



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: 20230864SW0000214965

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2861/2022 /4618 - 72
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-85/2023-24
दिनांक Date : 18-08-2023 जारी करने की तारीख Date of Issue 21.08.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/WSO7/O&A/OIO-051&52/AC-RAG/2022-23 दिनांक: 14.07.2022
passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s S. M. Boghra & Co.,
209-210, Pratiksha Complex, Mahalaxmi Five Road,
Opp. Shalimar Complex, Paldi,
Ahmedabad-380007.

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:

(i) 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 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 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 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 :-

- (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 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.

10 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)-

- (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.

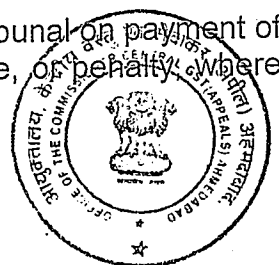
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D; .
- amount of erroneous Cenvat Credit taken;
- 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

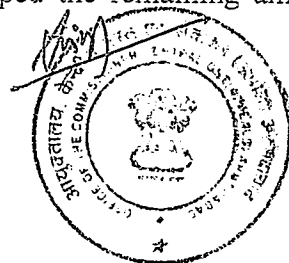
The present appeal has been filed by M/s. S. M. Boghra & Co., 209-210, Pratiksha Complex, Mahalaxmi Five Road, Opp. Shalimar Complex, Paldi, Ahmedabad. – 380007 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WS07/O&A/OIO-051&52/AC-RAG/2022-23 dated 14.07.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VII, 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. ASHPB5987GSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that there is difference of value of service amounting to Rs. 13,09,166/- for the FY 2015-16 and Rs. 13,15,070/- for the FY 2016-17, 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 relevant year. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS07/V/O&A/SCN-1024/2015-16/REG/2020/9537 dated 24.12.2020 demanding Service Tax amounting to Rs. 1,89,829/- 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 Subsequently, the appellant were issued another Show Cause Notice No. WS07/O&A/TPD/16-17/STRUKAD/2021-22/352 dated 20.10.2021 demanding Service Tax amounting to Rs. 1,97,261/- for the period 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; and imposition of penalties under Section 77(2) and Section 78 of the Finance Act, 1994.

2.3 The aforesaid both Show Cause Notices were adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,10,683/- 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 and FY 2016-17. The adjudicating authority has dropped the remaining amount of demand of

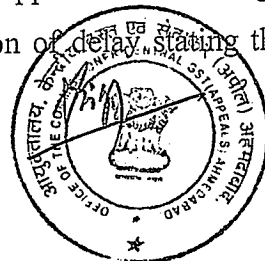


service tax. Further (i) Penalty of Rs. 2,10,683/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, along with an application for condonation of delay, inter alia, on the following grounds:

- They have provided services to Hajj Committee of India during the FY 2015-16 amounting to Rs. 3,46,302/-, which was exempted as per Clause 5A of Notification No. 25/2012-ST dated 20.06.2012.
- They have provided services to their USA based client during the FY 2015-16 and thus the same is required to be considered as export service and exempted from service tax. In support of the same they have submitted Bank statement showing foreign income and contract conversation related to export of services.
- They have also received salary income during the FY 2015-16 which is not taxable under service tax.
- As regard, the demand of service tax for the FY 2016-17 they have submitted detailed reply along with table showing calculation of tax payable quarter wise and Tax paid challan and details of CENVAT credit to the adjudicating authority, however, the same has not been considered by them.
- They have submitted that they have paid service tax on receipt basis as per Third Proviso to Rule 6 of Service Tax Rules, 1994. They have also eligible for the threshold exemption upto Rs. 10 lac as per Notification No. 33/2012 dated 20-06-2012. They have also eligible for cum duty benefit, as they have not charge service tax amount separately in invoices. In reply to show cause notice they have also shown willingness to pay Rs. 5471/- as difference of service tax payable after showing calculation in table given in reply.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 14.07.2022 and received by the appellant on 20.07.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 19.10.2022, i.e. after a delay of 29 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the delay



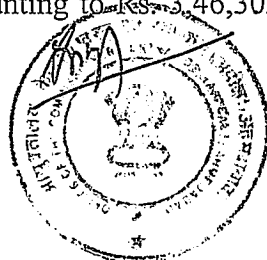
occurred due to the appellant could not log into the Service Tax portal for making the payment of pre-deposit, resulting in making the pre-deposit payment vide DRC-03. The appellant converted their proprietorship firm into partnership firm, thereby resulting in issues related to GST login and filing DRC-03. The appellant himself is a Chartered Accountant, and was busy filing the income tax return and income tax audit report, since 31.10.2022 and 07.10.2022 were the due date for the same. The appellant was having Australia CPA examination and due to preparation of the same, the appellant could not file the appeal in time.

4.1 Personal hearing in the case was held on 07.07.2023. Shri Sajid M. Boghra, Chartered Accountant and proprietor appeared for personal hearing. He handed over additional written submissions with supporting documents. He reiterated submissions made therein, in the appeal and condonation of delay application. He submitted that during Financial Year 2015-16, his income included income from salary which is exempted from service tax. This income also included income from service tax to the clients outside India which is also exempted. The remaining income was below Rs. 10 lakh so he was not liable to take registration or file return. In the next financial year he has discharged tax liability after claiming threshold exemption. The appellant was ready to pay differential tax amount but the lower authority has confirmed demand on the entire amount. He requested to set aside the impugned order.

4.2 Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 29 days and take up the appeal for decision on merits.

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 and FY 2016-17.

6. I find that the main contention of the appellant are that (i) they have provided services to Hajj Committee of India during the FY 2015-16 amounting to Rs. 3,46,302/-, which was



exempted as per Clause 5A of Notification No. 25/2012-ST dated 20.06.2012; (ii) they have provided services to their USA based client during the FY 2015-16 and thus the same is required to be considered as export service and exempted from service tax; (iii) they have also received salary income during the FY 2015-16 which is not taxable under service tax; (iv) they have eligible for the threshold exemption up to Rs. 10 lac as per Notification No. 33/2012 dated 20-06-2012 for the FY 2015-16 and FY 2016-17; (v) they have paid service tax on receipt basis as per Third Proviso to Rule 6 of Service Tax Rules, 1994, which was not considered by the adjudicating authority; and (vi) they have also eligible for cum duty benefit, as they have not charge service tax amount separately in invoices.

7. I find that the adjudicating authority, while confirming the demand of service tax for the FY 2015-16, has granted benefit of threshold limit of exemption as per Notification No. 33/2012-ST dated 20.06.2012 and calculating service tax as per cum duty value as per Section 67(2) of the Finance Act, 1994. However, he has denied the exemption from service tax (i) on the amount for service provided to government under Sr. No. 5A of Notification No. 25/2012-ST; (ii) on the amount for service provided to overseas client as export of service; and (iii) on amount shown as salary by the appellant, as appellant not provided any documentary evidences. The relevant portion of the impugned order reads as under:

"8.5 The service provider has submitted bifurcation of amount for FY 2015-16:-

(i) The service provider alleged to have given export of service value of Rs.1,70,819/-. However, service provider has not provided evidence to show that they have in fact provided export of service, and have not spelt out kind of service offered to recipient outside India.

(ii) Similarly, the service provider alleged to have offered service to government for taxable value of Rs.3,46,302/- and cited clause 5A of Notification No.25/2012-ST dated 20.06.2012. However, the service provider has not submitted evidence to show that they have really offered such services as may be applicable in the case of the service provider.

(iii) The service provider has shown salary income of Rs.2,16,000/- when he himself is Chartered Accountant and conducting Chartered Accountant business in the name of M/s. S.M. Boghra & Co. Here, the service provider has not given any ground or evidence to show that from which company he has received salary income. I therefore believe that the salary income shown by service provider is nothing but part of service income earned out of chartered accountant service in his individual capacity.



8.6 I place on record that it is the responsibility of the service provider to give proof/documentary evidence to the department to show his genuine claim of having offered exempted services. In absence of such evidence, I am declined to give benefit of Notification No. 33/2012-ST. However, service provider furnished 26AS through email and scan image of 26AS for 2014-15 is given below for better understanding of income earned in that financial year:

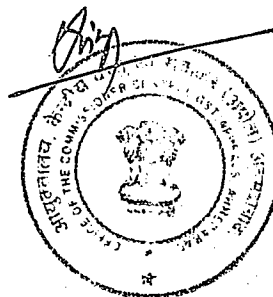
.....

On perusal of the 26AS for 2014-15, I do not find any evidence of exempted service given to Hajj Committee of India by the service provider. Although I do not agree with what service provider claims to have offered export of service and exempted service to Hajj Committee for the reasons that they have not submitted documentary evidence, I therefore understand that service provider is eligible to get threshold exemption of Rs.10 lakhs under Noti. No.33/2012-ST dated 20.06.2012 in FY.2015-16.

8.7 As far as service provider booking income of Rs.13,09,166/- from chartered accountant professional service in FY 2015-16 is concerned, after giving benefit of Rs.10 Lakh and as service provider did not exceed threshold limit of Rs.10 Lakh in FY 2014-15, I find that service provider is required to pay Service Tax on excess amount of Rs.3,09,166/-, after giving exemption of Rs.10 Lakh as per Noti. No.33/2012-ST.

8.8 I further find that amount Rs.3,09,166/- is inclusive of Service Tax as no evidence in file to suggest that service provider has charged and collected Service Tax. I, therefore, believe that benefit of cum-tax-price available is extendable to noticee as per Section 67(2) of the Finance Act, 1994."

7.1 I also find that the adjudicating authority, while confirming the demand of service tax for the FY 2016-17, has granted benefit of cum duty value as per Section 67(2) of the Finance Act, 1994. However, he has denied the exemption from service tax (i) on threshold limit of exemption as per Notification No. 33/2012-ST dated 20.06.2012 as the taxable income of the appellant for the previous year i.e. FY 2015-16 exceeds Rs. 10 lac. The adjudicating authority has not granted any exemption benefit also as appellant not provided any documentary evidences. The relevant portion of the impugned order reads as under:



"9.3 To this demand, service provider replied vide its letter dated 30.11.2021 and claimed Service Tax liability of Rs.5471/- is yet to be paid. Reply dated 30.11.2021 of the service provider is reproduced as under:-

.....

On going through the reply dated 30.11.2021, it appears that service provider had availed exemption of Rs.10 lakhs on his own in 2016-17 and calculated short payment of Service Tax of Rs.5471/-. As aggregate value exceeds threshold exemption limit of Rs.10 lakhs towards chartered accountant service rendered in 2015-16, service provider is not eligible to get exemption of Rs.10 lakhs in 2016-17 under Notification No.33/2012-ST.

9.4 In the audited balance sheet in Annexure D, the service provider has shown total turnover is Rs,89,52,916/- whereas the service provider claims its turnover is Rs.87,41,061/- and taxable value shown in Service Tax Return is Rs.76,37,846/-. It appears that service provider has given different values on three occasions. However, department has taken total turnover of Rs.89,52,916/- declared before Income Tax department, and on which, pivotal issue of differential Service Tax is required to be recovered from the service provider.

9.5 In its reply dated 30.11.2021, since difference value of Rs.13,15,070/- is accepted by service provider, Service Tax liability of Rs.1,97,261/- @ 15% including KCC & SBC on taxable value of Rs.13,15,070/- is confirmed and required to be recovered under Section 73(1) of the Act. As discussed earlier, service provider is not eligible to get benefit of threshold exemption limit of Rs.10 lakhs as per Noti. No.33/2012-ST as they are already given that benefit in FY 2015-16 as discussed hereinabove. Thus, the demand raised in the Show Cause Notice No.WS07/O&A/TPD/16-17/STRUKAD/2021-22/352 dated 20.10.2021 for FY 2016-17 is confirmed.

10 I further find that amount Rs.13,15,070/- is inclusive of Service Tax as no evidence in file to suggest that service provider has charged and collected Service Tax. I, therefore, believe that benefit of cum-tax-price available is extendable to service provider as per Section 67(2) of the Finance Act, 1994."

8. As regard, the claim of the exemption from the service tax under Sr. No. 5A of the Notification No. 25/2012-ST dated 20.06.2012, as amended for the services provided to Hajj



Committee of India, I find that the appellant provided services amounting to Rs. 3,46,302/- during the FY 2015-16 to Hajj Committee of India. For ease of reference, I hereby produce the relevant text of the Notification No. 25/2012-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:-

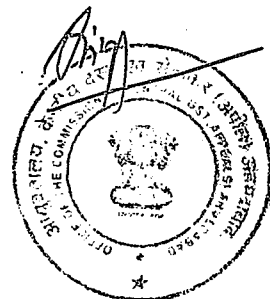
- 1...*
2... ..
5A Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement"

8.1 On verification of the aforesaid provisions of Sr. No. 5A of the Notification No. 25/2012-ST dated 20.06.2012, as amended, I find that the **services provided by a specified organization** in respect of a religious pilgrimage were exempted from service tax. However, in the present case the appellant **provided services to a specified organization** in respect of a religious pilgrimage and therefore, the same were not exempted from service tax. Therefore, the contention of the appellant that they have provide services of Rs. 3,46,302/- during the FY 2015-16, to Hajj Committee were exempted is not correct and not sustainable.

9. As regard, the claim of the exemption from the service tax by the appellant contending that they have provided services to their USA based client during the FY 2015-16 and thus the same is required to be considered as export service, I find that the appellant not provided any documents showing that the payment for such service has been received by the provider of service in convertible foreign exchange, i.e. FIRC. The Bank Statement provided by the appellant showing payment details in the Indian Rupees. Thus, I find that the appellant have not produce any documents showing that they have fulfilled all the six conditions as enumerated in Rule 6A of the Service Tax Rules, 1994, which are as under:

"6A. Export of services.- (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,



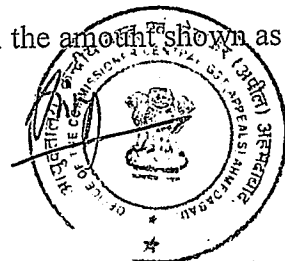
- (c) the service is not a service specified in the section 66D of the Act,
 (d) the place of provision of the service is outside India,
 (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
 (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act”

9.1 I am of the considered view that the appellant cannot seek to establish their eligibility for exemption from payment of Service Tax as export of service without fulfilling all the six conditions as mentioned above. Therefore, without supporting documents viz. FIRC, evidencing the amount received by the appellant were in convertible foreign exchange, the contention of the appellant that they have provide export services amounting to Rs. 1,70,819/- and the same were not chargeable to service tax is not sustainable.

10. As regard, the contention of the appellant that they have received salary income of Rs. 2,16,000/- during the FY 2015-16 and the same were not chargeable to service tax, I find that the appellant only provided a letter dated 15.03.2015 issued by M/s. Khyati Tin Poster Co. with regard to appointment of the appellant as Chartered Accountant on the monthly salary of Rs. 18,000/-, however, the appellant have not provided Form 16/16A or any income ledger showing salary income. I also find that Form 26AS for the FY 2015-16 also not showing the income received as salary and deducting TDS under Section 192 of the Income Tax Act, 1961. Thus, I find that the appellant, without providing any supporting documents to the adjudicating authority as well as to this authority, made a bald statement, which is not legally tenable.

11. As regard, the contention of the appellant that they were eligible for the threshold exemption up to Rs. 10 lac as per Notification No. 33/2012 dated 20-06-2012 for the FY 2015-16 and FY 2016-17, I find that the adjudicating authority has in his impugned order already allowed the threshold exemption for the FY 2015-16. As regard, the FY 2016-17, the taxable income of the appellant for the FY 2015-16 more than Rs. 10 lac, therefore, the appellant are not eligible for threshold exemption up to Rs. 10 lac as per Notification No. 33/2012 dated 20-06-2012 for FY 2016-17.

12. As regard, the contention of the appellant that they have paid service tax on receipt basis as per Third Proviso to Rule 6 of Service Tax Rules, 1994 during the FY 2016-17, I find that the Balance Sheet and Profit & Loss Account for the FY 2016-17 submitted by the appellant not showing any “Sundry Debtor”. Thus, I find that all the amount shown as income



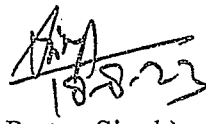
in the Profit & Loss Account of the FY 2016-17 was received by the appellant and without any other supporting documents the contention of the appellant in this regard is not sustainable.

13. As regard, the contention of the appellant that they have also eligible for cum duty benefit, as they have not charge service tax amount separately in invoices, I find that the adjudicating authority in his impugned order already granted the benefit of cum duty price as per Section 67(2) of the Finance Act, 1994 for both the year i.e. FY 2015-16 and FY 2016-17.

14. In view of above discussion, I do not find merit in the various grounds raised by the appellant. Therefore, 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 & FY 2015-16, is correct, legal and proper.


15. In view of the above discussion, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

16. 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)

Attested

Date : 18.08.2023


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



By RPAD / SPEED POST

To,
M/s. S. M. Boghra & Co.,
209-210, Pratiksha Complex,
Mahalaxmi Five Road,
Opp. Shalimar Complex, Paldi,
Ahmedabad – 380007

Appellant

The Assistant Commissioner,
CGST, Division-VII,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)
- 5) ✓ Guard File
- 6) PA file



