



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: 20230864SW000000FFDD

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3534/2023 / 1189 - 93

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-86/2023-24  
दिनांक Date : 25-08-2023 जारी करने की तारीख Date of Issue 28.08.2023

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

ग Arising out of OIO No. CGST-VI/Dem-II/AromenAC/DAP/2022-23 दिनांक: 23.05.2022 passed by  
Assistant Commissioner, CGST, Division VI, Ahmedabad South.

घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s. Aromen Hospitality Private Limited,  
04, Ground Floor, Sigma Legacy,  
IIM-A, Panjarapole, Ahmedabad-380015.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील 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, 4<sup>th</sup> 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 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.

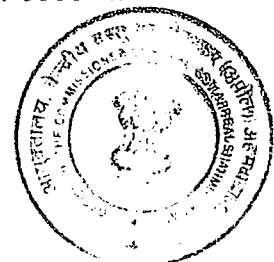
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
- इए लिया गलत सेनवैट क्रेडिट की राशि;
- बए 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.

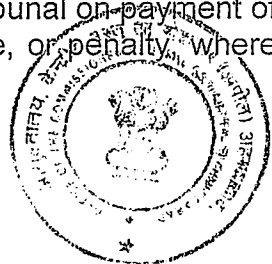
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

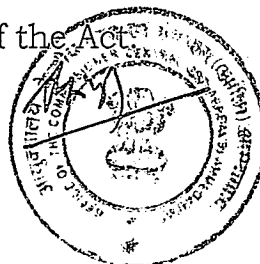


## ORDER IN APPEAL

The present appeal has been filed by M/s Aromen Hospitality Private Limited, 04, Ground Floor, Sigma Legacy, IIM-A, Panjarapole, Ahmedabad-380015 (hereinafter referred to as the "*appellant*") against Order in Original No. CGST-VI/Dem-11/Aromen/AC/DAP/2022-23 dated 23.05.2022 received by the appellant on 21.02.2023 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as "*adjudicating authority*").

2. Briefly state, the facts of the case are that the appellant a manufacturer of excisable goods and was holding Service Tax Registration No. AAICA7675GSD001 for discharging their service tax liability under reverse charge mechanism (RCM) in respect of services received by them. During the course of audit of records of the appellant, it was observed that they had incurred expense amounting to Rs. 1,24,50,000/- towards 'Renting of Immovable Property Service' which had been paid to Directors of their company. for the Financial Year 2013-14 to 2016-17. The audit observed that the Directors of the company have rented out their immovable property to the company and the same is used for commercial purpose and thus, it appeared that the activity of renting of immovable property in the case is covered within the ambit of "service" and liable to service tax. It was further observed that since the service provided by a Directors of a Company or a Body Corporate to the said company or body corporate appeared to be liable to service tax under Reverse Charge Mechanism under Notification No.30/2012-ST dated 20.06.2012, as amended vide Notification No. 45/2012-ST dated 07.08.2012, the company was liable to pay service tax on the said services received by them. Accordingly, a Show Cause Notice VI/1(b)80/Circle-III/AP-16/2017-18 dated 22.11.2018, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 16,93,722/- for the F.Y. 2013-14 to 2016-17 under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 (hereinafter referred to as 'the Act'). along with interest under section 75 of the Act.



- b) Impose penalty under the provisions of Section 77, and 78 of the Act.

The adjudicating authority vide the impugned order confirmed the demand along with interest and penalty.

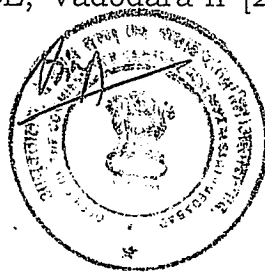
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

➤ The service which is provided by the director in their capacity of a Director to the company is only liable to payment of Service tax under Reverse charge mechanism. The appellant relied upon following decision in support of the above submission

1. OIA No. AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of Jay Pumps Pvt. Ltd., Commissioner (Appeals), CGST Ahmedabad.
2. OIA No. AHM-EXCUS-003-APP-3-18-19 dated 27.04.2018 in the case of M/s Advance Addmine Pvt. Ltd., Commissioner (Appeals), CGST Ahmedabad.
3. OIA No. AHM-EXCUS-002-APP-004-2020-21 dated 22.04.2020 in the case of M/s Emtelle India Ltd., Commissioner (Appeals), CGST Ahmedabad.
4. M/s Sheth Insulatin Pvt. Ltd., Commissioner (Appeals), CGST Ahmedabad.

➤ The appellant submits that had the service tax been held to payable the same would have been claimed as CENVAT Credit. Thus SCN has erred in not appreciating the facts that the entire transaction of Service Tax demanded under RCM on Rent paid to Director is Revenue neutral. The appellant relied upon following decision in support of the above submission

1. Lafrage India Pvt. Ltd Vs. CST [2015-TIOL-81-CESTAT-MUM]
2. Chaudhary Hammer Works Ltd. Vs. CCE, Ghaziabad [2012-(280) ELT461(Tri-Del)
3. Matrix Telecom P. Ltd. Vs. CCE, Vadodara-II [2013 (32) STR 423 (Tri. Ahmd.)]



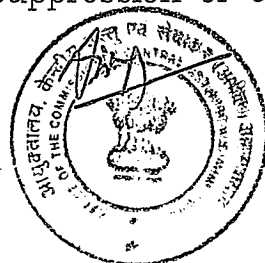
➤ The extended period for issuing Show Cause Notice as prescribed under section 73(1) is inapplicable in the instant case. The non-payment of service tax as mentioned in the impugned Show Cause Notice is not because of reason of fraud, collusion, willful misstatement or suppression of facts or contravention of any provision of service tax or rules is made with an intent to evade payment of service tax. The appellant did not willfully/deliberately suppress any facts. In other words, there was no positive act by the appellant to evade the service tax. In this regard the appellant relied upon the following decisions.

1. Oriental Insurance Company Limited (2021 (5) TMI 869) (CESTATE, New-Delhi)
2. Concept Motors Pvt. Ltd. Vs. CST, Ahmedabad Final Order No. A/11717/2018 dated 07.08.2018
3. Uniworth Textiles ltd. Vs. CCE-2013(288)ELT 161 (S.C.)
4. Rolext Logistic Pvt. Ltd. CST{2009-2013-STR-147(Tri. Bang)}
5. Om Sai Professional Detectives and Securities Pvt. Ltd. Vs. CCE {2008-12-STR 79 (Tri. Bang.)
6. Continental Foundation Jt. Venture Vs CCE 2007(216)E.L.T. 177 (S.C.)

➤ Impugned OIO issued is null & void since the adjudication proceeding had become barred by limitation. Reliance is placed on the case of Sundar system Pvt. Ltd. Vs. UoI and ors. 2020[33] G.S.T.L. 621

➤ The appellant submit that as the service tax is not leviable, interest under section 75 of the Act cannot be imposed. Reliance is placed on the case of Sundaram Textiles Ltd. 2014(36)STR 30(Mad.).

➤ Since the appellant is not liable to pay service tax penalty cannot be imposed. Moreover, Penalty under section 78 of the Act can be leviable only if there should be suppression or concealment or



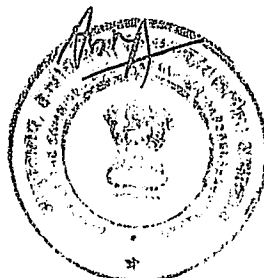
willful misrepresentation with intent to evade the tax. The appellant had not evaded payment of tax intentionally. Hence, penalty under section 78 of the Act cannot be imposed. In this regard Reliance is placed on the following judgments of the Hon'ble Supreme Court

1. Mysore Kirloskar ltd. -2008 (226) E.L.T. 161 (S.C.)
2. Pahwa Chemicals Pvt. Ltd. Vs Commissioner-2005 (189) ELT 257 (S.C.)
3. Cosmic Dye Chemicals -1995 (75) E.L.T. 721 (S.C.)

➤ Further, the appellant submit that penalty under section 77 of the Finance Act, 1994 is not applicable as in the instant case the appellant is merely alleged about failure to correctly assess the service tax liability.

4. Personal Hearing in the case was held on 28.07.2023. Sh. Bishan Shah, CA, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He stated that the appellant did not receive renting service from the director in the capacity of director, but in the capacity of individual on which the director himself is liable for payment of service tax and he did discharge the liability and filed return. In this regard he referred to the decision of the Hon'ble CESTAT, New Delhi in the case of M/s Cards Cable Industries Ltd. It was requested by the CA to allow two three days for submission of additional documents and written submission.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. The issue to be decided in the case is as to whether the appellant, as a service recipient, is liable to pay service tax under reverse charge mechanism on the rent amount paid to their Directors in respect of immovable property given on rent to the company in the light of provisions of Rule 2(l)(d)(EE) inserted w.e.f 07.08.2012 read with the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended vide 45/2012 dated 07.08.2012, or not.



6. It is observed from case records that the appellant has paid an amount of Rs.1,24,50,000/- as rent to the Directors of their company for renting to company the immovable property owned by the Directors. The department has sought to charge these expenditures as services under Section 65B(44) of the Act, 1994 by contending that the Directors, being owners of property, has become service provider and the appellant has become service recipient. As the appellant firm is a body corporate, they become liable to pay service tax in respect of such services under reverse charge mechanism under Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended vide Notification No. 45/2012-ST dated 07.08.2012.

7. The legal provisions contained under Section 65B (44) of the Act are reproduced below:

*"service" means any activity carried out by a person for another for consideration; and includes a declared service, but shall not include-*

*(a) an activity which constitutes merely,- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or (iii) a transaction in money or actionable claim, .*

*(b) a provision of service by an employee to the employer in the course of or in relation to his employment, .*

*(c) fees taken in any Court or tribunal established under any law for the time being in force.*

Further, the legal provisions contained under Rules 2(1)(d)(EE) of the Service Tax Rules, 1994 are reproduced below:

*(d) "person liable for paying service tax", -(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-*

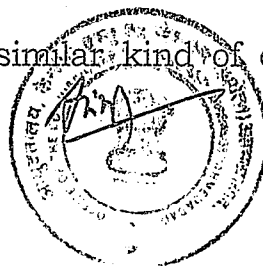
*(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or*





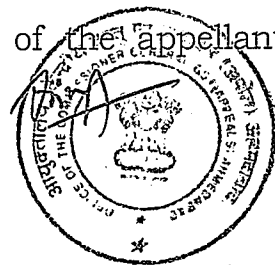
*the body corporate, the recipient of such service;*

8. At the outset, it is observed that the taxability of the service provided or received in the case viz. the renting of immovable property is not in dispute. The dispute is regarding whether the said service, in the facts of the present case, is taxable at the hands of the service recipient or otherwise. The appellant has contended that the said service was provided by the owner of the property in his individual capacity and not in the capacity of Director of the Company and therefore service provided in personal capacity cannot be considered as service provided in the capacity of Director, to be taxable under RCM at their end. Whereas the adjudicating authority has observed that the language used in Rule 2(d)(EE) of the Service Tax Rules, 1994 read with relevant Notification is very clear and any service rendered by the Directors to the company is taxable service attracting service tax under the reverse charge mechanism and that the statutes nowhere stipulate that the services ought to have been provided in the capacity of a director and also no distinction has been made in the provisions regarding services provided in personal capacity or services provided in the capacity of a director and therefore, if director of a company provided service in any capacity as a director or as an individual service provider, the tax liability would be of the company under reverse charge mechanism. It is observed that the said view of the adjudicating authority does not seem to be a fair and correct interpretation as the words used in the Notification are 'by a director of a company to the said company' and not 'by a person who is director of a company'. Therefore, if the director of the company provides a service in some other capacity, the tax liability would be of the director as an individual service provider and it will not be correct to consider the same as a service provided in the capacity of a director of the company to said company. The notification intends to cover the services provided by a Director of the company to said company in the capacity of the director post held by him. Other services performed beyond the function of Director are not covered by the above Notification. Such a view can fairly be inferred on analysis of other similar kind of entries in the



Notification like entries pertaining to taxable services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business and taxable services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company. In these entries, taxable services provided as insurance agent or as recovery agent are what are intended to be covered. The said entries can only be said to be referring to taxable services provided in the capacity in which services sought from such person by the recipient. By no stretch of imagination, it can be assumed that all taxable services provided by such persons are covered under the said notification. The intention of the legislation is to cover only those services provided by the person for which it was necessary to be in that capacity and not all services which can also be provided without being in that capacity. Therefore, I do not find any merit on the contention of the adjudicating authority that any service provided by the Director would be attracting service tax under reverse charge mechanism.

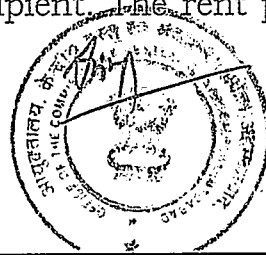
8.1. It is pertinent to mention that the owner of the property has given his property on rent to the appellant and getting the rent from the appellant being the owner of the property and not being the Director of the appellant. Appellant is also paying the rent to the owner being the owner of the property (who has provided service to the appellant) and not being Director of the appellant. It is not the case of the department that the Directors have rented their immovable properties to the company as they are obliged to do so being appointed as directors of the company. Further, it is a fact that for providing renting services one need not be a director of the company. The department has not brought on record anything which suggest that the impugned renting services received by the appellant from their Directors were received by them in the capacity of Directors of the company. Whereas the appellant has contended that the said services were received by them from their directors as owner of the property and not as a director of the company. They are paying the rent to the person being the owner of the property and not being the Director of the appellant and the



Directors is receiving the amount not as remuneration for his services as a director but in his individual capacity of an owner of the property. Such a case, in my view, is not intended to be covered under the reverse charge mechanism in terms of Notification No. 30/2012-ST but rather the director, as a service provider, would be liable to discharge the applicable service tax liability, if any.

8.2. Further, it is observed that had the Director of the appellant given his property on rent to some other company, the Director of the appellant would have been held liable to pay the service tax being the owner of the property and being in his individual capacity as service provider. Similarly, if such a renting service is received by the appellant from an individual other than Director, then liability to pay tax, if any, on such service is not on the appellant but on the service provider. This logic makes it clear that if the Director of a company is providing any sort of service in the capacity of Director to the said company, then only the service becomes liable to service tax at the end of that company being service recipient. This is the intention of law and therefore such words have been incorporated in the said rules and in the Notification. Further, I find that the CBEC, in their Circular No.115/9/2009-ST dated 31.07.2009 issued on the subject of Service tax on commission paid to Managing Director/Directors by the company has clarified that "the amount paid to Directors(Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax". In other words, the service provided by the Director in the personal capacity to the Company, would be payable by the person who rendered such service and not by the company under Reverse Charge Mechanism.

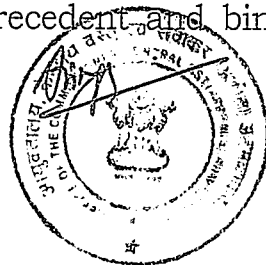
8.3. Under the circumstances, the fair conclusion which can be drawn is that just because the owner of the property is Director of the appellant, the renting service received by the appellant does not become taxable at their end being the service recipient. The rent paid



by the appellant company in the present matter, therefore, cannot be charged to service tax under Notification No.30/2012-ST dated 20.06.2012 as amended vide Notification No. 45/2012-ST dated 07.08.2012. The liability to pay service tax in the case would lie on the service provider. Hence, the order of adjudicating authority to charge service tax under reverse charge mechanism under Rule 2(1)(d)(EE) of the Service Tax Rules,1994 and NotificationNo.3012012-ST as amended is not legally correct and fails to sustain on merits and requires to be set aside.

8.4. It is further observed that similar view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in Order-in-Appeal No. AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd. and in Order-In-Appeal No. AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 in the case of M/s Advance Addmine Pvt. Ltd. and in Order-in-Appeal No. AHM-EXCUS-002-APP-004-2020-21 dated 22.04.2020 in the case of M/s Erntelle India Ltd. and in Order-in-Appeal No. AHM-EXCUS- 002-034-2018-19 dated 20.11.2020 in the case of M/s. Vimalachal Print & Pack Pvt. Ltd.

8.5. Further, I find merit in the contention of the appellant that the adjudicating authority, while deciding the issue, has not followed principles of judicial discipline in as much as not following the ratio of the higher appellant authority's decision, vide Order-In-AppealNo.No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd. and in Order-in-Appeal No. AHM-EXCUS-002-034-2018-19 dated 20.11.2020 in the case of M/s Vimalachal Print & Pack Pvt. Ltd. on identical issue. It is observed that the adjudicating authority rather than following the decisions of the appellate authority or distinguishing the same, has tried to sit on a judgement of the decision of the higher authority in utter disregard to the principles of judicial discipline. The adjudicating authority completely seems to have lost sight of the fact that it is beyond her functional competency to review the proceedings of a higher authority in judicial hierarchy. The adjudicating officer acts as a quasi judicial authority and he/she is bound by the law of precedent and binding

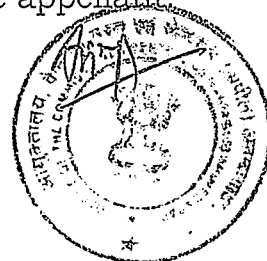


effect of the order passed by the higher authority or Tribunal of superior jurisdiction. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. This view has been consistently emphasized by the various judicial forums including the apex court in catena of decisions. The CBEC has also issued an Instruction F.No. 201/01/2014-CX.6 dated 26.06.2014 in this regard directing the all adjudicating authorities to follow judicial discipline scrupulously. Further, in this regard, the Hon'ble High Court of Gujarat in their decision in the case of M/s Lubi Industries LLP Vs. Union of India [2016(337)ELT179 (Guj.)] has made the legal position unambiguously clear that even if the decision of the Tribunal in a case was not carried further in appeal by the department on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision and as long as a judgment of the Tribunal stands, it would bind departmental authorities taking up such an issue. The above legal position is equally applicable to decisions of appellate authorities also. For that settled view of the matter, the impugned order passed by the adjudicating authority by not following the principles of is bad in law and is liable to set aside on that count also.

8.6. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of revenue neutrality and limitation raised by the appellant. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.

9. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of revenue neutrality and limitation raised by the appellant. When

10. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.



11. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

*Shiv Pratap Singh*  
(Shiv Pratap Singh)

Commissioner (Appeals)

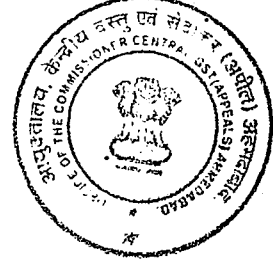
Dated: 25.08.2023

Attested

*Ammendra Kumar*  
(Ammendra Kumar)

Superintendent(Appeals)

CGST Ahmedabad.



**BY RPAD/ SPEED POST**

To

M/s Aromen Hospitality Private Limited,  
04, Ground Floor, Sigma Legacy,  
IIM-A, Panjarapole, Ahmedabad — 380 015

Appellant

The Assistant Commissioner  
CGST & Central Excise  
Division VI, Ahmedabad.

Respondent

Copy to :

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner Central GST, Ahmedabad South.
3. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad South (for uploading the OIA).
- ✓ 4. Guard File.
5. P.A. File.