सत्यमेव जयते

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

By SPEED POST

DIN:- 20240364SW0000718330

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4484/2023
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-001-APP-301/2023-24 and 13.03.2024
(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	15.03.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem-464/Manan/AC/DAP/2022-23 dated 28.03.2023 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. Manan Maheshbhai Patel, 1, Satyakam Society, Surendra Mangaldas Road, 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 पूवोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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

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

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

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

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

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

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

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

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक मे तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति 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 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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

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

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

(4) न्यायालय शुल्क अधिनियम 1970 यथा संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

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

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Manan Maheshbhai Patel, Satyakam Society, Surendra Mangaldas Road, Ambawadi, Ahmedabad-380015 (hereinafter referred to as "*appellant*") against Order-in-Original No. CGST-VI/Dem-464/Manan/AC/DAP/2022-23 dated 28.03.2023 (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. AOGPP5610P. The Income Tax Department provided data indicating taxable income for the financial years 2014-15, 2015-16 and 2016-17. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Years 2014-15, 2015-16 and 2016-17, it was noticed that the appellant had earned an income of Rs. 16,34,898/- during the F.Y. 2014-15, Rs. 51,65,049/- during the F.Y. 2015-16, and Rs. 21,81,103/- during the F.Y. 2016-17, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)"filed with the Income Tax department. Accordingly, it appeared that 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 required details of service provided during the financial years from 2014-15 to 2016-17, however, they did not respond to the letters issued by the department. The appellan's failure to register for service tax, respond to correspondence, and properly assess service tax liability led to allegations of willful suppression of facts and evasion of payment. As a result, a demand for service tax payment of Rs. 13,03,996/- for the F.Y. 2014-15 to 2016-17, along with interest and penalties, was issued.

2.1 Subsequently, the appellant were issued Show Cause Notice demanding Service Tax amounting to Rs. 13,03,996/- for the period from F.Y. 2014-15 to 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; imposition of penalties under Section 77(1) of the Act as well as late fee under Section 70 read with Rule 7C of the Service Tax Rules, and penalty under Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 13,03,996/- was confirmed 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 for the period FY 2015-16. Further (i) Penalty of Rs. 13,03,996/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 1,20,000/- was imposed on the appellant under Section 70 of Finance Act, 1994 and (iii) Penalty of Rs. 10,000/- under Section 77(1) (a) of the Finance Act, 1994.

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:

- The service named "services provided by way of renting of a motor vehicle designed to carry passengers" is subject to abatement vide Notification No. 26/2012- Service Tax issued under sub-section (1) of section 93 and Reverse Charge vide Notification No. 30/2012-Service Tax under sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994).

- After doing the conjoint reading of sr. no 9A of Notification No. 26/2012- Service Tax and sr. no 7(a) of Notification No. 30/2012-Service Tax, the appellant chose to go for an abatement criterion given under sr no 9A of Notification No. 26/2012- Service Tax. While reading both of the above

notifications simultaneously, the explanation comes out to be that the service provider, in order to avail the benefit of exemption from payment of service tax, is required to forgo the benefits of CENVAT credit on inputs, capital goods and input services, used for providing the taxable service and 100% of the service taxi.e on 40% of the value of the invoice amount is required to be paid by the recipient of the service under reverse charge as per sr. no 7(a) of Notification No. 30/2012-Service Tax.

- the service provider has chose the option 7(a) of the Notification No. 30/2012-Service Tax, and if the service provider has charged service tax on 50% of the taxable value on the face of the invoice, then the service provider is said to have chosen the option 7(b) of the Notification No. 30/2012-Service Tax and the service recipient is required to pay balance 50% of the service tax and it will be said as non- abated value as per option 7(b) of the Notification No. 30/2012-Service Tax

- However, the learned officer failed to understand the legality of service tax liability on the service named "services provided by way of renting of a motor vehicle designed to carry passengers" and failed to do the the conjoint reading of sr. no 9A of Notification No. 26/2012- Service Tax and sr. no 7(a) and 7(b) of Notification No. 30/2012-Service Tax and issued an order in original bearing reference number O.I.O.No -CGST- VI/DEM-464/Manan/AC/DAP/22-23, DATED 28.03.2023 invoking service tax demand on the "services provided by way of renting of a motor vehicle designed to carry passengers".

- In the said OIO, the learned officer invoked service tax under section 73(1) of the Finance Act, 1994 to the tune of Rs 4,70.308/- (i.e 15% on 31,35,386) on the income earned from the "services provided by way of renting of a motor vehicle designed to carry passengers" along with interest at the appropriate rate under section 75 of the Finance Act, 1994.

- Also in the said OIO, the learned officer invoked penalty under section 77(1)(a) of the Finance Act, 1994 to the tune of Rs 10,000/-

- Also in the said OIO, the learned officer invoked penalty under section 78 of the Finance Act, 1994 to the tune of Rs 4,70,308/- (i.e 15% on 31,35,386).

- From the above invoked demands of service tax along with interest and penalty, the appellant has the reason to believe that the above demand is ultra-vires and the appellant herewith submits your honour the grounds of appeal.

- Renting of Motor vehicles service is having and abatement (i.e partial exemption) vide sr. no 9A of Notification No. 26/2012-Service Tax.

- As it is very clear from the above Notification No. 26/2012-Service Tax that the said notification was issued under sub-section (1) of section 93.

- sub-section (1) of section 93 reads as under:

- If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified
- in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

- Hence from the above, we can easily conclude that only the 40% part of the renting of motor vehicle service is taxable and remaining part of 60% of the value of service is exempt from payment of service tax under section 93(1) of the Finance Act, 1994.

- As per section 69(1) of the Finance Act, 1994 which reads as under;

- Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such lime and in such manner and in such form, as maybe prescribed, make an application for registration to the superintendent of Central Excise. can easily conclude that-

- whether to choose an option of abatement or full value is in the hand of the service provider because first billing point is in the hand of the service provider. From the face of the invoice raised by the service provider, the service recipient can determine the value on which he being a recipient of service is required to pay service tax i.e whether he should pay service tax on 40% value or 50% value. i.e if the service provider has not charged any service tax on the face of the invoice then the service recipient can easily conclude that the service provider has chosen the option 7(a) of the Notification No. 30/2012-Service Tax, and if the service provider has charged service tax on 50% of the taxable value on the face of the invoice, then the service provider is said to have chosen the option 7(b) of the Notification No. 30/2012-Service Tax and the service recipient is required to pay balance 50% of the service tax and it will be said as non-abated value as per option 7(b) of the Notification No. 30/2012-Service Tax.
- Here, the service provider has chosen the option 7 (a) of the Notification No. 30/2012-Service Tax, at the cost of his CENVAT credit on inputs, capital goods and input services, used for providing the taxable service i.e 100% (i.e 40% of the value of service) of the service tax to be paid by the service recipient and hence did not charge any service tax on the face of the invoice raised on the service recipient M/s. Saffron Formulations Private Limited and the service recipient M/s. Saffron Formulations Private Limited should have paid 100% service tax i.e (i.e 40% of the value of service) and it can be

easily proved from the ST-3 returns filed by the said service recipient.

- As the service renting of motor vehicle itself is under the net of 40% of the value of service tax which the service recipient is liable to pay service tax on RCM, the balance 60% is exempt portion in the hand of service provider as per section 93(1) and Notification No. 26/2012- Service Tax issued thereunder.

- As the balance 60% is exempt portion in the hand of service provider and the service recipient has paid service tax on the value of 40%, the service recipient was at all not required to obtain service tax registration section 69(1) of the Finance Act, 1994 and in turn was not required to collect service tax from the service recipient and pay the service tax.

- Hence, as the appellant was not providing any taxable portion of service, he was neither required to obtain service tax registration nor he is required to collect and pay the service tax, the SCN Issued by the learned officer under section 73(1) invoking extended period is also baseless as the appellant is not liable to take service tax registration and pay service tax and hence the question of fraudulent intention does not arise.

- In turn, the appellant hereby prays your honour to kindly drop the proceedings initiated under the above stated O.I.O.No - CGST- VI/DEM-464/Manan/AC/DAP/22-23, DATED 28.03.2023 invoking ultra-vires service tax under section 73(1) of the Finance Act, 1994 to the tune of Rs 4,70,308/- (1.e 15% on 31.35.386) along with interest at the appropriate rate under section 75 of the Finance Act, 1994 and also penalty under section 77(1)(a) of the Finance Act, 1994 to The fune of Rs 10,000/- and under section 78 of the Finance Act, 1994 to the tune of Rs 4,70,308/- (i.e 15% on 31.35,386) and penalty Rs. 1,20,000/-under Section 70 of Finance Act, 1994, read with rule 7(c) of Service Tax Rules, 1994.

4. Personal hearing in the case was held on 07.03.2024. Shri Dilip U. Jodhani, and Shri Janak Tanna, Chartered Accountants, appeared on behalf of the appellant for personal hearing. He stated that that the client is giving two services 1. Overseas recruitment consultancy service which is export of service 2. Renting of Motor Vehicle, which is liable for 100% under RCM has they have given abated value. (Notification No. 26/2012-ST and 30/2012-ST). Hence, no service tax liability.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is (1) whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise, (2) whether consultancy recruitment service indeed qualifies as an export of service, as claimed by the appellant, (3) whether the Renting of Motor Vehicles service is liable for 100% service tax under the Reverse Charge Mechanism (RCM) on the abated value in the light of Notification No. 26/2012-ST dated 20.06.2012 and 30/2012-ST dated 20.06.2012 or otherwise. The demand pertains to the period from F.Y. 2014-15 to 2016-17.

6. I find that the appellant contend that the income tax data supplied by the Income Tax Department forms the basis for the tax demand imposed by the adjudicating authority. The appellant argues that the value over which service tax was demanded by the adjudicating authority actually include income pertaining to export of service, which is exempted under Rule 6A of the Service Tax Rules, 1994 and income from Renting of Motor Vehicles Service, on which service tax liability is on the recipient only in the light of Notification No. 26/2012-ST and 30/2012-ST dated 20.06.2012. To substantiate the claim the appellant submitted documentary proof

i.e. ledgers and supporting invoices related to both services. The details of service wise income is tabulated as under:-

Source of Income (Turnover)	F.Y. 2014-15	F.Y. 2015-16	F.Y. 2016-17
Overseas Recruitment Consultancy Service	16,34,899/-	20,29,663/-	21,81,103/-
Renting of Motor Vehicle Service	Nil	31,35,386/-	Nil

7. Firstly I will go through matter in respect of income received by the appellant pertaining to export of service. The appellant contends that the income received during the F.Y. 2014-15 to 2016-17 providing Overseas Recruitment Consultancy Service is not under the net of service tax as the income is exempted under Rule 6A of the Service Tax Rules, 1994. For clarification extract of Rule 6A is reproduced as under:

> *RULE 6A. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -*
>
> *(a) the provider of service is located in the taxable territory ,*
>
> *(b) the recipient of service is located outside India,*
>
> *(c) the service is not a service specified in the section 66D of the Act,*
>
> *(d) the place of provision of the service is outside India,*
>
> *(e) the payment for such service has been received by the provider of Service in convertible foreign exchange, and*
>
> *(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 2|Explanation 3] of clause (44) of section 65B of the Act*

8. It is observed that during 2014-15 to 2016-17, the appellant were engaged in the business of providing export of services to its various overseas clients outside India and have received payment in convertible foreign exchange against the same.

9. Reading the aforesaid provision and documents viz. copy of export invoices, copy of Foreign Inward Remittance Certificates (FIRCs) illustrating the amount received from export of service provided by the appellant, it is very much clear that the value amounting to Rs. 16,34,899/-, Rs. 20,29,663/- and Rs. 21,81,103/- in the F.Y. 2014-15, 2015-16 and 2016-17, over which service tax was demanded by the adjudicating authority is exempted in terms of service being export of service in view of Rule 6A of the Service Tax Rule, 1994.

10. I also observed that the appellant, which are located in taxable territory are providing service to the recipient of service located outside India and for the service rendered by the appellant they were collecting payment in convertible foreign exchange. Thus I am of the considered view that the appellant have provided export of services to its overseas clients outside India i.e. taxable territory and as such they earned income only in convertible foreign exchange in F.Y. 2014-15 to 2016-17 from Foreign Service recipients which is exempted in terms of Rule 6A of the Service Tax Rule, 1994 and demand accordingly is legally wrong and not sustainable.

11. As regard the appellant's claim that a portion of the income which is Rs. 31,35,386/- in F.Y. 2015-16, included in the tax demand pertains to the renting of motor vehicles service. This claim is substantiated by documentary evidence such as ledgers and supporting invoices. Moreover, the appellant cites Notification No. 26/2012-ST and 30/2012-ST dated 20.06.2012, which stipulates that the service tax liability for renting of motor vehicles shifts to the recipient under certain circumstances. Extract of Notification No. 26/2012-ST and 30/2012-ST dated 20.06.2012 is reproduced as under:

Notification No. 26/2012- Service Tax dated 20th June, 2012

****

the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax

leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely;-

Sl. No.	*Description of taxable service*	*Percentage*	*Conditions*
(1)	*(2)*	*(3)*	*(4)*
9A	*Transport of passengers, with or without accompanied belongings, by* *a. A contact carriage other than motor cab.* *b. A radio taxi.* *c. "A stage carriage"*	*40*	*CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.*

Notification No. 30/2012-Service Tax

****

the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

Sl. No.	*Description of a service*	*Percentage of Service tax payable by the person providing service*	*Percentage of service tax payable by any person liable for paying service tax other than the service provider*
(1)	*(2)*	*(3)*	*(4)*

7	*(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business*	*Nil*	*100%*
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business	*60%*	*40%*

12. In view of the above provision, it is found that the recipient who is not engaged in the similar line of business is liable for payment of service tax under RCM on renting of motor vehicles service. The appellant contended that they were providing renting of motor vehicle service to M/s Saffron Formulations Private Limited which is also evident from the 26AS form submitted by the appellant. This is also contended by the appellant that they were not charging service tax on the invoice raised (sample copies submitted by the appellant) to service recipient M/s Saffron Formulations Private Limited knowing that the liability of payment of service tax would go on them. Hence I find that the appellant are not liable for service tax payment on the service falling under Renting of Motor Vehicle Service in view of Notification No. 26/2012-ST and 30/2012-ST dated 20.06.2012. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

13. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the Appellant during the FY 2014-15 to 2016-17, is not legal and proper and deserve to be set aside.

14. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant.

15. 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 : 13 .03.2024

Attested

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

By RPAD / SPEED POST

To,
M/s. Manan Maheshbhai Patel,
Satyakam Society,
Surendra Mangaldas Road,
Ambawadi, Ahmedabad-380015.

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner Central GST, Ahmedabad South.
3. The Deputy/Assistant Commissioner, CGST, Division VI, Ahmedabad South
4. The Supdt. (Appeals) Central GST, Ahmedabad South (for uploading the OIA).
5. Guard File.
6. P.A. File.