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

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN: 20230864SW00007227CE

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2834/2022 /5016 - 20

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-94/2023-24**
दिनाँक Date : 28-**08-2023** जारी करने की तारीख Date of Issue 29.08.2023

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

ग Arising out of OIO No. CGST/WSO7/O&A/OIO-065/AC-RAG/2022-23 दिनाँक: **21.07.2022** passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Hitesh K Chhadva,
804, Prasad Tower,
Opp. Ambawadi Jain Temple,
Nehrunagar, 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:

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

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

(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 दिनाँक 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 रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

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

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

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

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

(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. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding 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.

1ण 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. Hitesh K. Chhadva, 804, Prasad Tower, Opp. Ambawadi Jain Temple, Nehrunagar, Ahmedabad – 380015 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WS07/O&A/OIO-065/AC-RAG/2022-23 dated 21.07.2022 (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. ADBPC1412GSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that there is difference of value of service amounting to Rs. 8,77,414/- for the FY 2015-16, 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/IV/O&A/SCN-909/2015-16/REG/2020 dated 24.12.2020 demanding Service Tax amounting to Rs. 1,27,225/- 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.

2.3 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,27,225/- 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. The adjudicating authority has dropped the remaining amount of demand of service tax. Further (i) Penalty of Rs. 1,27,225/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) and 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, along with an application for condonation of delay, inter alia, on the following grounds:

- The appellant is engaged in providing taxable as well as exempted services and holding Service Tax Registration No. ADBPC1412GSDS001.

- The appellant submitted that they were undertaking various consulting work as well as providing services to the educational institute. Even in profit and loss account both the incomes were separately demarcated. Accordingly, the appellant did not pay Service Tax on services provided to the education institute as they were exempted.

- Further the short payment of Service Tax other than that was already paid by the appellant along with interest vide DRC-O3 dated 23.03.2021. The appellant had paid Rs. 56,181/- towards Tax and Rs. 50,589/- towards interest vide DRC-03 on 21.03.2021. This was paid before the passing of the impugned order as well as it was part of the annexure enclosed with defense reply to the show cause notice submitted to the adjudicating authority. However, the adjudicating authority has not given any finding on the same.

- The Show Cause Notice as well as the impugned order is not tenable as the same is based on assumptions & presumptions and inferences not warranted by facts and hence the same should be dropped in the interest of justice.

- The appellant submitted that the adjudicating authority has not gone through the defense reply filed by the appellant. There is no finding on the invoices submitted by the appellant. Neither the amount paid by the appellant is discussed in the impugned order, nor the adjudicating authority has countered the evidence produced by the appellant. The impugned order deserves to be set aside on the ground that it does not properly consider the submissions filed by the appellant.

- The amount with respect to income received during FY 15-16 is not only towards taxable services. The appellant had provided services to educational institute as well. The appellant had disclosed the said fact in their Profit & Loss Account. The appellant was regular in filing ST-3 returns as well as he was registered with the Department. The service tax was not payable towards services provided related to admission as well as towards examination of the students. They have submitted copy of Invoices, ST-3 and Profit & Loss Account along with the appeal memorandum.

- During the FY 2015-16, the total amount Rs.4,65,620/- was received towards facilitating admission of students and for services provided in relation to the activity of conducting examination. It is to submit that such services are exempted vide entry no.

9 of the Notification No. 25/2012-ST dated 20.06.2012. Thus, out of Rs.8,77,414/- amount of Rs.4,65,620/- is towards exempted services. Therefore, no Service Tax can be demanded on the same.

- Without prejudice to other submissions, they submitted that amount of Rs.1,92,339/- is towards reimbursement of expenditure. The said expenditure was done on behalf of M/s Applewoods Estate Private Limited. However, there was no provisioning of service against said amount as it was in the nature of reimbursement. Therefore, such reimbursement of expenses should not be made liable to Service Tax.

- The appellant submitted that all the facts and figures were available in the Income Tax returns and 26AS and there was no suppression of the figures, had there been any deliberate intention of evading service tax, these facts and figures would not have been mentioned in the books of accounts. Hence, when all the figures have been taken by the Department from the 26AS and Income Tax returns, it cannot be said that there was deliberate intention to evade payment of service tax on the part of the appellant..

- In the present case of the appellant, it is an admitted fact that contention of the non-payment of service tax is based on the availability of exemption of services specifically by Notification No. 25/2012-ST dated 20.06.2012 and other amounts on account of being reimbursement of expenses. Hence, it can never be said that he had the intention to evade payment of service tax and therefore, the larger period of demand is not invokable in the present case. Since, the entire demand confirmed in the impugned order is for a period covered by proviso to Section 73(1) of the Finance Act, 1994, the entire demand is required to be dropped on the ground of limitation.

- Without prejudice to other submissions, assuming without admitting for the sake of discussion, the appellant submitted that they had neither collected nor charged service tax on invoices since they were exempt in nature. It is strange that that cum tax benefit is not extended while issuing the show cause notice as well in the impugned order. It is a deemed fact that the impugned order has been confirmed based on the SCN which was issued based on figures of Books of Accounts then on whatever amount the demand was confirmed should have been treated as gross value received by the appellant and benefit of cum-tax principle should have been given.

a) M/s. Vaishali Developers & Builders reported as 2017 (47) S.T.R. 300 (Tri. - Del.)
b) M/s. Hans Interiors reported as 2016 (44) S.T.R. 607 (Tri. - Chennai)

- Without prejudice to the above written submissions, the appellant submitted that he has not suppressed the facts with intention to evade the Service Tax. The imposition of penalties would be justified only when the assessee knew about the tax liability and still, he did not pay the tax and deliberately avoided such payment, and it was only in such a situation where suppression of facts on part of the appellant could be justifiably alleged by the Revenue. However, mere failure to pay Service Tax on account of interpretation of law would not be a case where the Revenue can invoke extended period of limitation. The impugned order proposing various demands and penalties by invoking extended period should be dropped.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 21.07.2022 and received by the appellant on 29.07.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 20.10.2022, i.e. after a delay of 21 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 matter being 7 years old, they required more time in order to collect all relevant documents. Moreover, the appellant is a proprietary concern and he did not have regular accounting staff or such department to undertake the proper documentation. Thus, there was delay in procuring the documents. Moreover, due to the September month being due date of the Income Tax Return filing the regular consultant of the appellant was not available. Therefore, there is delay in filing an appeal.

4.1 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 21 days and take up the appeal for decision on merits.

4.2 Personal hearing in the case was held on 07.07.2023. Shri Gunjan Shah, Chartered Accountant appeared for personal hearing on behalf of the appellant and reiterated the submissions made in the appeal. He submitted that part of the income was from provisions of service to educational institute which is exempted, the remaining liability was discharged by the appellant after issuance of the show cause notice. However, the adjudicating authority has

not considered their submissions and confirmed the demand with penalty. He requested to set aside the impugned order.

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.

6. I find that the main contention of the appellant are that (i) during the FY 2015-16, the total amount Rs.4,65,620/- was received towards facilitating admission of students and for services provided in relation to the activity of conducting examination, such services are exempted vide entry no. 9 of the Notification No. 25/2012-ST dated 20.06.2012; (ii) amount of Rs.1,92,339/- is towards reimbursement of expenditure done on behalf of M/s Applewoods Estate Private Limited, therefore, such reimbursement of expenses should not be made liable to Service Tax; (iii) they had paid Rs. 56,181/- towards Tax and Rs.50,589/- towards interest vide DRC-03 on 21.03.2021. This was paid before the passing of the impugned order; and (iv) they had neither collected nor charged service tax on invoices since they were exempt in nature, however, cum tax benefit is not extended while issuing the show cause notice as well in the impugned order.

7. It is observed that the adjudicating authority had confirmed the demand of service tax in the impugned order observing as under:

> *"6.2 I find that noticee has short-paid Service Tax of Rs.1,27.225/- on the amount of Rs. 8,77,414/- during 2015-16. The noticee has contended that the amount was received from School for admission of Students which is an exempt service as per Notification No.25/2012-ST dated 20.06.2012.*
>
> *6.3. This has come to notice that noticee is running a proprietary firm in the name of M/s ARN Architecture and he is in the field of consultancy as well as in the field of teaching. He has shown income in his profit and loss account for FY 2015-16 as under:*
>
> *(1) Consultancy Income Rs.14,18,733/-*
> *(2) Teaching Income Rs.4,65,620/-*

From the ST-3 returns, it appears that noticee has paid Service Tax on the consultancy income of Rs.10,06,959/- whereas he has booked Rs.14,18,733/- towards consultancy income in his ITR for which noticee has not submitted anything. The submission of noticee that he has received amount of Rs.4,65,620/- towards the services provided by him for admission of the students in school is not supported by any documentary proof like receipt of payment from M/s. Hiraba Kelvani Trust and other proof like copy of ledger of M/s. Hiraba Kelvani Trust. The noticee has also not provided any evidence to the effect that M/s. Hiraba Kelvani Trust has taken his services for admission of students.

6.4 It appears that noticee has failed to produce any evidence in support of his claim that he has provided exempted services. Therefore, I find that the noticee has short-paid Service Tax of Rs.1,27,225/- on the amount of Rs. 8,77,414/- which is recoverable from him under Section 73 the Act. Accordingly, noticee is required to pay interest on the amount of Service Tax not paid by him under Section 75 of the Act.

8. As regard, the claim of the appellant that the income of Rs. 4,65,620/- were exempted from Service Tax as per Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012, I hereby produce the relevant text of the Notification No. 25/2012-ST dated 20.06.2012 as amended, for ease of reference, 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... ... ...

9. Services provided, -

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of, -

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;"

8.1 On verification of the aforesaid provisions of Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012, as amended, and on verification of the Invoices issued by the appellant to M/s. Hiraba Kelavani Trust and M/s. Indus University during the FY 2015-16, I find that the services provided by the appellant to M/s. Hiraba Kelavani Trust and M/s. Indus University in respect of Academic services for Admission & Examination process a were exempted from service tax under Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012. I also find that the appellant in their Profit & Loss Account, shown the income of Rs. 4,65,620/- separately as 'Teaching Income'. Thus, the appellant not required to pay any service tax on income of Rs. Rs. 4,65,620/- received by them during the FY 2015-16.

9. As regard, the contention of the appellant that amount of Rs.1,92,339/- is towards reimbursement of expenditure done on behalf of M/s Applewoods Estate Private Limited, therefore, such reimbursement of expenses should not be made liable to Service Tax, I find that the appellant submitted Invoice No. 01 & Final dated 21.10.2015 for an amount of Rs. 40,000/-; No. 2 dated 21.10.2015 for an amount of Rs. 75,000/-; No. 01 & Final dated 21.10.2015 for an amount of Rs. 36,000/-; No. 05 dated 21.10.2015 for an amount of Rs. 45,000/-; and No. 10 & Final dated 23.07.2015 for an amount of Rs. 1,24,000/- issued to M/s. Applewoods Estate Private Limited, along with their appeal memorandum. On verification of the all the aforesaid invoices, I find that the appellant charged and recovered Service Tax from M/s. Applewoods Estate Private Limited. Thus, I find that the appellant failed to submit any evidence / documents regarding their claim for reimbursement of expenses for the expenses made by them as pure agent, which required to be excluded from the taxable income as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, which reads as under:

> *"**Rule 5(2)** Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-*
>
> *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured*
>
> *(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
>
> *(iii) the recipient of service is liable to make payment to the third party;*
>
> *(iv) the recipient of service authorises the service provider to make payment on his behalf;*
>
> *(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

***Explanation1**.–For the purposes of sub- rule (2), "pure agent" means a person who–*

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services."

9.1 In view of the above, I find that the contention of the appellant Rs.1,92,339/- was towards reimbursement of expenditure and not liable to Service Tax, cannot sustainable without providing / submitting any documents / evidencing regarding expenses made by them as pure agent, which required to be excluded from the taxable income as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006.

10. As regard, the contention of the appellant that they had paid Rs. 56,181/- towards Tax and Rs.50,589/- towards interest vide DRC-03 on 21.03.2021 and this was paid before the passing of the impugned order, I find that the appellant had made the said payment through DRC-03 on 21.03.2021 showing remark as "Difference of Service Tax for FY 2015-16". Therefore, I hold that the said payment of Service Tax and Interest required to be appropriate against their total liability of Service Tax and Interest for the FY 2015-16, which was not done by the adjudicating authority, while passing the impugned order.

11. As regard, the contention of the appellant that they had neither collected nor charged service tax on invoices since they were exempt in nature, however, cum tax benefit is not extended while issuing the show cause notice as well in the impugned order, I find that the appellant being a registered assessee with the Service Tax department, charged an collect service tax on all the taxable income. The appellant not submitted any evidence / documents / invoices showing that they have not charged and collected service tax from the customers / clients for the taxable service provided on the differential income for which the show cause notice issued to the appellant. Thus, I find that merely a bald statement that they had neither collected nor charged service tax on invoices not sustainable.

12. In view of the discussion made in para supra, I find that the appellant are required to pay Service Tax of Rs. 59,710/- on the taxable income of Rs. 4,11,794/- [Rs. 877414/- (value difference in ITR & STR) – Rs. 4,65,620/- (Exempted income)] as per proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. As the appellant had already made payment of Rs. 56,181/- towards Service Tax and Rs. 50,589/- towards interest vide DRC-03 on 21.03.2021, the said amounts required to be appropriate against their total liability of Service Tax and Interest for the FY 2015-16.

13. Further, in the present case, it clearly transpires that the appellant has intentionally suppressed the correct taxable value by deliberately withholding of essential information from the department though they were registered under the Service Tax. They also suppressed the value of taxable services provided by them in ST-3 returns, with an intent to evade taxes. Also, the appellant has never informed the department about the short payment of Service Tax and the said fact could be unearthed only at the time of initiation of the inquiry by the department. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients which exist in the present case which makes them liable to pay the demand raised against them invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest, hence, the same is, therefore, recoverable under Section 75 of the Finance Act, 1994.

14. As regards penalty imposed under Section 78 of the Act, the appellant has pleaded that since there was no suppression of facts, no penalty can be imposed upon them under Section 78 of the Act. I have already upheld invocation of extended period of limitation on the grounds of suppression of facts as per discussion in para *supra*. Hence, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, held that the appellant was liable to penalty under Section 78 of the Act.

15. As regards the penalty of Rs. 10,000/- imposed on the appellant under Section 77(1) and Section 77(2) of the Finance Act, 1994, as amended, I find that the appellant has not disclosed full and correct information about value of the services provided by them in the relevant ST-3 Returns and failed to self-assess the correct taxable value for the services provided by them and also failed to provide the necessary documents to the department in

time, therefore, the appellant are liable to the penalty under Section 77 of the Finance Act, 1994. Hence, I find that the impugned order to the extent of penalty of Rs. 10,000/- imposed on the appellant under Section 77 of the Finance Act, 1994 is legally correct.

16. In view of the above discussion, I uphold the order passed by the adjudicating authority for demanding Service Tax of Rs. 59,710/- along with interest for the FY 2015-16 and set aside the order for demanding remaining Service Tax amount. As the appellant had already made payment of Rs. 56,181/- towards Service Tax and Rs. 50,589/- towards interest vide DRC-03 on 21.03.2021, the said amounts required to be appropriate against their total liability of Service Tax and Interest for the FY 2015-16. Needless to say that the penalty under Section 78 of the Finance Act, 1994 is required to be reduced equal to the Service Tax demanded and upheld in this order, i.e. Rs. 59,710/-. However, in view of the clause (ii) of the second proviso to Section 78(1), if the amount of Service Tax confirmed and Interest thereon is paid within the period of thirty days from the date of receipt of this order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days. I also uphold the rest of the impugned order imposing penalty of Rs. 10,000/- under Section 77(1) & Section 77(2) of the Finance Act, 1994.

17. 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

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

Date : 28.08.2023

By RPAD / SPEED POST

To,
M/s. Hitesh K. Chhadva,
804, Prasad Tower,
Opp. Ambawadi Jain Temple,
Nehrunagar, Ahmedabad – 380015

Appellant

The Assistant Commissioner,
CGST, Division-VII,

Respondent

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 VII, Ahmedabad South
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
5) Guard File
6) PA file