



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240164SW000011161E

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/353/2023 / 160-64
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-197/23-24 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-228/Vaishali/AC/DAP/2022-23 dated 20.01.2023 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)	रेसपोण्डेड का नाम और पता / Name and Address of the Responded	Vaishali Parthesh Thakkar, 304, The Grand Mall, Opp. SBI Zonal Office, Ambawadi, Ahmedabad - 380015

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील 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:-

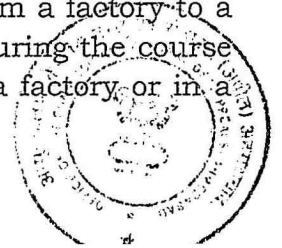
**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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 :-

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 :-

(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 में हो माल की प्रक्रिया 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 मामले 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 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।

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 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.

(3) 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.

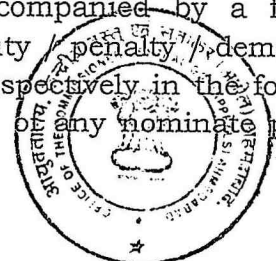
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 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. Registrar of a branch of any nominated 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 शुल्क अधिनियम 1970 यथा संशोधित 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 और 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.

(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 राशि;
- (3) 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।

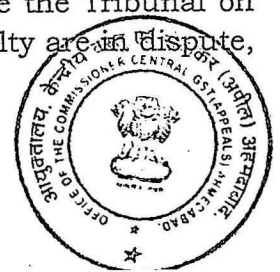
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

(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."

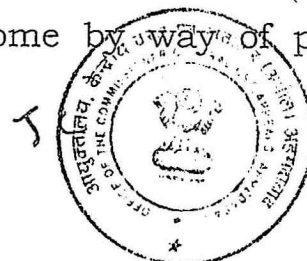


**ORDER-IN-APPEAL**

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 'appellants') in compliance to Order-in-Review No. 5/2023-24 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-228/Vaishali/AC/DAP/2022-23 dated 20.01.2023 received on 27.01.2023 (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. Vaishali Parthesh Thakkar, 304, the Grand Mall/Opp. SBI Zonal Office/Ambawadi/Ahmedabad-380015 (hereinafter referred as "the Respondents").

Appeal No. & Date	Review Order No. & Date	Order-In-Original No. & Date
GAPPL/ADC/GSTD/353/2023-APPEAL Dated 27.04.2021	05/2023-24 dated 25.04.2023	CGST-VI/Dem-228/Vaishali/AC/DAP/2022-23 dated 20.01.2023

2. Briefly stated, the facts of the case are that the respondents, having PAN No. AEVPT1572M, had earned substantial service income during the F.Y. 2015-16. An analysis of total amount paid/credited under Section 194C, 194I, 194H, 194J' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and the detail of said analysis was shared by them to Central Board of Indirect Tax and Customs (CBIC). On scrutiny of the data received from Income Tax department, it was noticed that the respondents had earned an income of Rs. 39,63,289/- during the F.Y. 2015-16, which was reflected under the heads "Sales/ Gross Receipts from Services (Value from ITR)". Accordingly, it appeared that the respondents 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 respondents were called upon to submit copies of required documents for assessment for the said period. However, the respondents 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-345/2020-21 dated 21.12.2020 wherein:

- a) Demand and recover an amount of Rs. 5,94,494/- under proviso to Sub Section (1) of Section 73 of the Act along with interest under section 75 of 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 the adjudicating authority vide the impugned order dropped the proceedings initiated against the respondent vide the show cause notice.

2.3 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. 5/2023-24 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 accepted the contention of the service provider that they have received income of Rs. 37,45,289/- towards sale of study material which is exempted as it is considered as trading of goods under section



66D(e) of the Act. They further submitted that the books and study material, which they were selling to students, were also exempted under Gujarat Vat Act, 2006 by virtue of entry No. 8 of Schedule I of section 5(1) of the Gujarat Value Added Tax Act, 2003. Thus, they submitted that VAT was not applicable on them, too. Therefore, it is clear that they have not paid VAT on the sale of study materials. Board has issued Notification No.12/2003-ST dated 20.06.2003 as amended, which provided for exemption to the value of goods and materials sold by the service provider to the service recipient and the text of the said exemption notification is as under:

*"In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32) of 1994) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.*

*Provided that the said exemption shall apply only in such cases where*

*(a) no credit of duty paid on such goods and materials sold, has been taken under the provisions of the Cenvat Credit Rules, 2004; or*

*(b) where such credit has been taken by the service provider on such goods and materials, such service provider has paid the amount equal to such credit availed before the sale of such goods and materials. "*

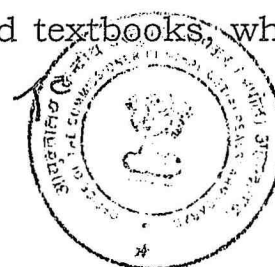
*This notification shall come into force on the 1st day of July, 2003."*



➤ Further, Board vide Circular No.59/8/2003 dated 20.06.2003 has issued clarification on imposition of Service Tax on new services consequent to enactment of Finance Bill, 2003. Para "2.9.1 of the said circular read as under:

*2.9.1 In case of authorized service stations, maintenance or repair services, commissioning and installation services and photography services it has been provided in the law that the cost of goods and material shall not form part of the value to be subjected to service tax, if evidence (like sale invoice/bill) shows that these goods were sold. Such dispensation has, however, not been provided for other services like commercial coaching and training centers, telecom services. In this regard, a general exemption under Notification No. 12/2003-Service Tax, dated 20<sup>th</sup> June, 2003 has been issued exempting that part of the value of all taxable services from service tax, which represents the cost of goods or material sold by the service provider to the receiver of such services during the course of provision of the taxable services. This exemption would be available only in cases where the sale of such goods is evidenced and the sale value is quantified and shown separately in the invoice. It is also clarified that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard textbooks, which are priced. Any study material or written text provided by such institute as a part of service which does not satisfy the above criteria will be subjected to service tax."*

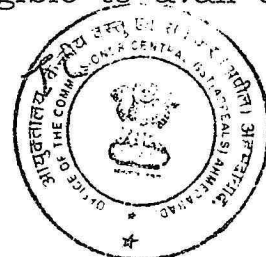
➤ In view of the above clarification, it is clear that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale of value of standard textbooks, which are



priced and any study material or written text provided by such institutes as a part of service which does not satisfy the above criteria will be subjected to service tax.

➤ In the subject case, the noticee is engaged in the business of providing IELTS Books and study materials along with coaching to students to help them clear IELTS exam. Therefore, they can be considered as commercial training & coaching institutes. Further, it appears that they provide coaching materials. Though they have claimed the said income as trading income, there is nothing on record to show that they have sold the said materials. Therefore, as per the Notification No. 12/2003-ST dated 20.06.2003 as amended and Board Circular dated 20.06.2003, any study material or written text provided by such institute as a part of service which does not satisfy the criteria of sale will be subjected to service tax.

➤ In view of above (i) It appears that the adjudicating authority has not considered the Board Circular No.59/8/2003 dated 20.06.2003 while passing while passing the subject order, which is not proper and legal, (ii) the contention of the adjudicating authority that the income of Rs. 37,45,289/- received by the service provider from sale of study material trading and service tax not applicable on the same, does not appear to be correct and proper, (iii) the contention of the adjudicating authority at Para 14 of the OIO that the taxable income of the service provider was below Rs. 10 lakhs in F.Y. 2015-16 and hence they were eligible to avail exemption benefit of 10 Lakhs as per Notification No. 33/2012 ST dated 20.06.2012, is also appear to be not correct, (iv) also the contention of the adjudicating authority at Para 20 of the OIO that the taxable income of the service provider during F.Y. 2014-15 was Rs. 8,93,686/- i.e. below Rs. 10 lakhs after considering the income of Rs. 39,17,780/- as trading of study material as exempted and therefore, they were eligible to avail exemption





benefit of 10 Lakhs as per Notification No. 33/2012-ST dated 20.06.2012 for the F.Y. 2015-16, is also appear to be not correct.

➤ 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.*



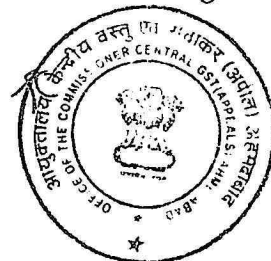
➤ The Hon'ble Supreme Court in the case of State of Gujarat Vs Arcelor Mittal Nippon Steel India Ltd. reported at 2022 (379) ELT 418 (S.C.), held that

*"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 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 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 exemption 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 to*

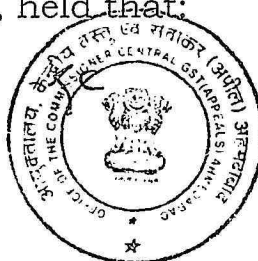


absurd results, which is so not found in the present case.

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.*

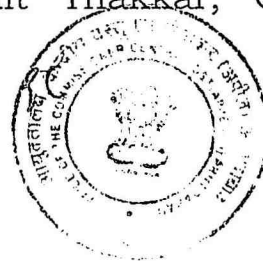
*8.1 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and 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. 2015-16.

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 Nishit Thakkar, Chartered



Accoutnat, appeared for personal hearing on behalf of the respondent and reiterated the written submissions in the cross objection to the departmental appeal. He submitted that out of income of Rs. 39,63,289/- the income of Rs. 37,45,289 was from sale of books, which is not part of the service provided by the respondent. Further the remaining income of Rs. 2,18,000/- from coaching and training is exempted from Service tax being less than the threshold exemption limit. He requested to uphold the order passed by the adjudicating authority and to reject the departmental appeal.

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 the impugned order passed by the adjudicating authority, dropping the proceedings initiated against the respondent vide the show cause notice (supra), in the facts and circumstance of the case, is legal and proper or otherwise.

6. In the submission of the appellant they have contended that the adjudicating authority accepted the contention of the respondent that they have received income of Rs. 37,45,289/- towards sale of study material which is exempted by considering it trading of goods under section 66D(e) of the Act. The appellant submitted that (i) the adjudicating authority had not considered the Board Circular No. 59/8/2003 dated 20.06.2003 while passing the order (ii) the contention of the adjudicating authority at Para 14 of the impugned order that the taxable income of the service provider was below Rs. 10 lakhs in F.Y. 2015-16 which made them eligible to avail exemption benefit of 10 lakhs as per Notification No. 33/2012-ST dated 20.06.2012, also appear to be not correct, (iii) the contention of the adjudicating authority at Para 20 of the impugned order that the taxable income of the

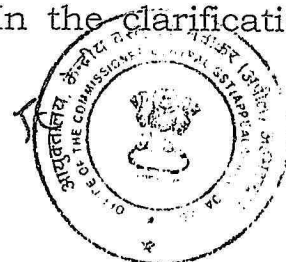


service provider during F.Y. 2014-15 was Rs. 8,93,686/- which is below Rs. 10 lakhs after considering the income of Rs. 39,17,780/- as trading of study material as exempted and therefore, which made them eligible to avail exemption benefit of 10 lakhs as per Notification No. 33/2012-ST dated 20.06.2012 for the F.Y. 2015-16, also appear to be not correct.

7. In the objection against the appeal filed by the department the respondent vide their submission datd 11.09.2023 relied on decision in support of his argument in respect of non-inclusion of sale value of books in consideration charged for coaching service:

- a. *Chate coaching Classes Pvt. Ltd. vs CCE Aurangaabad 2013 (29) S.T.R. 138 (Tri.-Mumbai);*
- b. *Cerebral Learning Solutins Pvt. Ltd. vs. CCE, Indore 2013 (32) S.T.R. 379 (Tri.-Del.)*
- c. *M/s Smart Value Products & Services ltd. vs. CGST, Noida i71643/2018dated 26.07.2018*
- d. *Pinnacle vs. CCE Chandigarh 2011(24) S.T.R. 453 (Tri.-Del)*
- e. *Rubic's Rostrum Coaching Pvt. Ltd. vs. CCE, Lucknow 2018 (10) G.S.T.L. 258 (Tri.-All.);*
- f. *Major Kalshi classes pvt. Ltd. vs. CCE Allahabad 2021(46) G.S.T.L. 148 (Tri. -All.)*

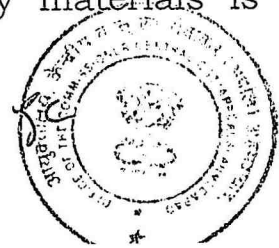
7.1 The respondent also relied on the judgment of the Hon'ble CESTAT, Kolkata in the case of M/s Kanhaiya Singh Vision Classes Private Limited vs. Commissioner of CGST and Cx. Patna-I Commissionerate vide its Final Order No. 75458/2023 dated 18<sup>th</sup> May 2023 in which it was decided that the sale of books and study material are out of the ambit of service tax and the question of levy of service tax on such value of sale of books/publications is not sustainable. In the clarification with



reference to para 2.9.1 of the Board's circular No. 59/8/2003 dated 20.06.2003 the respondent submitted that the exemption on the value of goods or material is available in case if the value is clearly identifiable and shown in the books of account separately. They further submitted that their published books are specifically priced and the receipts issued to the students also indicates the value of books separately and the value of coaching service separately. In an additional submission via mail dated 08.12.2023 the respondent submitted sample invoice issued to service recipients.

8. I have carefully gone through the submission of appellant and respondent and find that as per the clarification of Board's circular No. 59/8/2003-S.T., dated 20-6-2003, it appears that in case of commercial training and coaching institutes, the exclusion of liability of service tax shall apply only to the sale value of standard textbooks, which are priced. Any study material or written text provided by such institute as a part of service which does not satisfy the above criteria will be subjected to service tax. The Circular of C.B.E. & C. quoted by the appellant also states that such exemption will be applicable only if material sold is 'standard textbooks'. I have perused sample invoices and cover page of textbooks for sale of books/study materials. I find that some of the invoices were issued separately for sale of books/materials and some of the invoices were separately issued for service. I have also noticed after observation of the cover page of books sold by the respondents that these books are having price, too. On the other hand I have also noticed that the reviewing authority held that the respondent provided coaching materials and there is nothing on record to clarify that they have sold the said materials.

9. In view of the above discussion I find that the evidence in the form of bills for sale of books/study materials is being

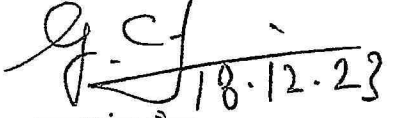


produced for the first time before the undersigned and the same has not been considered by the adjudicating authorities before passing the impugned order. I deem it proper to set-aside the impugned order issued by the adjudicating authority and remand the matter to the adjudicating authority for fresh 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.

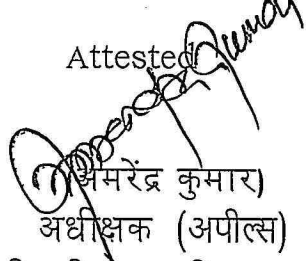
11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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. Vaishali Parthesh Thakkar,  
304, the Grand Mall,  
Opp. SBI Zonal Office,  
Ambawadi/Ahmedabad-380015.

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



