



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:- 20240264SW00000105E9

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1573/2023 1153 - 57
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-253/2023-24 and 31.01.2024
(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	01.02.2024
(ङ)	Arising out of Order-In-Original No. 58/CGST/A'bad. South/ADC/TGR/2022-23 dated 19.12.2023 passed by The Additional Commissioner, Central GST & Excise, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Shanti Educational Initiatives Ltd., 283, New Cloth Market, Outside Raipur Gate, 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 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, 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 में 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 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.

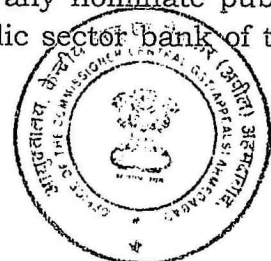
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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



No. 58/CGST/A'bad. South/ADC/TGR/2022-23-Appeal

ORDER-IN-APPEAL

The present appeal has been filed by M/s Shanti Educational Initiatives Ltd., 283, New Cloth Market, Outside Raipur Gate, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 58/CGST/A'bad. South/ADC/TGR/2022-23 dated 19.12.2023 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central GST & Excise, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant, registered under service tax with Registration No. AAACC6327KSD001 provided taxable services such as Franchisee Service, Intellectual Property Rights Service. Audit was conducted on the appellant's records for the period from April 2014 to June 2017. During audit it was observed that the appellant were involved in providing educational support services to preschools, K-12, and premium category preschools in India. The current operation involves franchised preschools under different brand names like Shanti Juniors, Shanti Asiatic School, and Shanti's Hopskotch etc. across India. The services provided include planning, establishment, management, and transformation of educational projects for K-12 schools and pre-schools. The business model revolves around operating through franchisees, where the appellant enter into agreements with them, receiving fixed non-refundable one-time franchise fees and recurring royalties for the use of the brand and teaching methodologies from the franchisee. During the course of audit for the period from April 2014 to June 2017, the Central Tax Audit Commissionerate, Ahmedabad scrutinized their records, as a result of which vide Final Audit Report No. 1359/2019-20 dated 09.03.2020, following eleven (11) Revenue Paras in which the appellant were disagreeing with the objection remained unsettled (1) Fees/Penalty for late filling/non-filing of ST-3 returns (2) Wrong availment of Swachh Bharat Cess (3) Short payment of service tax



on Director sitting fees (4) Non-payment of service tax on legal service under RCM (5) Excess opening balance of Rs. 9,00,000/- taken and credit of Rs. 3,90,224/- utilized not actually debited in ST-3 return (6) Wrong availment of input service tax credit used for trading (7) Short payment of service tax on account of reconciliation of financial statement with ST-3 return (8) Non-payment of service tax on the reimbursement in the provision of service (9) Non reversal of proportionate cenvat credit in respect of common input service (10) Non-payment of service tax on Goods Transport Agency (GTA) service under RCM (11) Non-payment of service tax on works contract service received under RCM.

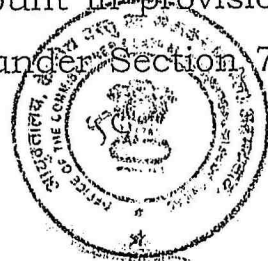
2.1 The appellant were subsequently issued Show Cause Notice bearing No. VI/1(b)/Tech-64/SCN/Shanti Edu/2019-20 dated 20.03.2020 wherein:

(i) Demand and recovery of Rs. 48,05,720/- under the provision of Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') and interest under Section 75 of the Act and penalty under Section 78 of the Act.

(ii) Demand and recovery of Rs. 26,375/- under the provision of Section 73(1) of the Act on legal service provided by the appellant and interest under Section 75 of the Act and penalty under Section 78 of the Act.

(iii) Demand and recovery of Rs. 29,40,444/- under the provision of Section 73(1) of the Act on Works Contract Service provided by the appellant and interest under Section 75 of the Act and penalty under Section 78 of the Act.

(iv) Demand and recovery of Rs. 9,51,638/- under the provision of Section 73(1) of the Act on reimbursement amount in provision of service provided by the appellant and interest under Section 75 of



the Act and penalty under Section 78 of the Act.

(v) Demand and recovery of Rs. 5,400/- under the provision of Section 73(1) of the Act on director's sitting fee and interest under Section 75 of the Act and penalty under Section 78 of the Act.

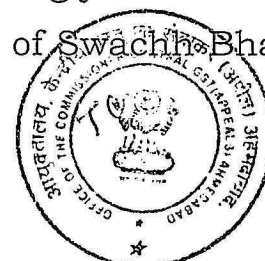
(vi) Demand and recovery of Rs. 54,426/- under the provision of Section 73(1) of the Act on GTA service and interest under Section 75 of the Act and penalty under Section 78 of the Act.

(vii) Demand and recovery of Cenvat Credit wrongly availed and utilised Rs. 36,714/- under the provision of Section 73(1) of the Act read with Rule 14(1)(ii) of Cenvat Credit Rule, 2004 and interest under Section 75 of the Act read with Rule 15(3) of the Cenvat Rule and penalty under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.

(viii) Demand and recovery of Cenvat Credit wrongly availed and utilised Rs. 9,00,000/- by showing wrong opening balance under the provision of Section 73(1) of the Act read with Rule 14(1)(ii) of Cenvat Credit Rule, 2004 and interest under Section 75 of the Act read with Rule 15(3) of the Cenvat Rule and penalty under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.

(ix) Demand and recovery of Cenvat Credit wrongly availed and utilised Rs. 3,90,224/- not debited from cenvat credit balance under the provision of Section 73(1) of the Act read with Rule 14(1)(ii) of Cenvat Rule and interest under Section 75 of the Act read with Rule 15(3) of the Cenvat Rule and penalty under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.

(x) Demand and recovery of Cenvat Credit wrongly availed and utilised Rs. 2,817/- wrongly availed cenvat credit of Swachh Bharat



Cess under the provision of Section 73(1) of the Act read with Rule 14(1)(ii) of the Cenvat Rule and interest under Section 75 of the Act read with Rule 15(3) of the Cenvat Rule and penalty under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.

(xi) Demand and recovery of Cenvat Credit wrongly availed and utilised Rs. 14,89,240/- under the provision of Section 73(1) of the Act read with Rule 14(1)(ii) of the Cenvat Rule and interest under Section 75 of the Act read with Rule 15(3) of the Cenvat Rule and penalty under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.

(xii) Demand and recovery of late fees/penalty of Rs. 41,900/- under the provisions of Section 70 read with Rule 7C of Service Tax Rules, 1994.

(xiii) The amount of Rs. 68,14,473/- received as consideration by the appellant from service recipient, and other units towards reimbursement of expense should be included in the assessable value for the purpose of charging service tax as per Explanation (a)(ii) to Section 67 (1) of the Act read with Rule 5(1) of the Valuation Rules.

2.2. The SCN was adjudicated vide the impugned order wherein the adjudicating authority had passed the order as under:

- a) The demand of service tax amounting to Rs. 41,900/- was confirmed under section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994.
- b) The demand of service tax amounting to Rs. 2,817/- was confirmed under section 73(1) of the Act read with Rule 14(1)(ii) along with interest under section 75 of the Act and penalty under section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.



- c) The demand of service tax amounting to Rs. 5,400/- was confirmed under section 73(1) of the Act along with interest under section 75 of the Act and penalty under section 78(1) of the Act.
- d) The demand of service tax amounting to Rs. 26,375/- was confirmed under section 73(1) of the Act along with interest under section 75 of the Act and penalty under section 78(1) of the Act.
- e) The demand of service tax amounting to Rs. 9,00,000/- was confirmed under section 73(1) of the Act read with Rule 14(1)(ii) along with interest under section 75 of the Act and penalty under section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule. The demand of service tax amounting to Rs. 3,90,224/- was confirmed under section 73(1) of the Act read with Rule 14(1)(ii) along with interest under section 75 of the Act and penalty under section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.
- f) The demand of service tax amounting to Rs. 36,714/- was confirmed under section 73(1) of the Act read with Rule 14(1)(ii) along with interest under section 75 of the Act and penalty under section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.
- g) The demand of service tax amounting to Rs. 48,05,720/- was confirmed under section 73(1) of the Act along with interest under section 75 of the Act and penalty under section 78(1) of the Act.
- h) The demand of service tax amounting to Rs. 6,72,459/- was confirmed under section 73(1) of the Act along with interest



under section 75 of the Act and penalty under section 78(1) of the Act. Out of proposed demand of Rs. 9,51,638/- the demand of Rs. 2,79,179/- pertaining to the period 2014-15 is vacated.

- i) The demand of service tax amounting to Rs. 14,89,240/- was confirmed under section 73(1) of the Act read with Rule 14(1)(ii) along with interest under section 75 of the Act and penalty under section 78(1) of the Act read with Rule 15(3) of the Cenvat Rule.
- j) The amount of Rs. 68,14,473/- received as consideration by the appellant from service recipient, and other units towards reimbursement of expense was ordered to be included in the assessable value for the purpose of charging service tax as per Explanation (a)(ii) to Section 67 (1) of the Act read with Rule 5(1) of the Valuation Rules.
- k) The demand of service tax amounting to Rs. 54,426/- was confirmed under section 73(1) of the Act along with interest under section 75 of the Act and penalty under section 78(1) of the Act.
- l) The demand of service tax amounting to Rs. 29,40,444/- was confirmed under section 73(1) of the Act along with interest under section 75 of the Act and penalty under section 78(1) of the Act.

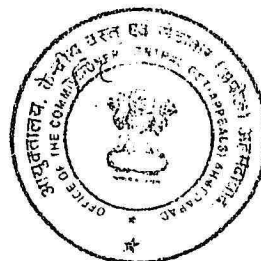
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- In respect to the demand pertaining to late filing/non-filing of ST-3 returns, invoking section 70 of the Finance Act, 1994,



and Rule 7C of the Service Tax Rules, 1994, the appellant contest that they had filed return however they could not produce the same claiming the system did not reflect their filed return for the first half of F.Y. 2016-17.

- In respect to the demand pertaining to the alleged wrongful availing of CENVAT credit on Swachh Bharat Cess (SBC), the appellant argues for the credit of SBC based on a CESTAT's order in the case of State Street Syntel Services Pvt. Ltd. [2019 (27) G.S.T.L. 519 (Tri.-Mum) and emphasizes that Cenvat Credit Rule is applicable for SBC.
- In respect to the demand pertaining to service tax on Directors' sitting fees,, the appellant argues that whole time directors are employees, citing various Tribunal cases.
- In respect to the demand pertaining to service tax on legal services under Reverse Charge Mechanism (RCM), the appellant claims a bonafide belief that no service tax was due, arguing revenue neutrality due to eligibility for CENVAT credit.
- In respect to the demand pertaining to service tax demand relating to an excess opening balance of Rs. 9.00 lakhs, the appellant acknowledges the clerical mistake for the excess availed amount, agreeing to pay it but contests penalties.
- In respect to the demand pertaining to the incorrect availing of input service tax credit for trading activities, the appellant argue that these services were used for providing taxable franchise services and are directly related to their output service.
- In respect to the demand pertaining to non-payment of service tax on reimbursement amount in the provision of service the appellant submitted that advertisement is an integral part. They assert that these advertisement on behalf of schools with costs borne by clients and recovered on actual basis is expenses incurred as pure agent and hence no service tax is leviable.



- In respect to the demand pertaining to non-payment of service tax of Rs. 54,426/- on GTA services under RCM, the appellant claims that the service tax liability for Goods Transport Agency (GTA) services was already discharged by the service providers, submitting that demand from the appellant would result in double taxation.
- In respect to the demand pertaining to non-payment of service tax on Works Contract Service (WCS) under RCM, I have gone through the submission of the appellant wherein they contend that the value over which the demand was confirmed by the adjudicating authority includes services for which full rate service tax was charged and paid, for this claim.
- They also claim that they have received 50 different services, many of which do not fall under WCS. They also assert that in most cases service tax has been recovered under forward charge by the service providers.

4. Personal Hearing in the case was held on 13.12.2023. Shri Sudhanshu Bissa, Advocate, appeared on behalf of appellant for the hearing and reiterated the contents of the written submission in the appeal and requested to allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and submission made at the time of personal hearing. In respect to the first demand against the appellant pertaining to late filing/non-filing of ST-3 returns, invoking section 70 of the Finance Act, 1994, and Rule 7C of the Service Tax Rules, 1994, the appellant contest that they had filed return however they could not produce the same claiming the system did not reflect their filed return for the first half of F.Y. 2016-17. This is factual claim. It needed verification from the system. Without verification and confirmation from the system, the



demand is not sustainable. Hence the demand is liable to be set aside and the matter needs to be remanded for verification.

6. In respect to the second demand against the appellant pertaining to the alleged wrongful availing of CENVAT credit on Swachh Bharat Cess (SBC) paid by the appellant the respondent claims that SBC is not mentioned in Rule 3(1) of Cenvat Credit Rules, 2004, thus barring service providers from availing CENVAT credit for SBC. However, the appellant argues for the credit of SBC based on a CESTAT's order in the case of State Street Syntel Services Pvt. Ltd. [2019 (27) G.S.T.L. 519 (Tri.-Mum) and emphasizes that Cenvat Credit Rule is applicable for SBC. The judgment of the Tribunal is not applicable in the present case, as the reliance is based on the case law of M/s. Shree Renuka Sugars regarding sugar cess. Relying on CBEC's FAQ issued on 14-11-2015, it is clarified that the Swachh Bharat Cess (SBC) is not integrated into the Cenvat Credit Chain. Consequently, the credit of SBC cannot be availed, and further SBC cannot be paid using the credit of any other duty or tax, as stated in Question 14 of the FAQ. Consequently, the appellant are deemed liable for a payment of Rs. 2,817/- for wrongly taken CENVAT credit on SBC along with interest and penalty.

7. In respect to the third demand pertaining to service tax on Directors' sitting fees, I find that, as a Limited Company, the appellant are liable for service tax under Reverse Charge Mechanism (RCM) as per notification Nos. 30/2012-ST and 45/2012-ST read with Rule 2(1)(d)(EE) of the Service Tax Rules, 1994. The appellant argues that whole time directors are employees, citing various Tribunal cases. However, the appellant's submission lacks merit due to the absence of proof regarding the directors' status, and the cited cases pertain to remuneration, not sitting fees. Consequently, the appellant are liable for discharging service tax of Rs. 5,400/- under RCM, along with interest and penalty.



7. In respect to the fourth demand pertaining to service tax on legal services under Reverse Charge Mechanism (RCM), the appellant is, as per the provision of Section 68(2) of the Finance Act, 1994, read with rule 2(d)(D)(II) of the Service Tax Rules, 1994 and Notifications No. 30/2012-ST dated 20th June 2012, the appellant are liable to pay 100% service tax on legal services provided by advocates. The appellant claims a bonafide belief that no service tax was due, arguing revenue neutrality due to eligibility for CENVAT credit. However, the appellant's submission lacks merit, and I find the decision made by the adjudicating authority right in respect of defending revenue neutrality, relying the judgment in Star Industries. Consequently, the appellant are liable for discharging service tax of Rs. 26,375/- under RCM, along with interest and penalty.

8. In respect to the fifth demand pertaining to service tax demand relating to an excess opening balance of Rs. 9.00 lakhs erroneously availed and credit of Rs. 3,90,224/- not debited in the ST-3 return. The impugned order claims that the appellant incorrectly carried forward the closing balance of March 2017, leading to an excess credit of Rs. 9,00,000/-. As per the table shown in para 28 of the SCN excess cenvat credit availed by the appellant is reproduced as below:

(Rs. Actual)

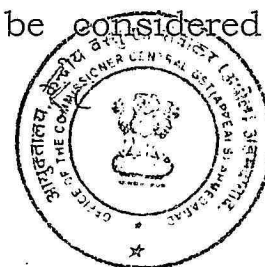
Closing cenvat credit balance for the half year ending march 2017	1,00,091
Opening cenvat credit balance in April-2017	10,00,091/-
Excess credit taken in April 2017 due to difference in Closing and opening	9,00,000/-



The appellant acknowledges the clerical mistake for the excess availed amount, agreeing to pay it but contests penalties. Regarding interest, I have peruse the table shown in para 30 of the SCN which is reproduced below:

ST-3 Return for the April-2017 to June-2017 (Revised)			
	April-2017	May-2017	June-2017
Opening Credit balance	1,00,091/-	1,83,578/-	2,00,125/-
Credit taken during the month	99,893/-	72,792	5,44,903
Credit utilized during the month	16,406/-	56,245/-	3,90,224/-
Closing credit balance shown in ST-3	1,83,578/-	2,00,125/-	3,54,804/-

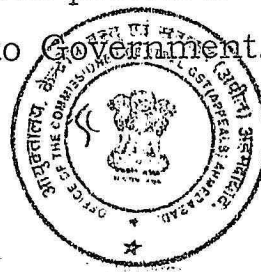
8.1. I find that the appellant had sufficient balance, however it cannot be said surely whether till date the appellant have utilized the wrongly availed cenvat credit or otherwise. Therefore, the appellant are liable to reverse cenvat credit of Rs. 9,00,000/-. Whether interest is chargeable or not needs factual verification with regard to Cenvat utilization till the date of reversal. Hence interest applicability needs to be verified in remand. Since from the record itself the matter appears to be a clerical mistake, penalty applicability needs to be verified in remand. Additionally, for utilizing CENVAT Credit of Rs. 3,90,224 and not reversing back the same, I find that although the cenvat credit of Rs. 9,00,000/-, the appellant had enough cenvat credit available to discharge the liability of service tax for the month of April, 2017, May, 2017 and June, 2017. As per the table shown in the impugned order, the appellant had earned legitimate Cenvat credit of Rs. 99,893, Rs. 72,792/- and Rs. 5,44,903/- in the respective months. Hence, these legitimate earned credit could have been considered as used for making payment of service tax of Rs. 16,406/-, 56,245/- and Rs. 3,90,224/-. Therefore, even without considering the Cenvat credit of Rs. 9,00,000/-, the appellant's service tax liability of Rs. 16,406/-, Rs. 56,245/- and Rs. 3,90,224/- was to be considered to be



discharged from the available Cenvat Credit. The adjudicating authority acknowledges that the reversal of the excess Cenvat credit of Rs. 9 lakh was already confirmed in the impugned order. Consequently, it appears that it would be inappropriate to confirm the demand for reversal of Cenvat credit of Rs. 3,90,224 once again. This aspect need to be verified in remand.

9. In respect to the sixth demand pertaining to the incorrect availing of input service tax credit for trading activities the adjudicating authority finds that the appellant had wrongly availed and utilized Rs. 36,714/- of service tax credit on courier services exclusively used for trading franchise material goods. The appellant argue that these services were used for providing taxable franchise services and are directly related to their output service. They rely on certain judgments viz. Dishman Pharmaceuticals & Chemicals [A/1194-1195/WZB/AHD/2010 dated 12.08.2010, (2) Ambalal Sarabhai Enterprises Ltd (TA No. 433/2010], (3) Kodak India P Ltd [2012(280) ELT 453], [4] Parle International P. Ltd [2012 (278) ELT 625]. Ltd. Franchise material are part and parcel of franchise service which is taxable. Hence there is no exempted service. Therefore credit of Courier service will be available. Hence the demand is liable to be set aside along with interest and penalty.

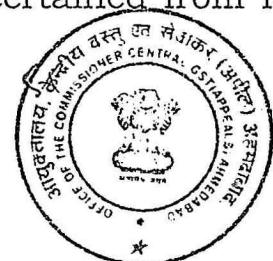
10. In respect to the seventh demand pertaining to short payment of Service Tax payment arising from reconciliation of figures in the financial statement of the appellant with those in the ST-3 returns, I have gone through the submission of the appellant and the averment of the adjudicating authority. The appellant has stated that the major amount pertains to the cases where Franchisee has first made agreement and paid franchisee fee along with service tax. Later they cancelled the agreement. The franchisee fee/royalty had to be refunded. So effectively no service was provided. They paid the service tax at the time of agreement to Government. So they



only refunded franchisee fee to the person seeking franchisee. On such refunded amount no service tax is payable. However, this aspect needs to be thoroughly verified with documents. This figure also included education training service provided to Gujarat Knowledge society which is exempted under the Notification No. 25/2012-ST. However, the documents needs to be verified. Hence the entire demand is liable to be set aside and the matter is liable to be remanded back for fresh adjudication.

11. In respect to the eighth demand pertaining to non-payment of service tax on reimbursement amount in the provision of service the appellant submitted that advertisement is an integral part. They assert that these advertisement on behalf of schools with costs borne by clients and recovered on actual basis is expenses incurred as pure agent and hence no service tax is leviable. However, the appellant did not submit to the adjudicating authority documentary evidence supporting the condition specified in explanation 1 of Rule 5(2) of the Service Tax Valuation Rules 2006. To ascertain the actual liability of the appellant the detailed verification is needed Hence, the matter needs to be remanded back for verification.

12. In respect to the ninth demand pertaining to non-reversal of proportionate CENVAT credit of Rs. 14,89,240/-in respect of common input service. The adjudicating authority states that the appellant are engaged in both taxable and non-taxable service, failed to maintain separate accounts for services like advertising and internet used for both taxable and non-taxable service. The appellant assert that advertising, internet and business promotion services were used exclusively for franchisee service, taxable activity, and as they are unrelated to trading, no CENVAT credit reversal is necessary. Apart from the above said submission against the demand of proportionate CENVAT Credit the appellant has nowhere submitted that they were not involved in trading activity. The nature of trading service needs to be ascertained from factual



records. If it is related to supply of franchisee material as part of Franchisee Service, then it is taxable. No reversal is needed in that case. However, this aspects needs to be verified. Hence the matter needs to be remanded back.

13. In respect to the tenth demand pertaining to non-payment of service tax of Rs. 54,426/- on GTA services under RCM, the appellant claims that the service tax liability for Goods Transport Agency (GTA) services was already discharged by the service providers, submitting that demand from the appellant would result in double taxation. I also find the appellant did not present supporting documents for the claim to the adjudicating authority that the service provider had paid the service tax. To ascertain the actual liability of the appellant the detailed verification is needed. Hence the matter needs to be remanded back for verification.

14. In respect to the eleventh demand pertaining to non-payment of service tax on Works Contract Service (WCS) under RCM, I have gone through the submission of the appellant wherein they contend that the value over which the demand was confirmed by the adjudicating authority includes services for which full rate service tax was charged and paid, for this claim, the appellant did not submit the document. They also claim that they have received 50 different services, many of which do not fall under WCS. They also assert that in most cases service tax has been recovered under forward charge by the service providers. Further they also said that construction of director's bungalow is a single residential unit which is exempt under Notificaiton No. 25/2012-ST dated 20.06.2012. Further Works Contract Service used for construction of educational institution is also exempted under Notification No. 25/2012-ST dated 20.06.2012. To ascertain the actual liability of the appellant the detailed verification is needed. Hence the matter needs to be remanded back.



15. In view of the above discussion, the order-in-appeal is passed as under:

15.1. In respect to the first demand pertaining to late fee/penalty of Rs. 41,900/-, I remand back the matter for verification and issuing fresh order.

15.2. In respect to the second demand pertaining to credit taken on SBC paid by the appellant of Rs. 2,817/-, I uphold the demand along with interest and penalty.

15.3. In respect to the third demand pertaining to service tax on Directors' sitting fees of Rs. 5,400/-, I uphold the demand along with interest and penalty.

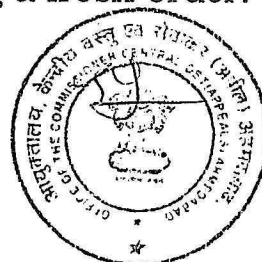
15.4. In respect to the fourth demand pertaining to service tax on legal service under RCM of Rs. 26,375/-, I uphold the demand along with interest and penalty.

15.5. In respect to the fifth demand pertaining to reversal of wrongful Cenvat Credit of Rs. 9 lakhs and Rs. 3,90,224/-, I remand back the matter for verification and issuing a fresh order.

15.6. In respect to the sixth demand pertaining to incorrect availing of input cenvat credit of Rs. 36,714/-, I set aside the demand along with interest and penalty.

15.7. In respect to the seventh demand pertaining to short payment of service tax of Rs. 48,05,720/-, I remand back the matter for verification and issuing a fresh order.

15.8. In respect to the eighth demand pertaining to nonpayment of service tax of Rs. 6,72,459/- on reimbursement amount, I remand back the matter for verification and issuing a fresh order.



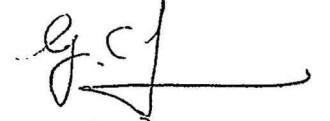
15.9. In respect to the ninth demand pertaining to non-reversal of proportionate Cenvat Credit of Rs. 14,89,240, I remand back the matter for verification and issuing a fresh order.

15.10. In respect to the tenth demand pertaining to non-payment of service tax of Rs. 54,426/- on GTA service, I remand back the matter for verification and issuing a fresh order.

15.11. In respect to the eleventh demand pertaining to non-payment of service tax of Rs. 29,40,444/- on Works Contract service, I remand back the matter for verification and issuing a fresh order.

16. अपीलकर्ताद्वारादायरअपीलकानिपटानउपरोक्ततरीकेसेकियाजाताहै।


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

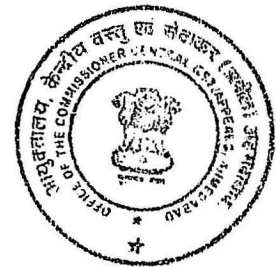


ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 31.01.2024

Attested


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



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 - 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad
South (For uploading the OIA)
- ✓ 6) Guard File
- 7) PA file

