case of State of Gujarat Vs Arcelor Mittal Nippon Steel India Ltd. reported at 2022 (379) ELT 418 (S.C.), held that

"14.1 While the exemption notification should be liberally construed, beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise.

14.2 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception andlor an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in industrial policy and the exemption notifications.

14.3 The exemption notification should be strictly construed and given meaning according to legislative intendment. The statutory provisions providing for exemplion have to be interpreted in the light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

14.4 As per the law laid down by this Court in catena of decisions, in the taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining defined meaning. Strict interpretation to the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it alleges lo absurd results, which is so not found in the present case.

14.5 In the present case, the intention of the State to provide the incentive under the incentive policy was to

give benefit of exemption from payment of purchase tax was to the specific class of industries and, more particularly, as per the list of 'eligible industries. Exemption was not available to the industries listed in the 'ineligible ' industries. It was never the intension of the State Government while framing the incentive policy to grant the benefit of exemption to ineligible industries' like the power producing industries like the EPL, which as such was put in the list of 'ineligible' industries.

14.6 Now, so far as the submission on behalf of the respondent that in the event of obscure in a provision in a fiscal statute, construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption notification, as it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand the scope deviating from the language. There is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification."

➢ The Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti Vs Commissioner of C.Ex. & Service Tax, Alwar, reported at 2022 (58) GSTL 129 (S.C.), held that:

"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

8.1 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.

8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions."

➢ Besides, there are a plethora of judgments delivered by different Appellate authorities emphasizing that when an assessee seeks exemption under a notification, compliance of the prescribed conditions are required to be strictly ensured.

➢ The ratio of above referred case law is squarely applicable in the present case as well. Therefore, in the instant case, it appears that the adjudicating authority has erred in extending the benefit of exemption Notification No. 33/2012-ST dated 20.06.2012 to the assessee for the F.Y. 2014-15.

4. The respondent were called upon to file a memorandum of cross objection against the appeal. Personal hearing in the case was held on 22-09-2023. Shri Vishal D. Langalia, Chartered Accountant, appeared for personal hearing on behalf of the respondent and reiterated the oral and written submissions made earlier including the submission dated 05.10.2023 submitted on 06.10.2023. He requested to uphold the order passed by the adjudicating authority.

5. I have carefully studied the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and documents available on record and considered the submissions by both sides. The issue to be decided in the present appeal is whether (i) reimbursable expenses can be subjected to service tax under section 67 of the Finance Act, 1994 by treating the same part of 'gross amount' charged by the service provider for 'service provided' by him; (ii) as per Table A mentioned at para 11 of the impugned order the exemption benefit of Rs. 10 lakhs in the light of Notification No.33/2012-ST dated 20.06.2012 can be extended to the respondent for the F.Y. 2014-15.

6. In the objection against the appeal filed by the department the respondent vide their submission dated 05.10.2023 submitted on 06.10.2023. They submitted that the department had failed to view the contract between Customer, the resources (Manpower) that with the assessee and accordingly failed to consider assessee as pure Agent in this case. They relied on decision in the case of Union of India vs. Intercontinental Consultants & Technocrats (P) Ltd. [TS-72-SC-2018-ST]=2018(3)TMI 357 that starting from May 14, 2015 in pre-GST era and continuing in GST regime, reimbursement are subject to tax unless incurred as a pure agent. As per appeal filed by the department, has failed to consider the Assessee as pure Agent, add the reimbursement of expenditure or cost into consideration and accordingly not allowing Exemption benefit under notification No. 33/2012-ST dated 20.06.2012 in the year Financial year 2014-2015 and Financial year 2015-2016. However, following the decision of Supreme Court noted above, the Assessee is in this case acting as a Pure Agent and hence reimbursement of expenses or cost is not a part of consideration and accordingly Exemption benefits under notification No. 33/2012-ST dated 20.06.2012 in the financial year 2014-2015

and financial year 2015-2016 is allowed. Considering above cross objections raised and decision held by above noted Supreme Court in the year 2018, it is requested to dismiss the appeal filed by respective authority in favor of Assessee. Vide the submission dated 05.10.2023 they have submitted (i) sample invoices for the period from F.Y. 2013-14 to F.Y. 2016-17 (ii) copy of agreement between contractor & Service provider for the period from F.Y. 2013-14 to F.Y. 2016-17.

7. I have carefully gone through the submission of appellant and respondent and find that as per the amendment of Section 67 of the Act w.e.f. 14.05.2015 any reimbursable expenses or cost incurred by the service provide and charges in the course of providing a taxable service needs to be included in assessable value for arriving at the Service Tax payable. The issue is covered by the Judgment of the Hon'ble Apex Court in the case of Union of India vs. Intercontinental Consultants and Technocrats Pvt. Ltd. In the said case the Hon'ble Supreme Court held that w.e.f. 14.05.2015 by amendment of Section 67 wherein the definition of 'consideration' was amended, reimbursable expenditure or cost would also form part of the value of taxable services. This aspect is also in consonance with the submission of the respondent and as such the respondent agrees in their submission that starting from 14th May, 2015 in pre-GST and continuing in GST regime, reimbursements are subject to tax unless incurred as a Pure Agent. I have perused submission of the respondent wherein they contended that they were acting as pure agent and hence reimbursement of expenses or cost is not a part of consideration. This aspect has not been addressed by the adjudicating authority, which needs to be verified keeping in view the above submission given by the respondent.

8. I have also observed the Table A mentioned at para 11 of the impugned order, it appears that the adjudicating authority

need to verify income in the F.Y. 2013-15 (preceding year of F.Y. 2014-15) for giving extension of benefit of exemption notification No. 33/2012-ST dated 20.06.2012. For ease of reference Notification No. 33/2012-ST dated 20th 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.

8.1 In view of the above provision the respondent would be eligible for benefit of threshold limit of exemption in the F.Y. 2014-15 as per the Notification No. 33/2012-ST dated 20.06.2012 only when their taxable income does not exceed ten lakh rupees in the preceding year i.e. F.Y. 2013-14. This aspect needs to be verified also in the year F.Y. 2015-16 and F.Y. 2016-17 with the verification of the aspect as to whether the respondents are pure agent or otherwise.

9. In view of the above discussion I find that the evidence in the form of (i) copy of sample invoices for the period from F.Y. 2013-14 to F.Y. 2016-17 (ii) copy of agreement between contractor & Service provider for the period from F.Y. 2013-14 to F.Y. 2016-17 is being produced for the first time before the undersigned and the same has not been considered by the adjudicating authorities before passing the impugned order. I deem it proper to set-aside the impugned order issued by the adjudicating authority and remand the matter to the adjudicating authority for fresh consideration of the evidence relied upon by the appellant by following the principles of natural justice accordingly.

10. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

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 : 18.12.2023

Attested

(अमरेंद्र कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,
The Assistant Commissioner,
Central GST, Division-VI,
Ahmedabad South.

Appellant

M/s. Tornado Software Pvt. Ltd.,
F-41, Satellite Center,
Vastrapur, Ahmedabad.

Respondent

Copy to :

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