



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 : 20230464SW000000EA67

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2741/2022 / 615 - 619
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-02/2023-24  
दिनांक Date : 17-04-2023 जारी करने की तारीख Date of Issue 24.04.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 27/WS08/AC/HKB/2022-23 दिनांक: 18.05.2022 passed by Assistant  
Commissioner, CGST, TAR Section, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Harsh Rajendrabhai Patel  
B/1, Rajshilp Apartment,  
Prakrutikunj Society,  
Near Shreyas Foundation,  
Manekbaug, 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:**

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

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



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(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 संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

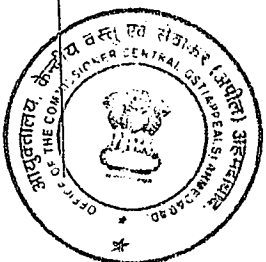
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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

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

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

18ण 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.

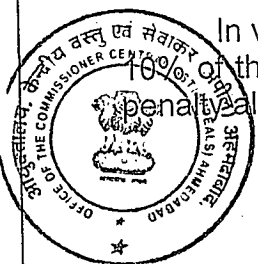
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cli) amount determined under Section 11 D;
- (clii) amount of erroneous Cenvat Credit taken;
- (cliii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

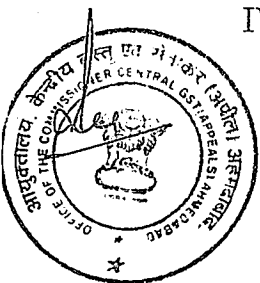
The present appeal has been filed by M/s. Harsh Rajendrabhai Patel, B/1, Rajshilp Apartment, Prakrutikunj Society, Near Shreyas Foundation, Manekbaug, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. 27/WS08/AC/HKB/2022-23 dated 18.05.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, TAR Section, H.Q., Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax department. They are holding PAN No. BPTPP4603R. As per the information received from the Income Tax Department, the appellant had earned substantial income from services during F.Y. 2014-15 and F.Y. 2015-16. However, they did not obtain service tax registration and did not pay service tax on such income from service. The appellant were called upon to submit documents. However, the appellant failed to submit the required details/documents. Therefore, the appellant were issued Show Cause Notice bearing No. CGST/Div-VIII/O&A/TPD/167/BPTPP4603R/2020-21 dated 21.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs. 3,50,509/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- b) Impose penalty under Sections 77(1), 77(2) and 78 of the Finance Act, 1994.

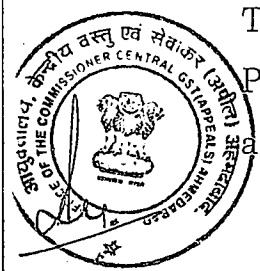
3. The SCN was adjudicated vide the impugned order wherein :

- I. The demand of service tax amounting to Rs. 2,80,693/- was confirmed along with interest.
- II. Penalty amounting to Rs. 10,000/- each was imposed under Sections 77(1) and 77(2) of the Finance Act, 1994.
- III. Penalty amounting to Rs. 2,80,693/- was imposed under Section 78 of the Finance Act, 1994.
- IV. The demand of service tax amounting to Rs. 69,816/- was dropped.



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

- i. They are not required to pay any service tax for F.Y. 2014-15 as their income was below the threshold limit of Rs. 10 lakhs as per Notification No. 33/2012.
- ii. They are not required to pay service tax for F.Y. 2015-16 as service tax on manpower supply services was 100% under reverse charge in terms of Notification No. 30/2012 as amended by Notification No. 7/2015. The liability to pay service tax was not on the service provider.
- iii. The demand made without properly verifying the documents submitted by them is grossly bad in law.
- iv. Their representative had during the personal hearing agreed to pay service tax only on 25% of the taxable value of service provided between October, 2014 to March, 2015, as the said service falls within Entry No. 8 of Notification No. 30/2012 and RCM is applicable @ 75% of the total services provided, after considering the taxable amount in excess of Rs. 10 lakhs. The finding that they had agreed to the liability of the entire amount is not correct.
- v. The adjudicating authority has mentioned at Para 17 that they had not submitted any documents in support of their claim for threshold exemption during F.Y. 2014-15. They had submitted copies of their ITR, Form 26AS and financial statements for the said period. Copies of Form 26AS for the disputed period is again being submitted by them.
- vi. Their claim for RCM for the service provided during F.Y. 2015-16 was rejected on the ground that they had not submitted supporting documents viz. invoices, contracts etc. They had submitted the said documents at the time of personal hearing and the adjudicating authority has mentioned that they are providing labour supply services to PSP projects for construction of hospital, road etc.
- vii. They had already provided all the proof and TDS is also deducted under Section 194C of the Income Tax Act, 1961 which is for contract payment. They are once again submitting the sales invoices raised by them on PSP Projects etc. which proves that they are providing manpower services and eligible to claim the benefit of RCM.



- viii. Their claim for basic exemption of Rs. 10 lakhs is valid for F.Y. 2014-15 as their turnover does not exceed Rs. 10 lakhs : i.e. 25% of Rs. 15,52,087/- is Rs. 3,88,021/-, which is way below the threshold limit for obtaining registration or pay service tax on Rs. 5,52,087/- as held in the impugned order.
- ix. Though they do not agree, the tax payable by them for F.Y. 2014-15 would be Rs. 17,060/- calculated on Rs. 1,38,022, which is 25% of Rs. 5,52,087/-.
- x. As per Notification No.30/2012 as amended by Notification No.7/2015, Nil service tax is payable by the provider of manpower services w.e.f. 01.03.2015. As the RCM provision is applicable from F.Y. 2014-15 onwards, the liability to pay service tax for F.Y. 2015-16 is not correct.
- xi. They have complied with the provisions of the Act and hence, there was no question of suppression of facts. Consequently, they had no reason to and had not deliberately withheld any facts from the revenue authorities. The impugned order has failed to provide any evidence for alleging suppression on their part.
- xii. When the demand of service tax itself is not sustainable, the question of imposition of interest does not arise. Reliance is placed upon the judgment in the case of Pratibha Processors Vs. UOI – 1996 (88) ELT 12 (SC); Commissioner of Customs, Chennai Vs. Jayathi Krishna & Co. – 2000 (119) ELT 4 (SC).
- xiii. As they are not required to have registration and not required to pay service tax, penalty under Section 78 cannot be imposed. Further, penalty cannot be levied in case there is no liability of service tax. Reliance is placed upon the judgment in the case of Roots Multiclean Ltd. Vs. Commissioner of Central Excise, Coimbatore – 2006 (1) STR 17 (Tri.-Chennai).
- xiv. Penalty can be imposed only if there is short payment or non payment of tax by reason of collusion, wilful misstatement and suppression of facts. As there was no suppression of facts and no contravention of any provisions with intent to evade payment of tax, penalty under Section 78 cannot be imposed.
- xv. Reliance is placed upon the judgment in the case of Hindustan Steel Vs. State of Orissa – 1978 (2) ELT J159 (SC); Tamil Nadu Housing Board



Vs. Collector of Central Excise, Madras – 1994 (74) ELT 9 (SC) and DCW Ltd. Vs. Assistant Collector of Central Excise – 1996 (88) ELT 31 (Mad.).

- xvi. No penalty can be imposed under Section 77 as they have complied with all legal provisions pertaining to discharge of their liability.
- xvii. Since there was no mens rea on their part; there is no question of imposition of penalty. Reliance is placed upon the judgment in the case of AEON's Construction Products Ltd. Vs. Commissioner of C.Ex., Chennai - 2005 (180) ELT 209 (Tri.-Chennai).

5. In the application for condonation of delay, the appellant submitted that the appeal was filed by them within three months from the date of receipt of order. In the order served on them, it was mentioned that appeal has to be filed within three months from the date of receipt of the order. They were under the impression that appeal can be filed within expiry of three months and their Proprietor was not in town for 15-20 days during August, 2022. Payment of Challan and signing also took some time. They request that the delay of 29 days in filing appeal be condoned.

6. Personal Hearing in the case was held on 22.02.2023. Shri Tarang R. Kothari, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax amounting to Rs. 2,80,693/- along with interest and penalty. The demand pertains to the period F.Y. 2014-15 and F.Y. 2015-16.

8. Before dealing with the merits of the case, I proceed to take up the matter of condonation of delay in filing the appeal by the appellant. It is observed from the records that the present appeal was filed by the appellant on 22.08.2022 against the impugned order dated 18.05.2022, which the appellant claimed to have received on 24.05.2022. It is also observed that the preamble to the impugned order states that the appeal is to be filed within three months from the date of its communication. From the materials available on record, it is



observed that the appellant is not registered with the Service Tax department and, therefore, their plea that the appeal was filed by them in terms of what has been stated in the preamble to the impugned order appears to be justified.

8.1 It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994.

The relevant part of the said section is reproduced below :

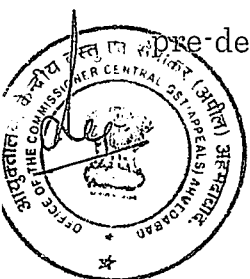
“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

8.2 In the instant case, the impugned order is dated 18.05.2022 and the appellant have received it on 24.05.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 24.07.2022. The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal, ends on 24.08.2022.

8.3 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

8.4 The appellant was required to file the appeal on or before 24.07.2022 i.e. two months computed from 24.05.2022. Further, the condonable period of one month, in terms of Section 85 (3A) of the Finance Act, 1994 ends on 24.08.2022. The present appeal filed on 22.08.2022, is, therefore, within the condonable period. Keeping in view the fact that the appellant is not registered with service tax department, that the preamble to the impugned order states that the appeal is to be filed within three months as well as the fact that as unregistered person the appellant had to complete formalities for payment of  
pre-deposit, I am of the considered view that the appellant have shown





sufficient cause for condonation of delay in filing appeal. Accordingly, the delay of 29 days in filing the appeal by the appellant is condoned.

9. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. It is stated at Para 5 of the impugned SCN that the activities carried out by the appellant as a service provider appears to be covered under the definition of service and appears to be not covered under the Negative List of services as per Section 66D of the Finance Act, 1994 and that the services are not exempted by Notification No.25/2012-ST dated 20.06.2012. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Finance Act, 1994. No cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

9.1. I find in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that :

“It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.”

9.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

Coming to the merits of the present appeal, it is observed that the appellant had contended before the adjudicating authority that their income,



as per Form 26AS, for F.Y. 2013-14 was Rs. 7,96,015/- and, therefore, they was eligible for threshold exemption upto Rs. 10 lakhs. Accordingly, for F.Y. 2014-15, their liability was on the Rs. 5,52,087/-. The appellant had further contended that they are providing supply of labour service to PSP Projects and other customers and that the said service is covered under reverse charge. The adjudicating authority has rejected the claim for threshold exemption on the grounds that the appellant had not submitted any document viz. P&L Account, Form 26AS etc. in support of their claim. The adjudicating authority has also rejected the claim of the appellant that the services provided by them are covered by reverse charge, on the ground that they had not submitted documents evidencing that they were providing manpower supply service.

10.1 It is observed that the appellant had in their defence reply dated 20.10.2020, filed before the adjudicating authority, submitted copies of the Form 26AS for the period of F.Y. 2013-14 to F.Y. 2015-16. Further, as stated hereinabove, the department had not brought on record any evidence showing the taxable services provided by the appellant on which service tax was sought to be demanded. On the contrary, in the adjudication proceedings, the entire onus of proving that they were not liable to pay service tax was cast upon the appellant. This in my considered view is not the correct approach. The adjudicating authority has erred in rejecting the claim for threshold exemption when the Form 26AS for F.Y. 2013-14 was submitted by the appellant. He ought to have verified the same and if the turnover of taxable income for F.Y. 2013-14 was less than Rs. 10 lakhs, the benefit of exemption upto Rs. 10 lakhs in F.Y. 2014-15 should have been extended to the appellant. As regards the nature of service provided by the appellant, it is observed that the department has not specified the same and at the same time rejected the contention of the appellant that they are providing manpower supply service which is covered under reverse charge. Therefore, the adjudicating authority has clearly erred in rejecting the claim of the appellant for payment of service tax as per Notification No. 30/2012-ST dated 20.06.2012.

11. In view of the above facts, I am of the considered view that the impugned order is required to be set aside and remanded back to the adjudicating authority for fresh adjudication proceedings by considering the claim of the appellant for threshold exemption and also after considering their claim for



benefit of Notification No.30/2012-ST dated 20.06.2012. The appellant are directed to co-operate with the adjudicating authority and submit the relevant documents in support of their claim within 15 days of the receipt of this order. Needless to state, the principles of natural justice are to be adhered to in the denovo proceedings. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

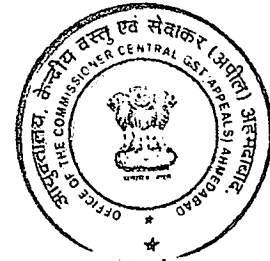
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*Akhil Kumar*  
 17<sup>th</sup> April, 2023..  
 ( Akhilesh Kumar )  
 Commissioner (Appeals)  
 Date: 17.04.2023

Attested:

*(Signature)*  
 (N.Suryanarayanan. Iyer)  
 Assistant Commissioner (In situ),  
 CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Harsh Rajendrabhai Patel,  
 B/1, Rajshilp Apartment,  
 Prakrutikunj Society,  
 Near Shreyas Foundation,  
 Manekbaug, Ahmedabad

Appellant

The Assistant Commissioner,  
 CGST, TAR Section, H.Q.,  
 Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.  
 (for uploading the OIA)
4. Guard File.
5. P.A. File.

