



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
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आजादी  
अमृत महोत्सव

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DIN:- 20240164SW0000222D53

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| (क) | फ़ाइल संख्या / File No.   | GAPPL/COM/STP/4471/2023 / 1093 - 98  |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date  | AHM-EXCUS-001-APP-238/2023-24 and 25.01.2024   |
| (ग) | पारित किया गया / Passed By  | श्री ज्ञानचंद जैन, आयुक्त (अपील)<br>Shri Gyan Chand Jain, Commissioner (Appeals)                                       |
| (घ) | जारी करने की दिनांक / Date of Issue   | 31.01.2024   |
| (ङ) | Arising out of Order-In-Original No. CGST-VI/Dem-132/RAA Positive/AC/DAP /2022-23 dated 26.12.2023 passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South. |  |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant   | M/s. RAA Positive media Private Limited,<br>C-3 Sursagar App., Nr. Sattadhar bus Stop,<br>Solar Road, Ahmedbad-380061. |

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:**

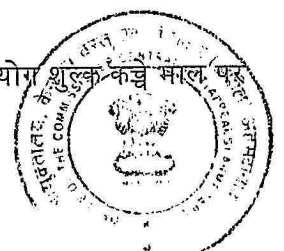
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 कट्टे माल पर उत्पादन शुल्क के रिबेट के मामलों 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 nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय 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 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.

(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 present appeal has been filed by M/s. RAA Positive media Private Limited, C-3 Sursagar App., Nr. Sattadhar bus Stop, Solar Road, Ahmedbad-380061 (hereinafter referred to as "the appellants") against Order in Original No. CGST-VI/Dem-132/RAAPositive/AC/DAP/2022-23 dated 26.12.2023 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AAGCT3772D. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant had earned income of Rs. 56,87,546/- during the F.Y. 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

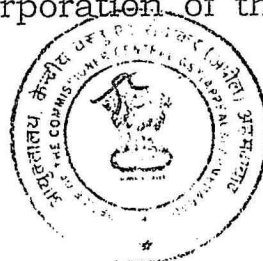
2.1. Subsequently, the appellant were issued Show Cause Notice No. V/WS07/O&A/SCN-78/2020-21 dated 24.09.2020 wherein it was proposed to:

- a) Demand and recover an amount of Rs. 7,02,981/- 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.
3. The SCN was adjudicated vide the impugned order wherein:
- a) The demand of service tax amounting to Rs. 7,02,981/- was confirmed along with interest.
  - b) Penalty amounting to Rs. 7,02,981/- was imposed under section 78(1) of the Act.
  - c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) (a) of the Act.
  - d) Penalty as applicable on the Appellants under section 70 of the Act read with Rule 7C of Service Tax Rules, 1994.
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:
- The appellant argues that they are not liable to pay service tax for the financial year 2014-15 since their taxable service income falls below the threshold of Rs 10 lakhs, as specified in Notification 33/2012-ST dated 20.06.2012.
  - They emphasize that their services are exempted and listed in the negative list under section 66D of the Finance Act, 1994.
  - The appellant disputes the registered office address is at C-3 Sursagar App Nr. Sattadhar Bus Stop, Sola Road, Ahmedabad from the date of incorporation of the company.



The appellant cited the address "302, Yash Aqua, Nr. Ras Ranjan Vijay Char Rasta, Navrangpura, Ahmedabad-9" as incorrect and is in the name of one of the directors and sent notice was not served at this address due to the pandemic.

➤ The appellant deny the liability for the service tax mentioned in the Order-in-Original (OIO), asserting that the entire gross receipt pertains to exempted services.

➤ The appellant contends that the order is passed without proper consideration, alleging wilful suppression without evidence.

➤ They argue that at the time of personal hearing submitted documents was sufficient proof of non-taxability.

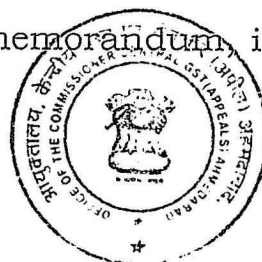
➤ The appellant challenges the jurisdiction based on the address used in the show cause notice, asserting that the matter is already settled in their favor.

➤ They dispute the adjudicating authority's claim of insufficient documentation and deny any wrongdoing, concluding that the service tax liability is not payable, and penalties should not be imposed.

5. Personal Hearing in the case was held on 22.01.2024. Shri Tarang R. Kothari, Chartered Accountant, appeared on behalf of the appellant for the hearing. He stated that the appellant gave advertisement in print media which is exempt.

6. The appellant have submitted following documents (A) copy of Income Tax Return, (B) copy of P & L Account and Balance Sheet in respect of F.Y. 2014-15, (C) copy of Form 26AS for F.Y. 2014-15.

7. On going through the appeal memorandum, it is noticed



that the impugned order was issued on 03.04.2023. The present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 29.05.2023, i.e. after a delay of 27 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay of 27 days in filing appeal which was required to be filed on or before 02.05.2023.

8. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant were prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 27 days and take up the appeal for decision on merits.

9. Coming to the merit of the case, I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and oral submissions made at the time of personal hearing. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 56,87,546/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2014-15.



10. As per the para 6.4 of the impugned order, I find that the appellant failed to submit the required documents viz. Profit and Loss Account, Form 26AS (TDS certificate), Income Tax Returns etc. These documents were necessary to support their assertion that the income the appellant earned in the F.Y. 2014-15 was from exempted services i.e. "*selling space for advertisements in print media*". Now, I find that the appellant have submitted various documents in support of their claim for exemption from service tax, which was not produced by them before the adjudicating authority. In this regard, I am of the considered view that the appellant cannot seek to establish their eligibility for exemption at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption.

11. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant is directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

12. 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.





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

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



ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 25.01.2024

Attested



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

**BY RPAD/ SPEED POST**

To

M/s. RAA Positive media Private Limited,  
C-3 Sursagar App.,  
Nr. Sattadhar bus Stop,  
Solar Road, Ahmedbad-380061.

**Copy to :**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Deputy/ Assitant Commissioner, Division -IV, Central GST, Ahmedabad South.
4. The Deputy/ Assistant Commissioner (RRA), Ahmedabad South.
5. The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

6. Guard File

7. PA file

