



सत्यमेव जयते

**आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),**

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN: 20230864SW000000B1F6

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/300/2023 /433n - 38

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-74/2023-24
दिनांक Date : 25-07-2023 जारी करने की तारीख Date of Issue 10.08.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of OIO No. 93/AC/Kaalal Oza Vaidhya/Div-6/A'bad-South/JDM/2022-23 दिनांक:
07.11.2022 passed by Assistant Commissioner, CGST, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Kajal Oza Vaidhya,
A-602, Gala Imperia, Off Drive In Road,
SKUM School Road, Ahmedabad-380054.

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 :

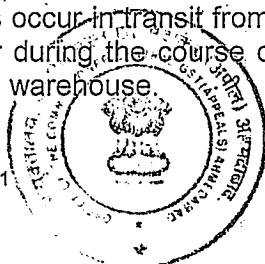
Revision application to Government of India:

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 प्रक्रिया 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 इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

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

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 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 (1) (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 अनुसूचि-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 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.

- 17 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.

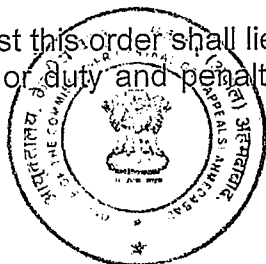
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (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.

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

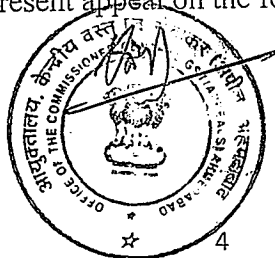
The present appeal has been filed by M/s. Kaajal Oza Vaidhya, A-602, Gala Imperia, Off Drive In Road, SKUM School Road, Ahmedabad – 380054 (hereinafter referred to as “the appellant”) against Order-in-Original No. 93/AC/Kaajal Oza Vaidhya/Div-6/A’bad-South/JDM/2022-23 dated 07.11.2022 (hereinafter referred 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 were holding Service Tax Registration No. AADPO8012FSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 23,16,591/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period vide letter dated 13.07.2020. The appellant had submitted their reply vide letter dated 22.12.2020, however, they had not submitted required details for the assessment.

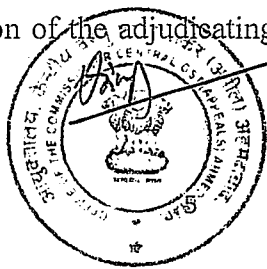
2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS06/O&A/SCN-589/2020 dated 30.12.2020 demanding Service Tax amounting to Rs. 3,47,488/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2) and 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. 3,47,488/- 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 2014-15. Further, (i) Penalty of Rs. 3,47,488/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994; Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) 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 is an author, speaker, presenter, screenwriter, radio personality and columnist from Ahmedabad, India. She has written more than 56 books including novels, short stories and essays. She has also written dialogues and scripts of soap operas and films. She regularly writes articles in several publications. She has contributed a lot in Gujarati literature, and she is a youth icon and an inspiration for thousands of women across the world. For writing such books, short stories and essays, articles in columns etc. the appellant receives royalty for temporary transfer of copy right of the books, articles, essay and stories.
- The appellant submitted that the differential income earned by the appellant pertains to royalty received towards original literacy work.
- The appellant is an author, columnist and speaker and the income earned by the appellant is in the nature of royalty for writing such books, article etc. and as per Sr. No. 15 of the Notification No. 25/2012-ST, income earned by temporary transfer of copyright related to original literary is exempted from service tax. The services provided by the appellant falls under the said entry.
- The adjudicating authority refers to Section 17(a) of Copyright Act, 1957 which talks about literary, dramatic and artistic works; it says that such work made by the author during course of employment or the services to the owner of newspaper, magazine, book etc. are under an contract for publishing such work and the owner of such newspaper or magazine becomes the first owner of such work and copyright of work is with the owner and not with the author. The above contention of the adjudicating authority is not proper as the services performed by author is related to original literary work only and it covers under Section 13(1)(a) of Copyright Act, 1957. Further, copyright of such work is allowed to be used by the author for consideration namely royalty income. Hence the above services very well fall under the exemption entry 15 of Notification No 25/2012-ST. The contention of the adjudicating authority that service performed by appellant falls under Section 17(a) of Copyright Act, 1957 and becomes taxable is not tenable and needs to be set aside. While passing the order the adjudicating authority has not understood the transaction properly and confirm the taxability accordingly.
- Further, the adjudicating authority also refers to Section 17(cc) of The Copyright Act, 1957, which talks about person delivering speech on behalf of another then, the person on behalf of whom the lecture is given in the public is the first owner of such copyright. The contention of the adjudicating authority is that services performed by



author in Lecture at various places and on various occasions on the invitation of some institution or individuals and such speeches are delivered on behalf of host and copyright of such lectures also lies with host. However, the adjudicating authority has not applied factual aspects properly. The transaction flow is discussed as under:

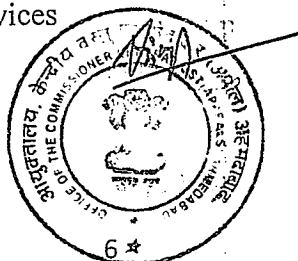
- Above services are performed by the author on her own account.
 - The content of the same is also created by the author herself.
 - Author is the owner of the content delivered and not the host.
- Considering the actual flow of transaction, it can be said that the services provided by author is not covered under Section 17(cc) of Copyright Act, 1957 but, it is covered under Section 13(1) of the Copyright Act, 1957.
 - Further, the above exemption is also discussed in CBEC Education Guide published for guidance and educational purpose. Relevant extract from Education guide for this exemption entry is reproduced as under:

"7.10.2 I am a composer of a song having the copyright for my song. When I allow the recording of the song on payment of some royalty by a music company for further distribution, am I required to pay service tax on the royalty amount received from a music company?"

No, as the copyright relating to original work of composing song falls under clause (a) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 which is exempt from service tax. Similarly, an author having copy right of a book written by him would not be required to pay service tax on royalty amount received from the publisher for publishing the book. A person having the copyright of a cinematographic film would also not be required to pay service tax on the amount received from the film exhibitors for exhibiting the cinematographic film in cinema theatres."

- As per the provisions of Section 194J of Income Tax Act 1961, any person other than Individual or HUF shall be liable to deduct TDS at 10%, if any sum exceeding INR 30,000/- is paid by way of:

- a) Fee for professional services,
- b) Fee for technical services



ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

c) Royalty (Explanation 2 to clause (vii) of sub-section (1) of section 9)

d) any sum referred to in clause (va) of section 28

Explanation 2 to clause (vi) of sub-section (1) of section 9

Royalty means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trademark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trademark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trademark or similar property;

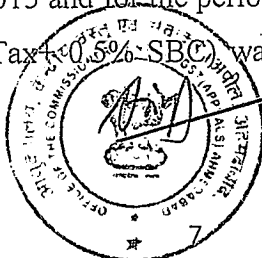
(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

(iva) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

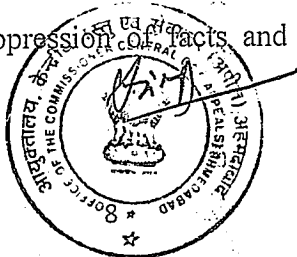
v) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v)

- As per Section 194J of Income Tax Act, 1961, TDS on Royalty paid is deducted under this section and appellant has also submitted Form 26AS through mail. From such submission it is observed that various publishers have deducted TDS on royalty payments made to the appellant u/s 194J of Income Tax Act, 1961.
- They further submitted that during the year 2015-16, 14% service tax was applicable upto the period 14-11-2015 and for the period from 15-11-2015 to 31-05-2016, rate of 14.50% (14% Service Tax + 0.50% SBC) was applicable. Further, rate of 15% (14%



Service Tax+ 0.5% SBC+ 0.5% KKC) was applicable w.e.f. 01-06-2016. Hence, service tax demanded @ 15% for the year 2015-16 is absolutely incorrect.

- Apart from Royalty Income, the appellant has certain other income that are covered under Service Tax. For the year 2015-16, out of total income of Rs 29,60,591/- income of Rs. 24,83,591/- pertains to Royalty Income and other income is Rs. 4,77,000/- for the year 2015-16. Further, income of Rs. 1,67,000/- booked in profit and loss account for the year 2014-15 was received in the year 2015-16 and hence the total income on which service tax was required to be paid was Rs. 6,44,000/- (Rs. 4,77,000/- for the year 2015-16 and Rs. 1,67,000/- for the year 2014-15). Hence, service tax was required to be paid on the amount of Rs 6,44,000/-. Service tax has already been discharged on income of Rs 6,44,000/- and has shown in Service Tax Return. They have submitted copy of Service Tax Return along with the copy of challans.
- As per Section 75 of Finance Act, 1994, interest shall be payable by the person who has failed to credit tax to the account of central government within prescribed time. In the present case, appellant is not liable to pay service tax, therefore Section 75 relating to interest shall not be made applicable.
- As per Section 77 of Finance Act, 1994, penalty shall be levied in case any person contravenes any of the provisions of this Chapter. In the present case, appellant have not contravened any of the provisions and hence no penalty shall be imposed.
- Penalty under section 78 can be levied only if there is a fraud; collusion; willful misstatement; suppression of facts or contravention of any provisions with intend to evade payment of service tax and it can be imposed by invoking larger period or extended period for issue of show-cause notice. In the said case, appellant has not suppressed any income. As the said income has already been accounted in books of accounts and considered while filing Income Tax return. The reason behind non-disclosing the said income in Service Tax return is only that appellant is in belief that said income is exempted from Service Tax vide Mega Exemption Notification. The said belief is also supported with relevant provisions and clarifications available in Service Tax regime. The income details are very well available with Department from initiation of inquiry. Hence, it can be proved that there is no intension to suppress anything by appellant and evading the Tax payment.
- Only in unusual circumstances, demands for extended period are to be invoked, with a very serious allegation of suppression of facts and intention to evade payment of

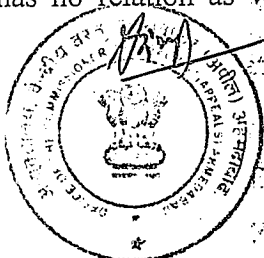


service tax. Such serious allegations of suppression can be invoked only if the Appellant has deliberately done an action with an intention to hide certain facts from the department and department has confirmed it beyond doubt with aid of corroborative evidence that there was a deliberate act on part of appellant to evade tax.

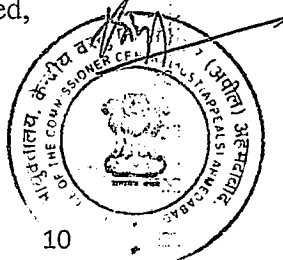
- No penalty shall be imposable on appellant for any failure referred to in the said provisions if appellant proves that there was reasonable cause for said failure. In this regard they relied upon the judgment in the case of CCE, Meerut-11 v. On Dot Couriers & Cargo Ltd. reported at (2006) 6 STJ 337 (CESTAT, New Delhi)

3.1 The appellant have vide their letter dated 19.06.2023 submitted additional submission under which they inter alia submitted as under:

- In Para 18 to 20 of the impugned order the adjudicating authority has tried to emphasize and give detailed explanation of the provisions of Section 17 of the Copyright Act, 1957 so as to articulate or prove ownership of the literature prepared and sold and/ or transferred by the Appellant. In relation to the said contention of adjudicating authority, the appellant put-forth detailed provisions of Section 13 and Section 17 of the Copyright Act along with the Sr. No. 15 of the Mega Exemption Notification No. 25/2012-ST dated 17 March 2012.
- The conjoint reading of the legal provisions of Section 13 and Section 17 of the Copyright Act along with the Sr. No. 15 of the Mega Exemption Notification No. 25/2012-ST can be concluded as under:
- Entry no. 15 of the Exemption Notification relates to or mentions about transfer of the copy right which are covered under Section 13(1)(a) of the Copyright Act. It is important to note here that while understanding the matter or narrating the impugned order, the adjudicating authority has entirely changed the inclusion part of the Exemption Notification from Section 13 to Section 17 to analyze to comment on the ownership of the original literary written or presented by the appellant. Thus, such contention of the adjudicating authority on not even discussing Section 13 of the Copyright Act and its co-relation between the availability of exemption while he affirms the demand of Service tax is coming out of the blue from other provisions of the Copyright Act which has no relation as well as no mention in the Exemption Notification.



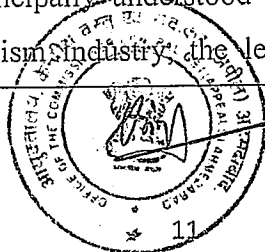
- In para 18 of the impugned order the adjudicating authority has created fiction by treating the conditions of employment and a contract of service as mutually exclusive. Whereas, from the plain reading of Section 17(1) of the Copyright Act, it can be gathered that the condition of employment and contract of service are mutually inclusive.
- The appellant submitted that she is neither an employee nor has entered into any contracts of employment with any newspaper agency which proves ownership of the writeups remains with the agencies. For the whole while the appellant was working as an independent professional rendering services to the different agencies. As a result, the service recipients have deducted Tax Deducted at Source considering such services as professional services under Section 194J of the Income Tax Act, 1961 which is also evident from the records submitted by the appellant.
- If the appellant take base of the contention of the adjudicating authority whereby impugned order confirmed the demand of Service Tax considering first ownership of the News Paper, the appellant would stand as an Employee of the Newspaper or any other agency and considering the services provided in the course of employment, Service Tax in terms of Clause 44 of section 65 of the Finance Act, 1994 (hereinafter referred to as 'the Act') shall not apply.
- From the legal wording and its applicability in the case of the appellant, it is very well identifiable that there is no co-relation between applicability of Section 17 of the Copyright Act with exemption granted under the Exemption Notification as it only speaks about transfer of Copyright Act which in the case of appellant is not in question as there can be no consideration if such transfer of copyright was not undertaken. At the same time, if the adjudicating authority by stretched imagination put Section 17 applicable in case of the appellant, then the appellant will stand as an employee of the service recipients and hence, Service Tax cannot be demanded on such work undertaken under the employment contract. Thus, the adjudicating authority has erred applying ratio of the Copyright Act under the impugned order and demand confirmed is not sustainable based on afore said detailed discussion.
- Without prejudice to the aforesaid legal grounds, the appellant would also like to put emphasis on the correct classification of the different services rendered by the appellant. While affirming the demand under impugned order, at Para 16, the adjudicating authority has mentioned,



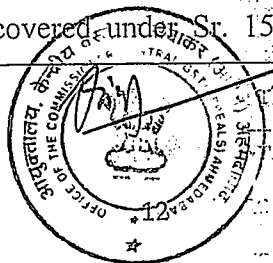
"Thus, I find that the noticee had provided taxable services, i.e., business auxiliary services, intellectual property service, support services for business for commerce in any manner and development & supply of content for use in advertising, and the same are taxable services."

- On the basis of plain reading of the above para, it is crystal clear that even the adjudicating authority while passing the impugned order has not tried to identify the basic classification of service wherein the appellant should register and discharge Service Tax. Also, there is no exercise being done by the adjudicating authority to check which services provided by the appellant would fall under which head and/ or category of the service in terms of Section 65 of the Act.
- To elaborate further, the appellant submitted tabulate services rendered along with the detailed description of the services rendered and quantum involved for further consideration in the Appeal:

Nature of Transaction	Explanation of services rendered	Amount Received
Royalty Income for Books written	The appellant has written various famous books including, Krishnayan, Madhyabindu, Symphony of Silence, Yoga-viyog in vernacular language some which are further translated in English Language. As the books written by the appellant are literary works which are sold under her own name through various agencies / vendors. Such Royalty received by the appellant is squarely covered under Section 13 of the Copyright Act and intern is exempted from Service Tax in terms of Sr. No. 15 to the Exemption Notification. Copy of sample Books excerpts of the same in Newspaper for which royalty income is received is attached.	Rs. 5,70,087/-
Articles and Column writing	The appellant writes columns for various Newspaper, Magazines and other print medias including Divya Bhaskar and Bombay Samachar. As principally understood and laid down in the journalism industry, the legal ownership and/or	Rs. 3,59,600/-



	<p>copyright of the write up remains with the author while the copyright of the column or the name of the Column remains with the media agency. Thus, such income arising out of transferring the right to use the ownership in said writeup is squarely covered under Sr. No.15 to the Exemption Notification.</p> <p>Copy of sample published are attached.</p>	
<p>Arranging and / or attending as a public speaker in seminars / lectures</p>	<p>The appellant being a public face, an orator and inspiration to thousands of women, is many a times invited on honorarium basis or on the contractual basis wherein the appellant charges for the content which will be presented or orated amongst the larger audience. She is also a public speaker and orator who has inspired thousands of women through her literary as well as powerful oratory skills. The appellant gets an invitation to provide lectures at various events. For the same, the appellant prepares content and delivers the speech on a particular topic and expresses her opinions. Thus, such dramatic work from the appellant is squarely covered in Sr. No. 15 to the Exemption Notification read with Section 13 of the Copyright Act and hence, Service Tax should not be applicable in case such services are rendered by the appellant.</p> <p>Copy of invites to lectures is attached.</p>	Rs. 3,60,000/-
<p>Script writing and / or copy writing</p>	<p>Alongside writing for her own Book and speech / presentation in theaters, the appellant is also involved in writing of scripts, songs, dialogues, slogans, syllabus, etc. whereby the copyright is being transferred on such original literature work done by the appellant. As the appellant being the owner of the literature prepared and further transferred for consideration, the same should also be covered under Sr. 15 to the Exemption</p>	Rs. 11,93,904/-



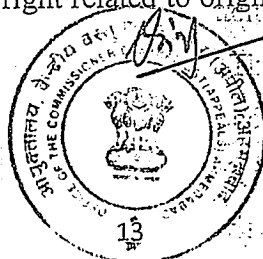
	<p>Notification.</p> <p>Copy of sample syllabus course has been attached.</p>	
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- None of the services rendered by the appellant has reference to the services mentioned by the adjudicating authority in the impugned order viz. Business Auxiliary Services, Intellectual property service and Support services for business for commerce in any manner and development and supply of content for use in advertising. Also, to the best of the knowledge to the appellant, services rendered by them are not covered under any of the specified list of services and hence, the said services should get classified under 'Other Taxable Services- other than 119 listed"
- The appellant relied upon the decision of Calcutta High Court in the case of SOURAV GANGULY VERSUS UNION OF INDIA & OTHERS (2016 (43) S. T.R. 482 {Cal.}) wherein the issue of classification and exemption in case of orator is squarely covered and the decision is being made in favour of the Appellant.

4. Personal hearing in the case was held on 30.06.2023. Ms. Foram Dhruv, Chartered Accountant, appeared on behalf of the appellant for personal hearing. She handed over the summary of the case at the time of personal hearing. She reiterated the submission made in the appeal, in the additional written submissions dated 21.06.2023 and those in summary of the case. Based on these submissions, she requested to set aside the impugned order which is base on incorrect appreciation of law and the facts.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, additional written submission, during the course of personal hearing 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.

6. It is observed that the main contentions of the appellant in the appeal memorandum are that the differential income earned by the appellant pertains to royalty received towards original literacy work and as per Sr. No. 15 of the Notification No. 25/2012-ST, income earned by temporary transfer of copyright related to original literary is exempted from service tax.

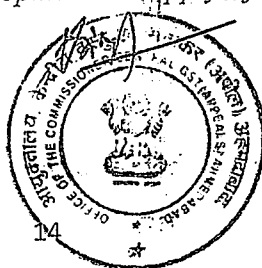


6.1 It is also observed that adjudicating authority has confirmed the demand of service tax in the impugned order observing that most of the services provided by the appellant were taxable services under the categories viz. business auxiliary services, intellectual property service, support services for business or commerce in any manner and development & supply of content for use in advertising. As regard the royalty income received by the appellant through books, short stories and essays, articles, columns, etc. in news paper / magazine, books, etc., the adjudicating authority has observed that whenever such a work is made by an author during the course of his employment or service to the owner of a newspaper, magazine, book etc. under a contract for publishing such work, then subject to an agreement in contrary, the owner of such newspaper or magazine shall become the first owner of the copyright as per Section 17(a) of the Copyright Act, 1957. Thus, such literary work is not owned by the appellant but by the concerned newspapers only. As regard the income received by the appellant through delivering a speech / lectures at various places and on various occasions on the invitation of some institution or individuals, the adjudicating authority has observed that as per Section 17(cc) of the Copyright Act, 1957, if a person is delivering a speech on behalf of another then, the person on behalf of whom the lecture is given in the public is the first owner of such copyright, therefore the appellant had delivered speeches/ lectures on behalf of her host and thus the host is the copyright owner of such lectures delivered by her and not the appellant. The adjudicating authority has also held that the appellant have failed to substantiate her claim of temporary transfer of her copyright, in the form of any agreement or contract between her and her service receivers. Thus, the ownership of copyright by her is under dispute. She has also failed to produce any proof / evidence in respect of ownership of copyright by her. The relevant portion of the impugned order is as under:

"14. I find that the noticee, neither in her ST-3 Returns nor in her reply, has classified services provided by her on which Service Tax was paid as well as exemption was availed.

15. I find that the noticee is a multi-faceted personality and she had provided services as an author, orator, lecturer, compere, motivational speaker, model for advertising, writer, Brand Ambassador, T.V. presenter, business promoter and content writer. Thus, most of the services she had provided, were taxable services.

16. Thus, I find that the noticee had provided taxable services i.e. business auxiliary services, intellectual property service, support services for business or commerce in any manner and development & supply of content for use in advertising and the same are taxable services.



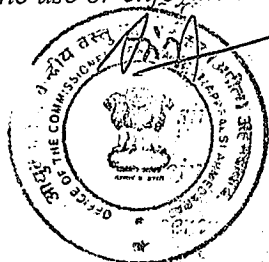
17. From the detailed break-up of income of Rs. 29,60,591/-, I find that she had discharged Service Tax on value of Rs. 4,77,000/- + Rs. 1,67,000/- = Rs. 6,44,000 as submitted by her in her written reply.

18. I find that in her reply, the noticee has referred to the provisions of the Copyright Act, 1957. I further explore the same. I find that Section 17(a) talks about literary, dramatic and artistic works. It says that whenever such a work is made by an author during the course of his employment or service to the owner of a newspaper, magazine, book etc. under a contract for publishing such work, then subject to an agreement in contrary, the owner of such newspaper or magazine shall become the first owner of the copyright. I find that her articles feature regularly on weekly basis in daily vernacular language newspapers. Thus, she is doing so under some contract with the owner of a newspaper. Thus, such literary work is not owned by her but by the concerned newspapers only.

19. Similarly, as per Section 17(cc), if a person is delivering a speech on behalf of another then, the person on behalf of whom the lecture is given in the public is the first owner of such copyright. However, if a person gives a lecture in public by himself and not representing anyone else then, he becomes the author and first owner of such copyright. I find that she had given lectures at various places and on various occasions on the invitation of some institution or individuals and had charged them for every such event. Thus, she had delivered speeches on behalf of her host and thus the host is the copyright owner of such lectures delivered by her.

20. I find that the Copyright Act, 1957 has precisely demarcated authors, owners and their rights. In the event that there is an ambiguity amongst the parties as to the authorship or ownership of rights, one can simply check the contract they have entered in and the terms and conditions therein. If the parties share a relationship where section 17 applies and there's no agreement between the parties which is in contrast, then the authorship and ownership rights shall be granted to parties only as per Section 17 of the Copyright Act, 1957.

21. Now, coming to the exemption enunciated at Sr. No. 15 of the Notification No. 25/2012-S.T., I find that it provides for exemption to services provided by way of temporary transfer or permitting the use or enjoyment of a copyright.



22. I find that the noticee have failed to substantiate her claim of temporary transfer of her copyright, in the form of any agreement or contract between her and her service receivers. Thus, the ownership of copyright by her is under dispute. She has also failed to produce any proof / evidence in respect of ownership of copyright by her.

23. Thus, I find that services provided by her in the form of magazine article, newspaper article, preparation of syllabus for educational institute, script writing, writing and reproducing it as lecture, writing a brochure for an institution or a product, writing marriage invitation, write up and reproduce it on film song etc. are taxable services and aptly falls under the categories mentioned at Para 6 above and if is beyond any doubt.

24. The noticee has taken plea of provisions of the Copyright Act, 1957 and Income Tax Act, 1961 to substantiate her claim but failed to prove non-taxability of her income on which she deliberately avoided to pay Service Tax."

7. For ease of reference, I hereby reproduce the relevant abstract of the Sr. No. 15 of the Notification No. 25/2012-ST dated 20.06.2012; Section 13(1)(a) of the Copyright Act, 1957 and Section 17 of the Copyright Act, 1957, which reads as under:

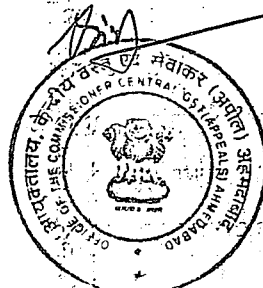
"Notification No. 25/2012-Service Tax dated 20th June, 2012

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... ..

15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright: -



(a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or

(b) of cinematography films for exhibition in a cinema hall or cinema theatre”

Section 13 (1) (a) of the Copyright Act, 1957

"13. (1) subject to the provision of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say

(a) Original literary, dramatic, musical and artistic works;

(b) Cinematograph films; and

(c) records"

Section 17 of the Copyright Act, 1957

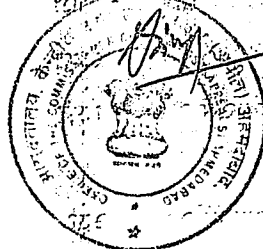
"17. First owner of copyright-Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that-

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;"

(b)

(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;"

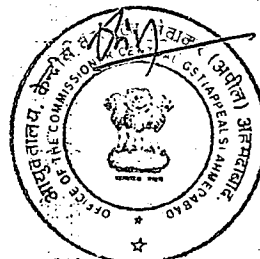


7.1 In view of the aforesaid provisions of the Sr. No. 15 of the Notification No. 25/2012-ST dated 20.06.2012, it is clear that services provided by way of temporary transfer or permitting the use or enjoyment of a copyright in respect of original literary work is exempted from the service tax. Section 13(1)(a) of Copyright Act, 1957 provide the author of the Original literary work copyright for their work. Section 17(a) of Copyright Act, 1957 talks about literary, dramatic and artistic works; it says that if such work made by the author during course of employment or the services to the owner of newspaper, magazine, book etc. than the owner of the copyright is proprietor of publication of newspaper, magazine, but in all other respects the author shall be the first owner of the copyright. Section 17(cc) of the Copyright Act, 1957, talks about person delivering speech on behalf of another then, the person on behalf of whom the lecture is given in the public is the first owner of such copyright.

8. The below mentioned facts emerged from the case records:

- The appellant is an author, speaker, presenter, screenwriter, radio personality and columnist from Ahmedabad, India
- She has written more than 56 books including novels, short stories and essays. She has also written dialogues and scripts of soap operas and films.
- She regularly writes articles in several publications, news paper, magazines, etc.
- As claimed by the appellant, the differential amount on which the demand of service tax confirmed related to royalty income for temporary transfer of copy right of the books, articles, essay and stories, etc.
- There is no agreement / contract for the transfer of the copyright.

9. I find that the Copyright Act, 1957 intends to safeguard the rights of the owner as well as the author, whether the copyrightable work is published or unpublished. Copyright is a type of intellectual property that is generally owned by the creator. It is given in the name itself that one possesses rights against the person copying it. The Copyright Act, 1957 is the law that deals with copyright in India. The intent of the legislature with respect to the Copyright Act, 1957 is, to assure authors, artists, composers, designers; basically, those who belong to the creative field who invest time, energy and money in creating the work and secondly, to encourage creative individuals to create more such work without fearing violation of their rights.



9.1 The Copyright Act, 1957 has set a general rule under the definition of the author of various works laid down under Section 2(d), which states that the author is the first owner of the Copyright, which reads as under:

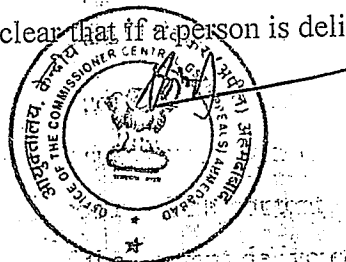
"Section 2(d) of the Copyright Act, 1957.

In literary or dramatic works, the author of such work shall be the author."

9.2 I find that as per Section 17 of the Copyright Act, 1957 clearly indicate that in respect of Original literary, dramatic, musical and artistic works, etc. the author of a work shall be the first owner of the copyright and in the present case the appellant is the owner of the copyright. The appellant is an author, speaker, presenter, screenwriter, columnist, etc. and a well known personality. I also find that if there is no agreement between the parties which is in contrast, then the authorship and ownership rights shall be granted author of the original literary work only as per Section 17 of the Copyright Act, 1957.

9.3 I find that the appellant not the employee of the any publication, news paper, magazine, etc., thus, the literary work made by the appellant for such institution can not be said to be done during the course of her employment. Thus, the finding of the adjudicating authority in this regard that the owner of copyright of the literary work was owner of the newspaper, magazine, publication etc. is not correct and legally sustainable. Even if it is presumed that the appellant is employee in that case the amount received by the appellant was in nature of salary and in such amount not falls within the definition of 'Service' as per Section 65(B)(44) of the Finance Act, 1994.

9.4 As regard, the findings of the adjudicating authority that the appellant had given lectures at various places and on various occasions on the invitation of some institution or individuals and had charged them for every such event and the speeches delivered by the appellant on behalf of her host and thus the host is the copyright owner of such lectures delivered by her, I find that the observation of the adjudicating authority is only on the basis of assumption and presumption basis and without any supporting evidences. In actual, above services are performed by the author on her own account. The content of the same is also created by the author herself. Author is the owner of the content delivered and not the host. Thus, the services provided by author is not covered under Section 17(cc) of Copyright Act, 1957 but, it is covered under Section 13(1) of the Copyright Act, 1957. There is no evidence on records that such speeches not written by the appellant and the appellant delivered the crafted script given by the host on behalf of the host. I also find that such vague findings of the adjudicating authority cannot hold any water and legally cannot sustainable. As per Section 17(cc) of Copyright Act, 1957, it is very clear that if a person is delivering a speech on



behalf of another person then, the person on behalf of whom the lecture is delivered is the first owner of the copyright. However, if a person gives a lecture in public by himself and not representing anyone else then, he becomes the author and first owner of such copyright.

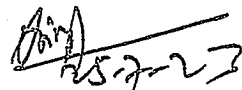
9.5 Thus, the view of the above, the findings of the adjudicating authority that the appellant is not first owner of the copyright is without any contrary evidence put forth by them and not legally sustainable. I find that the services provided by the appellant by way of temporary transfer or permitting the use or enjoyment of a copyright in respect of original literary work is exempted from the service tax as per the provisions of the Sr. No. 15 of the Notification No. 25/2012-ST dated 20.06.2012 and the appellant not required to pay any service tax on differential income as confirmed in the impugned order.

10. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2015-16, is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.

11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

12. 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.




(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 25.07.2023



Attested


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

By RPAD / SPEED POST

To,
M/s. Kaajal Oza Vaidhya,
A-602, Gala Imperia,
Off Drive In Road,
SKUM School Road,
Ahmedabad - 380054

The Assistant Commissioner,

Appellant

Respondent

CGST, Division-VI,
Ahmedabad South

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- ~~5) Guard File~~
- 6) PA file

