

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -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 का न्यायालय 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 और 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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."



अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s. Sandeep Paul, G-718, Sabri Apartment, Nehru Park Vastrpur, Ahmedabad-380015 (hereinafter referred to as "*the appellant*") against Order-in-Original No. 408/DC/Sandeep/Div-6/Abad South/PMT/2022-23 dated 17.03.2023 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant, a service tax assessee and holding Service Tax Registration No. APHPP8430KSD001 declared different values in their Service Tax Return (ST-3) and Income Tax Return (ITR/ Form 26AS) for the Financial Year 2015-16. Despite being asked to provide explanations and supporting documents, they failed to do so. Consequently, the service tax liability for 2015-16 was calculated based on the values from the Income Tax Department.

2.1 Subsequently, the appellant were issued Show Cause Notice bearing F.No. V/WS06/O&A/SCN-512/2020-21 dated 26.12.2020 demanding Service Tax amounting to Rs. 18574/- for the period Financial Year 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), 77(2) and 78 of the Finance Act, 1994.

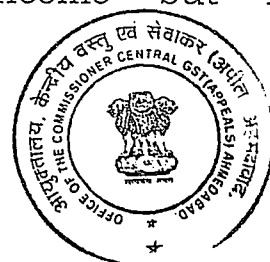
2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 18,574/-was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from Financial Years 2015-16. Further (i) Penalty of Rs.



18,574/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994, (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for failure to follow service tax provisions.

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

- That the appellant are doing business of Architect Services & Education Services. We are filing regular Form No. ST-3 and no discrepancy in filing the return.
- The facts relevant to various grounds of appeal set out in the Memorandum Appended herewith are as under
- The appeal above named craves liberty to move this Appeals u/s 35 of the Act, against the learned Deputy Commissioner, CGST, Ahmedabad South (Technical) dated 17-03-2023 for the Financial Year 2015 to 31-03-2016 and further imposed Penalty Rs. 10,000/- u/s 77(2) of the Finance Act, 1994 & Rs.18,000/- u/s 78 Finance Act, 1994.
- The learned Deputy Commissioner CGST, Ahmedabad South (Technical) has erred in law and on facts while making aforesaid disallowable merely on presumption, surmises and conjecture: in absence of any material evidence being brought on record in support of addition of Rs.1,23,827/- as services. Only on assumption that it is taxable services.
- The learned Deputy Commissioner CGST, Ahmedabad South (Technical) Division has erred in law and on facts that Income Tax Form 26AS is considered Income but Deputy



Commissioner has wrongly quoted income while comparing the figures.

- The learned Deputy Commissioner CGST, Ahmedabad South (Technical) Division has erred in law and on facts that letter dated 18/01/2021 & 19/01/2023 was not considered or not objected till 17/03/2023 and suddenly finalized the matter without giving opportunity to explain and submission of documents which was relevant to the facts of the case.
- The appellant have submitted copy of Profit & Loss Account, Form 26AS, Calculation Sheet, Letter of CEPT University and Letter of Anant National University which was Exempted Income u/s 66D of the Act.

4. The appellant were given opportunities for Personal Hearing on 12.02.2024. Shri Dineshkumar A. Rathi, Advocate appeared for Personal hearing on behalf of the appellant. He stated that the client is educational institution; hence the service tax is not liable to be paid. The appellant were given other opportunities for Personal Hearing on 22.03.2024. Shri Dineshkumar A. Rathi, Advocate appeared for Personal hearing on behalf of the appellant. He requested for two days time to submit ITR for the subject year and the previous year and ST-3 returns for the subject year (2015-16).

4.1 The appellant have forwarded copy of following documents (1) ST-3 return (April to September 2015 and October to March 2016) (2) Income Tax Return for the F.Y. 2015-16 and 2014-15.

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 Financial Year 2015-16.

6. Upon thorough examination of the provided documents and the appellant's submissions, it is evident that there exists a discrepancy between the values declared in the Service Tax Return (ST-3) and the Income Tax Return (ITR/ Form 26AS) for the Financial Year 2015-16. The details are as under:

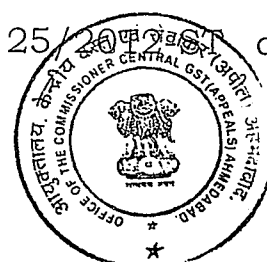
F.Y.	Gross value as per ST-3	Value as per ITR/26AS	Service tax payable
2015-16	8,97,589/-	10,21,416/-	18,574/-

7. On analyzing the facts presented and the relevant documents submitted by the appellant which include copy of Profit & Loss Account, Form 26AS, Computation Sheet, copy of Income Tax Returns for the impugned period and previous financial year i.e. 2014-15 and ST-3 Returns and letters from CEPT University and Anant National University, it is clarified that the appellant are providing architect and education service. The appellant was appointed as visiting faculty for Cept University and Anant National University. The appellant claimed that they are exempted from service tax under entry no. (1) of Negative list of service as per Section 66D of the Finance Act, 1994. The excerpt of the entry no. (1) of Section 66D of the Finance Act, 1994 is reproduce as under:

services by way of—

- (i) pre-school education and education up to higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) education as a part of an approved vocational educational course*

7.1 However, it is important to mention that the clause (1) was omitted from Section 66D of the Finance Act, 1994 by Finance Bill, 2016 and incorporated in Notification No. 25/2016 dated



20.06.2012 (w.e.f. 01st July 2012). For reference the excerpt of entry no. 9 under the Notification No. 25/2012-ST as amended is reproduced as under:

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property;

7.2 The above provision under entry no. 9 of the Notification No. 25/2012-ST dated 20.06.2012 as amended defines the services exempted from service tax in relation to education. It covers auxiliary education services and renting of immovable property service.

“Auxiliary educational services” means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to: admission to such institution, conduct of examination, catering for the students under any midday meals scheme sponsored by Government or transportation of students, faculty or staff of such institution;

7.3 Reading the above definition, I am of the opinion that Auxiliary educational services refer to services that support the main educational activities provided by an educational institution. These include services such as transportation and catering among others. However, it is important to note that the aforesaid entry no. 9 of the Notification No. 25/2012-ST dated 20.06.2012 has been substituted vide the Notification No. 06/2014-ST dated 11.07.2014 and the entry no. 9 reads as under:

"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;";

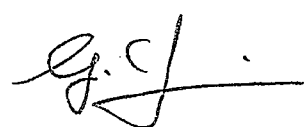
8. After careful consideration of the submissions made by the appellant and upon perusal of the relevant provisions of law and supporting documents, it is observed that the appellant's services to CEPT University and Anant National University does not fall within the ambit of exempted services provided to educational institutions as per the Notification No. 06/2014-ST dated 11.07.2014. Hence the appellant is held liable to pay service tax along with interest and penalty.

9. Moreover, while going through 26AS for the F.Y. 2015-16, I find that the appellant has received the amount of Rs. 3,33,816/- from Arya Architects under Section 194(c) (payment to contractor) and 194 (J) (payment from professional service) of Income Tax Act, 1961. This amount does not fall in negative list. Hence the appellant is held liable to pay service tax along with interest and penalty.

10. In view of the above discussion, the order is upheld.

11. 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.



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 29.04.2024



सत्यापित / Attested:

(Signature)
अरिन्द्र कुमार)

अधीक्षक (अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. Sandeep Paul, G-718,

Sabri Apartment,

Nehru Park Vastrpur,

Ahmedabad-380015

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Deputy/Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The Supdt.(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file

