



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220264SX0000616481

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/25/BVR/2021	BHV-EXCUS-000-JC-002-2020-21	23-02-2021

अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-015-2021-22**

आदेश का दिनांक/ Date of Order:	जारी करने की तारीख / Date of issue:
28.01.2022	02.02.2022

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम।  
द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :
- घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Smile Please Digital Lab Pvt. Ltd. (7-Akashdeep complex, opp. Taluka Panchayat Office Kalanala Bhavnagar

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है /  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है /  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए /  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 360016 को की जानी चाहिए /

- (iii) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above  
अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

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.5000/-, Rs.10,000/- where amount of duty demanded/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) भारत सरकार कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
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.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि पर या बाद में पारित किए गए हैं। /  
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).



**:: ORDER-IN-APPEAL ::**

M/s. Smile Please Digital Lab Private limited, 7, Aakashdeep Complex, Opp. Taluka Panchayat Office, Kalanala, Bhavnagar (*hereinafter referred to as 'Appellant'*) has filed the present Appeal No. 25/BVR/2021 against Order-in-Original No. BHV-EXCUS-000-JC-MT-002-2020-21 dated 23.02.2021 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central Excise & Central GST Bhavnagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the intelligence received by the jurisdictional departmental officers revealed that Appellant were engaged in providing taxable services under the category of Photography & Video Tape Production Services falling under erstwhile Section 65 (105) (zb) & 65 (105) (zi) respectively of the Finance Act, 1994 (*hereinafter referred to as the 'Act, 1994'*). However, they had not paid the appropriate service tax on such services. It was observed that the major portion of these services were provided during the Legislative Assembly elections in 2007 and Parliamentary Elections in 2009 at various places. Therefore, an inquiry was initiated by the department which culminated in issuance of the Show Cause Notice F. No. V/15-03/Dem-ST/HQ/2011-12 dated 19.04.2011 to the appellant, wherein it was proposed as under:

- (i) To demand and recover Service Tax amounting to Rs. 32,46,134/- under Section 73(1) of the Act, 1994;
- (ii) Adjust and appropriate Service Tax payment of Rs.25,63,563/- made by the appellant against the demand at (i) above.
- (iii) To recover interest from them under Section 75 of the Act 1994.
- (iv) To impose penalty upon them under Section 76 of the Act 1994 for late payment of service tax.
- (v) To adjust the payment of interest/penalty amounting to Rs.1,10,488/- made by the appellant against the demand.
- (vi) To impose penalty for non-payment of Service Tax on them under Section 78 of the Act, 1994.
- (vii) To impose penalty under the provisions of clause (c) to sub-Section (1) of Section 77 of the Act on them for failure to produce documents i.e. invoice raised by the appellant company for the Financial Years 2005-06 to 2009-10 called for by Central Excise Officer in an inquiry as envisaged under Section 83 of the Act, 1994 with Section 14 of the Central Excise Act, 1944.
- (viii) To impose penalty upon them under the provisions of sub Section 2 of Section 77 of the Act 1994 for late submission of service tax return.





2.1. The aforesaid show cause notice was adjudicated vide the Order-in-Original No. 44/BVR/Jt. Commr./2011 dated 27.12.2011 passed by the Joint Commissioner, Central Excise, Bhavnagar wherein the demands were confirmed and penalties were imposed upon the appellant.

2.2. The matter was carried forward by the appellant by filing appeal before the then Commissioner (Appeals), who vide his Order-in-Appeal No. 117/2012(BVR)/SKS/Commr.(A)/Ahd dated 30.11.2012 allowed the appeal by way of remand and directed for re-determination of the demand by the lower adjudicating authority. The directions of the Commissioner (Appeals) are as under:

"8. The appellant have mainly contested that it is settled position that photography/videography service provided to election commission in connection with legislative assembly election and parliamentary election is not liable to service tax. They had placed reliance on the Hon'ble Tribunals' decisions.

8.2 I find the contention of the appellant merits acceptance. The Hon'ble Tribunal in case of Ankit Consultancy Ltd., Vs. CCE reported at 2007 (6) STR 101 (Tri. Del.), had held that any activity performed by a State organ to discharge the sovereign activity of the State cannot be brought under the tax limit. I also find that Hon'ble Tribunal in case of CCE, Hyderabad Vs. CMC Limited reported at 2007 (7) STR 702 (Tri-Bang) held that "issue of Electors Photo Identity Cards cannot be considered as "Photo Identify" falling within the definition of 'Photography Studio or Agency' as per section 65 (78) ad 65 (79) of the Act." Applying the ratio of the cited judgements, I hold that appellants are not liable to pay service tax on the activity of photography/videography service provided to election commission in connection with legislative assembly election and parliamentary election.

9. The appellant have also contested that service tax cannot be levied and collected on items like albums, photo rolls etc. that were sold by the appellant as the same is pure sale. I find the contention of the appellant merits acceptance. The appellant have contested that they were entitled for the exemptions in terms of Notification No. 12/2003-ST dated 20.06.2003 and for exemption in terms of Notification No. 6/2005-ST dated 01.03.2005 as amended by Notification No. 04/2007-ST dated 01.03.2007 and 08/2008-ST dated 01.03.2008 setting out the value limits for exemption from payment of service tax from time to time. I find the contention of the appellant merits acceptance. The value of the taxable services may be arrived at excluding the value of the pure sale and extending the benefit of notification No. 6/2005-ST dated 01.03.2005 as amended.

10. In view of the above, the demand of service tax and interest as arrived at in the impugned order is required to be re-determined in accordance with the law as laid down in terms of the judicial pronouncement and notifications cited in para 8 & 9 supra, Ordered accordingly, Penalties under Section 76, 77, 78 of the Act, are also required to be determined properly by way of re-quantifying the same. The correct amount of demand and penalties may be arrived at and may be communicated to the appellant within three weeks from the date of receipt of the order.



11. Accordingly, I set aside the impugned order and allow the appeal by way of re-determination of the demand by the lower authority.”

2.3 In view of the aforesaid Order-in-Appeal, the Adjudicating Authority has passed the impugned order, inter-alia, confirming the demand as under:

(i) the demand of service tax amounting to Rs. 2,00,590/- was confirmed and appropriated it out of total service tax payment of Rs.25,63,563/- made by the appellant.

(ii) the interest amount of Rs.91,022/- was confirmed and appropriated it out of total interest payment of Rs.1,10,488/- made by the appellant.

(iii) imposed reduced penalty @ 25% amounting to Rs. 50,148/- under Section 78 of the Act, 1994.

(iv) Imposed penalty of Rs. 2000/- for late submission of each service tax return under the provisions of sub-Section (2) of Section 77 of the Act, 1994.

3. Being aggrieved by the impugned order, the appellant has filed the present appeal, inter-alia, contending as under:

(i) That in the present case disputed service of photography and video tape productions provided to the Government in or in connection of Election duty was considered as non-taxable; therefore, the impugned order passed by the Adjudicating Authority confirming the service tax of Rs.2,00,590/- is not proper, correct and legal and, accordingly, the imposition of penalty is also not proper correct and legal;

(ii) That the total amount of Rs.14,47,009/- was not taxable value and, therefore, they were required to be extended the benefit SSI exemption as provided under Notification No. 06/2005-ST dated 01.03.2005;

(iii) That no service tax was levied for the services which were provided in or in relation to election duty;

(iv) That it is settled law that no service tax is levied on providing such services which is to be used in or in relation to the territory of state of Gujarat as well as other Territory of Central Government.

(v) In view of the above, the impugned order deserves to be set aside out rightly with consequential relief.

4. Personal hearing in the matter was held on 11.01.2021 in virtual mode through



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video conferencing. Shri N. K. Maru, Authorised Representative of the appellant, attended the personal hearing. He reiterated submission made in appeal memorandum. He further stated that he would make additional written submissions based on which case may be decided.

4.1. The appellant vide their mail dated 21.01.2022 has submitted additional written submission wherein he has reiterated the grounds raised in their appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal and written as well as oral submissions made by the appellant at the time of personal hearing and also additional written submission. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority in the facts and circumstances of the case is correct, proper and legal or otherwise.

6. It is observed that the impugned order has been passed in compliance of the directions contained in Order – in – Appeal No. 117/2012(BVR)/SKS/Commr.(A)/Ahd dated 30.11.2012 of the Commissioner (Appeals), Central Excise and Service Tax, Rajkot. Further, the adjudicating authority has dropped major portion of demand against the appellant along with consequential relief. The appellant is in appeal mainly on two grounds, first of which is that no service tax is payable on services provided for election duty and, therefore, the Adjudicating Authority has erred in demanding the service tax amount of Rs.2,00,590/-. In this regard, I find that the Adjudicating Authority has in the impugned order held that no service tax was leviable on sale of any goods, services given to the Election Commission, Machinery Rent and the amount which was not realized by the appellant till 31.03.2010. Accordingly, the demand of service tax amounting to Rs.29,38,029/- out of total demand of Rs 32,46,134/- has been dropped in light of the directions contained in the Order-in-Appeal. The relevant para of the impugned order is reproduced as under for ease of reference:

“20 In view of the aforesaid discussion, I find that out of total demand of Rs.32,46,134/-, the demand of Service Tax of Rs.29,38,029/- is related to the income received by the said Noticee from the sale/services provided to the Election Commission/machinery rent/amount not realized till 31.03.2010. The details of the same is as under:

TABLE-B

Sl. No.	Description	Service Tax Amount
1	Amount received by the Noticee from sale of various types of photography items	Rs.2,42,489/-
2	Amount received by the Noticee from the services provided to the Election	Rs.25,18,050/-



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	Commission	
3	Amount received by the Noticee from Machinery Rent	Rs.18,105/-
4.	Amount Not Realised till 31.03.2010	Rs.1,87,357/-
	Total Amount	Rs.29,38,029/-

21. In view of the aforesaid discussion, I find that no service tax was leviable on sale of any goods, service given to the Election Commission, Machinery Rent or the amount which was not realized by the Noticee till 31.03.2010. Thus, I hold that the demand of Service Tax amounting to Rs.29,38,029/- is required to be dropped in light of foregoing discussion."

6.1 Hence, it is apparent that the Adjudicating Authority has already excluded the income earned through services provided to Election Commission, and hence the contentions made by the appellant is without any merits and is rejected. It is also observed from the impugned order that the adjudicating authority has, after considering all the exempted income, held that the appellant has earned income of Rs.23,84,387/- from photography and videography services, which were chargeable to service tax. The relevant paragraph of the impugned order is reproduced as under:

"22. Further, I find that Noticee had collected the following amount from the service of Photography/Videography falling under Section 65(105)(zb) & 65 (105)(zi) of the Act during the period mentioned against the same:

Sl. No.	Financial Year	Amount received from Photography & Videography Services	Rate of Service Including cess applicable
1	01.10.05 to 31.03.06	Rs.5,42,922/-	10.20%
2	2006-07	Rs.9,57,244/-	12.24%
3	2007-08	Rs.2,26,904/-	12.36%
4	2008-09	Rs.5,74,727/-	12.36%
5	2009-10	Rs.82,590/-	10.30%
	Total Rs.	Rs.23,84,387/-	

7. The second contention of the appellant is that the taxable value on which demand of service tax has been confirmed, was covered within the ambit of SSI exemption as provided by the Finance Act, 1994. In this regard, on perusal of the impugned order, I find that the Adjudicating Authority has also extended the benefit of the eligible SSI exemptions to the appellant wherever they are entitled which is detailed at Para 24 (TABLE-D) of the impugned order. After considering all the exempted income as well as exemptions, the Adjudicating Authority has confirmed the demand of Rs.2,00,590/- on the amount of Rs.23,84,387/- received from the services of Photography/Videography.

7.1 Furthermore, I find that the appellant, in their appeal memorandum as well as in



written submission, has failed to establish as to how the Adjudicating Authority has erred in calculation and arriving demand of service tax amounting to Rs.2,00,590/- . Further, the appellant has not adduced any evidence whether the amount on which demand has been confirmed by the Adjudicating Authority is from services provided for election work or any exempted service.

8. In view of the above, I do not find any merit in the appeal filed by the appellant so as to interfere with the impugned order passed by the Adjudicating Authority and accordingly, I uphold the same. Since, the demand confirmed by the adjudicating authority is upheld, the levy of interest and penalty imposed is also upheld accordingly.

9. In view of above, I uphold the impugned order and reject the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।  
10. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

*[Signature]*

*[Signature]*  
(Akhilesh Kumar)  
Commissioner (Appeals)

F. No. V2/25/BVR/2021  
Dated: \_\_.01.2022

जतिन कुडलिया  
अधिक्षक

By Regd Post AD

To, M/s. Smile Please Digital Lab Pvt. Ltd., 7, Akashdeep Complex, Opposite Taluka Panchayat Office, Kalanala, Bhavangar - Gujarat.	सेवा में, मेस्सर्स स्माइल प्लीज डिजिटल लेब प्राइवेट लिमिटेड, 7, आकाशदीप कॉम्प्लेक्स, तालुका पंचायत ऑफिस के सामने, कालानाला, भावनगर - गुजरात
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक / उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल - I, भावनगर, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

