



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 - टेलीफैक्स 07926305136



DIN : 20230464SW000066706A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/150/2023 / 605 - 609
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-07/2023-24
दिनांक Date : 21-04-2023 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. 64/AC/Amrish R Shah/Div-6/A'bad-South/JDM/2022-23 दिनांक:
30.08.2022 passed by Assistant Commissioner, CGST, HQ, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Amrishbhai Ratilal Shah
22/G, Hemkoot Building,
Nr. Gandhigram Railway Station,
Ahmedabad - 380009

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 :

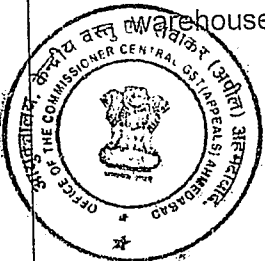
Revision application to Government of India:

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

(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 हो।

(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 इका 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.

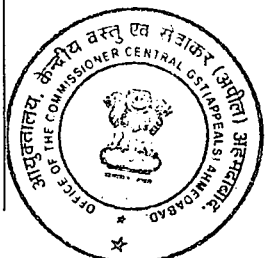
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

(a) 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 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-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.

137 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.

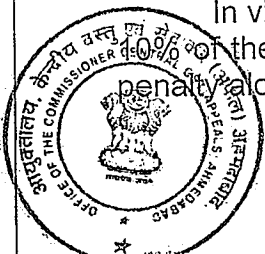
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxxxvi) amount determined under Section 11 D;
(cxxxvii) amount of erroneous Cenvat Credit taken;
(cxxxviii) 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 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. Amrishbhai Ratilal Shah, 22/G, Hemkoot Building, Nr. Gandhigram Rly. Station, Ahmedabad – 380009 (hereinafter referred to as “the appellant”) against Order-in-Original No. 64/AC/Amrish R Shah/Div-6/A’bad-South/JDM/2022-23 dated 30.08.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, HQ, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

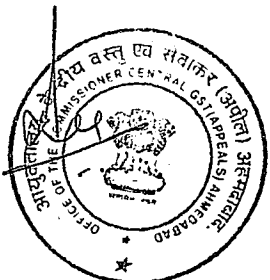
2. Briefly stated, the facts of the case are that the appellant is holding PAN No. AGVPS1245C. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 & FY 2016-17, it was noticed that the appellant had earned substantial income from services amounting to Rs. 21,24,880/- during the FY 2015-16 & Rs. 14,54,486/- during the FY 2016-17. However, they did not obtain Service Tax Registration and did not pay service tax on such income from service. The appellant was called upon to submit documents, however, they did not submit the called for documents and details.

2.1 Therefore, the appellant was issued a Show Cause Notice No. V/WS06/O&A/SCN-560/2020-21 dated 28.12.2020 demanding Service Tax amounting to Rs. 5,36,905/- for the period FY 2015-16 to FY 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; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 readwith Section 70 of the Finance Act, 1994; and imposition of penalties under Section 77(1) & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 5,36,905/- 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 from FY 2015-16 to FY 2016-17. Further (i) Penalty of Rs. 5,36,905/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77(1) of the Finance Act, 1994.

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

- The appellant are engaged in business of investment and insurance services distribution. The show cause notice was issued to the appellant on the basis of data



received from income tax department wherein no details were being provided with regards to the nature of income and taxability of the same under the relevant provision of the service tax. The impugned order in original has been decided without analyzing entire facts of the case and without appreciating terms of the service contract. Further, without giving proper reasoning that how the service tax would be applicable on the income being earned by them. In this regard, they relied upon the decision of Hon'ble Supreme Court in the case of Amrit Foods Vs. CCE reported at 2005 (190) ELT 433 (SC).

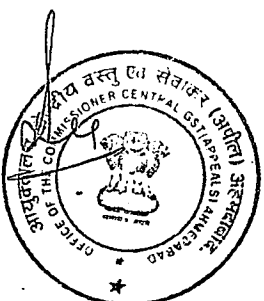
- The appellants are inter alia engaged as: (i) Life insurance commission agent. (ii) Mutual fund commission agent wherein they have earned commission from an Asset Management Company and (iii) Sub agent for investment in fixed deposit, NCO, Capital Gain Bonds, Government of India Tax Free Bonds, IPO (Initial Public Offer). The appellants are working as sub broker of the main broker as registered with SEBI.
- The appellant submitted statement showing income of brokerage and commission total earned by them during the period in dispute, which is as under:

Sr. No.	Income Details	Amount (in Rs.)	
		FY 2015-16	FY 2016-17
1	Commission income for carrying on life insurance business	0	13,913/-
2	Commission for Mutual fund	11,25,826/-	8,44,299/-
3	Services provided as a sub-broker to Stock Brokers as Registered with SEBI.	9,99,053/-	5,40,963/-

- They have submitted copy of the financial statement, copies of the brokerage invoices and copy of Form 26AS for both the FY 2015-16 & FY 2016-17. The appellant have earned commission income by acting as a sub agent of the main stock broker. Copy of the documents showing that the appellants are working as a sub broker to the main stock broker was submitted by the appellant along with appeal memorandum.
- As per sub-clause (a) of clause (29) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, services provided by the person in the capacity of the sub-broker of the stock broker is eligible for exemption and accordingly liability to pay service tax on the same does not arise.



- The appellant have provided services of insurance agent and earned commission of Rs. 13,913/- from the same. As per section 68 (2) of the Finance Act, 2012 as amended by time to time, service recipient is liable to pay service tax under reverse charge mechanism. As per Notification No. 30/2012-ST dated 20.06.2012 as amended, in respect of service provided or agreed to be provided by an insurance agent to any person carrying on insurance business, service tax is payable by the person who is recipient of service.
- Their income from mutual fund commission was liable for service tax but same was payable by the AMC and not by the distributor or commission agent. Accordingly, it was liable for reverse charge under the provision of Notification 25/2012-ST Sr. No. 29. Therefore, on the mutual fund commission income earned during the financial year 2015-16, service tax was payable under reverse charge by the service recipient.
- Since beginning the appellant are working as sub broker to the main broker or stock broker registered with the SEBI. Accordingly the services provided by the appellant to the main stock broker as a sub broker was eligible for exemption under the provision of the Mega Exemption Notification.
- The appellant are not liable to pay service tax, the appellant cannot be subjected to penalty under Section 77 or any other section of the Finance Act, 1994. Similarly, no interest under Section 75 can be demanded from the appellant.
- In any case the matter involves interpretation of the statutory provisions. It is well settled that in a case involving interpretation of law, no penalty can be imposed. The appellant relied upon the following decisions in support of the above submission:
 - a) CCE v. Sarup Tanneries Limited – 2005 (184) ELT 217 (T)
 - b) CCE v. Explicit Trading – 2004 (169) ELT 205 (T)
 - c) Goyal M. G Gases Ltd v. CCE – 2004 (168) ELT 369 (T)
 - d) Kanthuria Portfolios v, CCE – 2003 (158) ELT 355 (T)
 - e) Goenka Woolen Mills v. CCE – 2001 (135) ELT 873 (T)
- The appellant submit that allegation of suppression facts against the appellant are not maintainable and no penalty is leviable on this ground. In this regard the appellant relied on the decision in the case of U.P. State Sugar & Cane Dev. Corpn. Ltd. v. CCE 2009 (242) ELT 260.



- Furthermore, as it is a quasi-criminal proceeding, penalty will not be ordinarily imposed unless and until "mens rea" on the part of the defaulter is proved beyond all reasonable doubts. The show cause notice has failed to bring out the essential "mens-rea" or guilty mind of the appellant. In fact, there was no intention to evade payment of service tax on part of the appellant. In this regard the appellant relied on the decision in the case of Hindustan Steel Ltd. v The State of Orissa [1969 (2) SCC 627].
- The extended period for issuing show cause notice as prescribed under Section 73(1) is inapplicable in the instant case. The short payment of service tax as mentioned in the impugned Show Cause Notice is not because of reason of fraud, collusion, wilful misstatement or suppression of facts or contravention of any provision of service tax or rules is made with intention to evade payment of service tax. It is submitted that the appellant did not willfully/deliberately suppress any fact and there was no failure to disclose fully or truly the material facts at any point of time. It is submitted that all the facts and documents were disclosed to the Department as and when requested for. In other words, there was no positive act by the appellant to evade service tax. The appellant have always co-operated with the Department in their proceedings and have always provided the details asked for by the Department and have never suppressed any facts from the Department. In this regard the appellant relied on the following decision:

- a) Continental Foundation V/s CCE.2007 (216) ELT 177 (SC)
- b) Padmini Products Vs CCE 1988 (35) ELT 543

- The appellant were and continue to be under a bona fide belief that they have not contravened any provisions of the Finance Act, 1994 and accordingly there has not been any short payment of service tax at any time for the reasons stated hereinabove. Further, the issue involved in the present case relates to interpretation of number of statutory provisions, thus extended period cannot be invoked. Reliance is placed on the following cases:

- Steelcast Ltd. v. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.);
- P.T. Education & Training Services Ltd. v. Commissioner of Central Excise, Jaipur, 2009 (14) STR 34 (Tri.-Del.);
- K.K. Appachan v. Commissioner of Central Excise, Palakkad, 2007 (7) STR 230 (Ti.-Bang.).



4. Personal hearing in the case was held on 03.03.2023 through virtual mode. Ms. Dipa Muchandani, Chartered Accountant, appeared on behalf of the appellant for personal hearing. She reiterated submission made in appeal memorandum.

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 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. The demand pertains to the period FY 2015-16 & FY 2016-17.

6. I find that main contentions of the appellant are that they have earned three types of income (i) Life Insurance Commission, which falls under RCM as per Notification No. 30/2012-ST dated 20.06.2012; (ii) Mutual Fund Commission, which is exempted from service tax as per Sr. No. 29(a) of the Notification No. 25/2012-ST dated 20.06.2012; and (iii) Commission as Sub agent for investment in fixed deposit, NCO, Capital Gain Bonds, Government of India Tax Free Bonds, IPO (Initial Public Offer), which are exempted as per Sr. No. 29(a) of the Notification No. 25/2012-ST dated 20.06.2012.

6.1 For ease of reference, I reproduce the relevant provision of Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 30/2012-ST dated 20.06.2012, as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

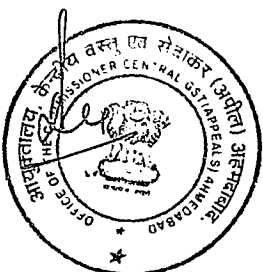
1...

2... ..

29.Services by the following persons in respective capacities –

(a) sub-broker or an authorised person to a stock broker;”

"Notification 30/2012 Service Tax dated 20.6.2012 GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the



Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, 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:-

I. The taxable services, -

(A)

(i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

[(ib) provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company;] [Omitted by Notification No.18/2016-ST, dated 1-3-2016 w.e.f.1-4-2016.]

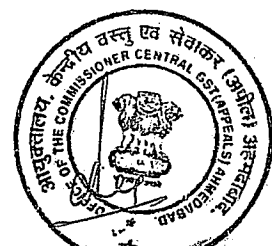
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(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following table, namely: -

Table

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
I.	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	NIL	100%
IB	*[in respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company] [*Inserted vide Notification No. 7/2015-ST dated 01.03.2015 w.e.f. 01.04.2015 and omitted vide Notification No.	NIL	100%



18/2016-ST dated 01.03.2016 w.e.f. 01.04.2016]		
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7. I also find that the appellant have, at the time of reply to the show cause notice, submitted bifurcation of their income as under:

Sr. No.	Income Details	Amount (in Rs.)	
		FY 2015-16	FY 2016-17
1	Commission income for carrying on life insurance business	0	13,913/-
2	Commission for Mutual fund	279.62	8,44,299/-
3	Services provided as a sub-broker to Stock Brokers as Registered with SEBI.	21,24,600/-	5,40,963/-

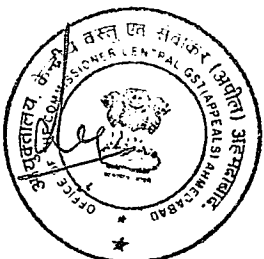
7.1 However, they have changed the same at the appeal stage, without specify any reason or without submitting any supporting documents. In appeal memorandum, the bifurcation of income shown by the appellant is as under:

Sr. No.	Income Details	Amount (in Rs.)	
		FY 2015-16	FY 2016-17
1	Commission income for carrying on life insurance business	0	13,913/-
2	Commission for Mutual fund	11,25,826/-	8,44,299/-
3	Services provided as a sub-broker to Stock Brokers as Registered with SEBI.	9,99,053/-	5,40,963/-

8. It is observed that the adjudicating authority had confirmed the demand by observing that the appellant had not submitted required documents, not submitted bifurcation of income received along with supporting documents. The relevant paras of the impugned order are as under:

"41. I find that the noticee has failed to submit any document regarding his acting as an Insurance Agent and Sub-broker to Broker who deals in stocks shares. Similarly, he has also failed to establish that he was working as an Agent of Mutual Funds. He has failed to submit evidences like Appointment as Sub-Broker of any broker who deals in shares/ stocks on recognized Stock Exchange, Appointment as an Agent of insurance co., respective mutual funds, its validity for the period involved under SCN, Ledger / payment summary / Bank statements showing income from each of the entity, as claimed by him. TDS deducted by these entities, etc.

45. Further. I find that the entities with whom the noticee has dealt with are in the multiple businesses so it need to be established that under which head, how much



income was earned and that will be deciding factor of it taxability. E.g. M/s. SMC Global Securities is providing service as Stock Broker, Mutual Fund Agent, Insurance Agent and Loan / financing and so on. Thus, the noticee needs to substantiate his claim of non-taxability of his income in terms of each of the entities and each of the income head. viz. commission. brokerage. fees, etc."

8.1 I find that the appellant have submitted the following documents with the appeal memorandum showing their appointment with various financial institutions:

- a) a letter dated 23.06.2009 issued by M/s. Shriram Fortune Solutions Ltd. indicating that they appoint the appellant as Business Associate w.e.f. 15.04.2009.
- b) a letter dated 14.12.2009 issued by M/s. SMC Global Sec Ltd. indicating that they appoint the appellant as Financial Planning Agent.
- c) a letter dated 03.09.2015 issued by M/s. IFAN offering them advance financial products through a web based platform.
- d) a letter dated 06.03.2010 issued by M/s. Karvy Stock Broking Limited indicating that they appoint the appellant as Business Associate for Equity IPOs and for Mutual Funds.
- e) a letter dated 02.07.2015 issued by M/s. Shriram Insight Share Brokers Ltd. indicating that they appoint the appellant as Business Associate.
- f) a letter dated 11.06.2008 issued by M/s. RR Investors Capital Services Private Limited indicating that they appoint the appellant as Business Associate.
- g) a letter dated 27.10.2008 issued by M/s. Edelweiss Mutual Fund indicating that they appoint the appellant as Business Associate.
- h) a letter dated 20.04.2016 issued by M/s. Computer Age Management Services Pvt. Ltd. (Registrar and Transfer Agent to ICICI Prudential Mutual Fund) indicating that they appoint the appellant as ICICI Prudential Mutual Fund Distributor.
- i) a letter dated 11.04.2016 issued by M/s. UTI Asset Management Company Ltd. indicating that they appoint the appellant as agent.
- j) a letter dated 19.04.2016 issued by M/s. Franklin Templeton Asset Management (India) Pvt. Ltd. indicating that they appoint the appellant as distributor.
- k) a letter dated 27.04.2016 issued by M/s. Reliance Nippon Life Asset Management Ltd. indicating that they appoint the appellant as distributor.

8.2 It is observed that as per their Income Ledger for the FY 2015-16 & FY 2016-17, they have received total income of Rs. 21,24,880/- and Rs. 14,54,486/-, respectively. Group summary of the same submitted by the appellant are as under:

FY 2015-16

(Amount in Rs.)

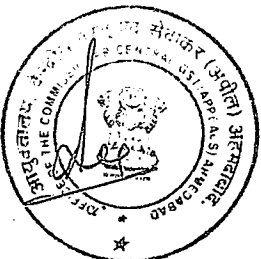
Brokerage Received	
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IFAN Finacial Securities Ltd.	481673.9
Fix Deposit	
20 Microns Ltd.	188
Bombay Dying Ltd:	26200
Karvy Stock Broaking Ltd.	84668
Pooja Investment & Fin Co. Bro.	1019131
Shriram Fortune Ltd.	92963
Vipra Consultancy Brok.	106415.6
Mutual Fund Brokerage Received	
Axis Mutual Fund	279.62
Edelwise Capital Limited	124263
Shriram Insight Brok	182473
SPA Securities Ltd.	6625
Total	2124880

FY 2016-17**(Amount in Rs.)**

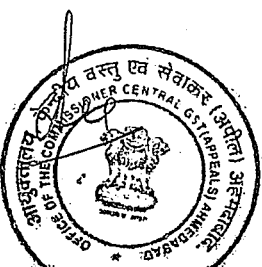
Brokerage Received	
Brokerage Received	12097
IFAN Finacial Securities Ltd.	21988
Fix Deposit	
HDFC Ltd. (FD Brok)	470
Mahindra & Mahindra Finance	84666
Mukund Ltd. (FD Brok)	17760
Pooja Investment & Fin Co. Bro.	48385.5
Shriram Fortune Ltd.	2720
Vipra Consultancy Brok.	6925
Insurance Commission received	
Edelweiss Tokio Life Insurance Commission	13913.39
Mutual Fund Brokerage Received	
Axis Mutual Fund	206.84
Franklin Templeton Mutual Fund	103027.88
HDFC Mutual Fund	603090.17
Mahindra Mutual Fund	6751.65
Reliance Mutual Fund	34193.46
Tata Mutual Fund	97028.7
Edelwise Capital Limited	121121
Shriram Insight Brok	23464
SMC Global Securities Ltd.-FD	99699.51
SPA Securities Ltd.	156978
Total	1454486.1



8.3 In view of the aforesaid provision of Notification No. 30/2012-ST dated 20.06.2012, I find that the Service Tax liability in respect of the Life Insurance Commission of Rs. 13,913/- received by them during the FY 2016-17 is under Reverse Charge Mechanism on Insurance Companies in respect of the commission given to the insurance agent by the Insurance Companies. I also find that the Service Tax liability in respect of the Mutual Fund Commission is under Reverse Charge Mechanism on mutual fund or asset management company in respect of the commission given to the agent by them during the FY 2015-16. In the present case, the appellant have received commission of Rs. 279.62 only as Mutual Fund Commission during the FY 2015-16.

8.4 In view of the aforesaid provision of Sr. No. 29(a) of Notification No. 25/2012-ST dated 20.06.2012, I find that the Service Tax liability in respect of the Commission received as sub-broker is exempted from the service tax. As per definition of "Sub broker" provided in Para 2(zh) of the Notification No. 25/2012-ST dated 20.06.2012, "*sub-broker*" has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992". As per definition of "Sub broker" provided in clause 2(gc) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992, "*Sub broker*" means any person not being a member of stock exchange who acts on behalf of as stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers. However, it is observed that appellant have failed to produce detailed bifurcation of income received from such stock brokers who deal in buying selling or dealing in securities along with supporting documents showing the income received from such entities for which purpose viz. Brokerage for FD, Brokerage for Mutual Fund, etc. It is also observed that the appellant have not produced such details and documents before the adjudicating authority or at the appeal stage. I also find that the adjudicating authority in the impugned order correctly held that the entities with whom the appellant have dealt with are in the multiple businesses so it need to be established that under which head, how much income was earned and that will be deciding factor of it taxability and the appellant needs to substantiate his claim of non-taxability of his income in terms of each of the entities and each of the income head. However, I find that the appellant have failed to submit any supporting document regarding the same. Without producing such details, the contention of the appellant that their income is exempted from service tax as per Sr. No. 29(a) of Notification No. 25/2012-ST dated 20.06.2012 is not legally tenable.

8.5 In view of the above, I find that as regard, the other income of FY 2015-16 i.e. Rs. 21.64,600/- received as Brokerage Income, and the other income of FY 2016-17 i.e. Rs. 8.44,299/- received as Mutual Fund Commission Income and Rs. 5,96,274/- received as

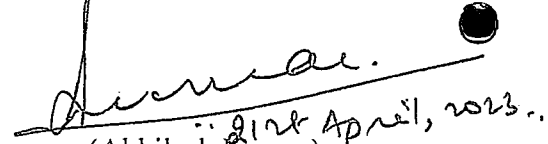


Brokerage Income, there is no exemption available from payment of Service Tax and the appellant is required to pay the applicable service tax on the said income.

9. In view of above, I hold that the impugned order passed by the adjudicating authority in respect of income received by the appellant on demanding service tax on Mutual Fund Commission income of Rs. 279.62 during the FY 2015-16 and Life Insurance Agent Service income of Rs. 13,913/- during the FY 2016-17, is not legal and proper and deserves to be set aside. As regards the remaining portion of the impugned order, I uphold the order passed by the adjudicating authority. Needless to say that the penalty under Section 78 of the Finance Act, 1994 is required to be reduced equal to the Service Tax demanded and upheld in this order.

10. 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.



(Akhilesh Kumar)
Commissioner (Appeals)

Date : 21.04.2023



Appellant

Attested


(R. C. Mahiyar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Amrishbhai Ratilal Shah,
22/G. Hemkoot Building,
Nr. Gandhigram Rly. Station,
Ahmedabad – 380009

The Assistant Commissioner,
CGST, HQ,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, HQ, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South

(for uploading the OIA)

5) Guard File

6) PA file