



::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 / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

DIN20221164SX000000BAAD

क अपील / फाइल संख्या / मूल आदेश सं / O.I.O. No. दिनांक / Date
Appeal / File No. BHV-EXCUS-000-JC-LD-005-2021- 31-12-2021
V2/07/BVR/2022 22

ख अपील आदेश संख्या (Order-In-Appeal No.):
BHV-EXCUS-000-APP-078-2022

आदेश का दिनांक / जारी करने की तारीख /
Date of Order: 09.11.2022 Date of issue: 14.11.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवा कर वस्तु एवं सेवा कर, राजकोट / जयनगर / गांधीधाम।
द्वारा उपरलिखित जारी मूल आदेश से सूचित: /
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. Theme Designer, Block No. 11, Kirtii Bunglows-II, Near Nirmal Homes, Behind Shukan Gold, Gota, Ahmedabad - 382421

इस आदेश (अपील) से स्वचित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 सेवा कर 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 मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) 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 मांग, ब्याज की मांग 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्किंग 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। स्वयंम आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 demand/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 सेवा कर 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 सेवा कर की मांग, ब्याज की मांग 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्किंग 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। स्वयंम आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 upto 5 Lacs, 5 Lacs or less, Rs.5000/- 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 35एक के अंतर्गत, जो की विलीय 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 अपेक्षित देव राशि दस करोड़ रुपये 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 गयी नई मात्र राशि
(iii) सेनवेट जमा निबन्धावली के नियम 6 के अंतर्गत देव रकम

- बशर्त यह कि इस धारा के प्रावधान विलीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विधायकीय स्थगन जर्जी एवं अपील को लागू नहीं होंगे। /

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 को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण प्राधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपारंतक 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 अंडर गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंडर गृह से दूसरे अंडर गृह पारगमन के दौरान, या किसी अंडर गृह में या अंडरगमन में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंडर 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 इव्यूटी 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 निबत की गई तरीक अथवा समायाविधि पर का बट 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 निर्दिष्ट है, इस आदेश के संघेषण 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 जवाबगी के साथ 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 Chialian 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 जवाबगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये वा 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, उपरोक्त इन से किया जाना चाहिए। इस तरह के होते हुए भी की निम्न 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) निबन्धावली, 1982 में बर्णित एवं अन्य संबंधित 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 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Theme Designer, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-005-2021-22 dated 31.12.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department provided the data/ details containing various persons i.e. Income Tax Assessee, who declared in their Income Tax Returns for financial year 2014-15, 2015-16 & 2016-17 to have earned income by providing services classified under various service sectors. The Income Tax Department had also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, 1961 in respect of various persons which depicted that such persons had earned income from providing services like contract, commission or brokerage, renting of movable/ immovable property, Technical or Professional service etc. The said data also contained details of the Appellant who had not obtained Service Tax Registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The Superintendent, Central GST Range-1, Division: Bhavnagar-1 issued letter dated 15.07.2020 to the Appellant calling for information/ documents viz. Copies of I. T. Returns, Form 26AS, Balance Sheet (incl. P & L account), VAT/Sales Tax returns, Annual Bank Statement, Contracts/ Agreements entered with persons to whom services were provided for the financial year 2014-15, 2015-16 & 2016-17. The said letter was also sent on email of the Appellant. As the letter sent at the address of the Appellant was received back from the Postal Authority undelivered, the Service Tax was determined on the basis of data/details provided by the Income Tax department and culminated into Show Cause Notice dated 03.09.2020 proposing to demand Service Tax of Rs. 62,34,281/- including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') interest under Section 75, and penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act, invoking extended period.

3. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 62,34,281/- under Section 73(1) along with interest under Section 75 of the Act by invoking extended period of 5 years. The adjudicating authority imposed penalties of Rs. 5,000/- each under Section 77(1)(a), 77(2) and Section 77 (1)(c) of the Act. The penalty of Rs. 62,34,281/- was also imposed upon the Appellant under Section 78 of the Act.

Being aggrieved, the Appellant has preferred the present appeal on 03.2022 on various grounds as stated below:



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(i) The adjudicating authority erred in confirming the demand of service tax alongwith interest and penalties by invoking extended period of limitation despite the fact that service is provided outside the taxable territory and thus not subjected to service tax. They carried out services of web designing/development, theme design/development etc. to person residing outside India, the recipient of services falls outside India and entire gross receipts are received from person residing outside India, in convertible foreign exchange through banking channel, from such activity of providing services.

(ii) The proceeds from rendering services are received in convertible foreign exchange through banking channel. In some cases they directly received in their HDFC Bank Account No. 50200004354620 and in some cases it is received through mediator "Paypal" and credited to their HDFC Bank Account. They submitted copies of Income ledger account and Foreign Inward Remittance Certificate (FIRC). For amount received directly in their HDFC Bank Account, FIRC is issued by the said bank whereas in respect of amount received through "Paypal", consolidated FIRC is issued by their banker City Bank. Thus, these facts show that recipient of service is located outside India and this fact is not disputed by the adjudicating authority.

(iii) The chargeability of service tax is defined under Section 66B of the Act and one of the criterion for levy of service tax is that service must be provided or agreed to be provided in the taxable territory as defined under Section 65B(52) of the Act. Further, the place of provision of service is determined by Section 66C of the Act read with Place of Provisions of Service Rules, 2012 (hereinafter referred to as 'the Rules'). As per Rule 3 of the Rules, place of provisions of service shall be the location of the recipient of service. In their case, the recipient of service is located outside India and thus receipts falls outside the charging section for levy of service tax and therefore, the entire demand is liable to be dropped.

(iv) Section 93A of the Act provides for rebate of service tax paid on input services which are used in providing export of services but it does not talk about exporter of services need to make payment of service tax on export of service and then to take rebate of such service tax. Thus, the findings of adjudicating authority that appellant is first required to make payment of service tax on export of services and then to claim rebate, is misinterpretation.

(v) As per show cause notice, the Appellant received income from providing services classified under Section 194C, 194H, 194I and 194J of the Income Tax Act. These section of Income Tax Act are meant for providing deduction of tax at source on certain payment and not for classifying services. Show Cause Notice has assumed gross receipts as value of taxable services liable to service tax



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without cogent material. The Show Cause Notice is issued based on assumption and presumption and no demand can be confirmed based on such Show Cause Notice and requested to drop the demand. They rely on Indo Nippon Chemicals Co. Ltd. Vs. Commissioner of C.Ex. Vadodara - 2009 (16) S.T.R. 639 (Tri.-Ahmd.), Creative Travel Pvt. Ltd. V. CCE - 2016(41) S.T.R. 134 (Tri.-Del.), Commissioner of Service Tax Ahmedabad Vs. Purni Ads. Pvt. Ltd. - 2010 (19) S.T.R. 242 (Tri.-Ahmd.), Canny Detective & Security Services Vs. Commr. Of C.Ex. Ahmedabad - 2010 (20) S.T.R. 695 (Tri. - Ahmd.).

(vi) The demand of service tax is time barred as the same has been served beyond a normal period of thirty months in terms of provisions of Section 73(1) of the Act and there was no fraud or collusion or wilful mis-statement or suppression of acts, or contravention of any of the provisions of the Act or of the Rules made thereunder with an intent to evade payment of service tax. The SCN is based on income tax data/returns, which was filed on 16.09.2015 and the SCN is issued on 03.09.2020 i.e. almost after period of five years from the date of such return. The data was available with the department from the concerned year in which return is filed and figures are taken from Income Tax Return without any variation, thus there cannot be any fraud, collusion or wilful misstatement as the I. T. return was available for verification. They rely on decision of Hon'ble CESTAT, Allahabad Bench in Tax Appeal No. 70707 of 2018 (DB) in case of M/s. Pappu Crane Service, Apex Electricals (P) Ltd. Vs. UOI - 1992 (61) ELT 413 (Guj.), Pahwa Chemicals P. Ltd. Vs. CCE, Delhi - 2005 (189) ELT 257 (S.C.), CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC), NRC Ltd. Vs. CCE, Thane-t - 2007 (5) STR 308 (Tri.-Mum), Cosmic Dye Chemical Vs. Collector of C.Ex., Bombay - 1995 (75) ELT 721 (SC), Board Circular No. 1053/02/2017-CX dated 10.03.2017, Vir Teja Roadlines Vs. Commissioner of C.Ex., Ahmedabad - 2012 (27) S.T.R. 290 (Tri.-Ahmd.).

(vii) The SCN is time barred as is not covered by extended period of limitation of 5 years even under the Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020. The 5 year period for issuing show cause notice for 1st half of F.Y. 2014-15 had already been expired on 13.11.2019 and hence the show cause notice is time barred. The demand of service tax was confirmed without giving the benefit of threshold exemption under Notification No. 33/2012-ST dated 20.06.2012.

(viii) No fresh proceedings can be initiated after introduction of GST as per the provisions of Section 174 (2)(e) of the CGST Act, 2017. Confirming demand based on SCN which issued in violation of Board Circular No. 1053/2/2017-CX. Dated 10.03.2017 is not legal and proper. The SCN is issued without giving pre-show notice consultation to the Appellant in terms of instructions F. No.



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1080/09/DLA/MISC/15 dated 21.12.2015. They rely on case of Dharmashil Agencies Vs. UOI Civil Application No. 8255 of 2019, Back Office IT Solutions Pvt. Ltd. Vs. UOI & Ors. 2021 (4) TMI 520, Amadeus India Pvt. Ltd. Vs Pr. Commissioner of CEX, Service Tax and Central Tax Commissionerate - 2019 (5) TMI 669. Thus the impugned order confirming demand, interest and penalties is liable to be dropped.

5. Personal hearing in the matter was held on 20.10.2022. Shri Keyur Radia appeared for personal hearing and reiterated the submissions contained in the grounds of appeal. He drew attention to Para 3.4 & 3.5 of the Order-In-Original, wherein it is held that the services have been provided outside India. That being the case, these services are not taxable as per provisions under the charging Section 66B which mandates that such services have to be provided within the taxable territory. He contended that the finding of the lower Adjudicating Authority in the Para 3.6 that the Appellant has to file rebate as per Notification No. 41/2021-Service Tax dated 29.06.2012 is erroneous. He also contended that pre-Show Cause Notice consultation was not extended in the present case, despite being mandatory. He also submitted a copy of CESTAT final order No. A/10801/2022 dated 15.07.2022, holding that no demand can be made solely on the basis of Profit & Loss Account/26AS data without identifying the service rendered. Based on above, he requested to set aside the Order-In-Original and grant consequential relief.

6. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The issue to be decided is that whether the Appellant is liable to pay service tax on activity carried out by them or not. I find that, it is on record that the Appellant is engaged in providing services of Web Designing/ Development, Theme Design/Development etc. to the customers situated outside India and hence they are exporting their services. The lower Adjudicating Authority in his findings at para 3.2 to 3.4 of the impugned order has categorically held that the services provided by the Appellant is classifiable under the category of "Export Services". At para 3.5 of the impugned order has also observed that the Appellant is located in India, where the Service Tax Rules, 1994 applicable and the service recipients are outside of India as per the submissions of the Appellant. The services have also been provided outside India and the payment received by the Appellant is in convertible foreign exchange. Therefore, the Adjudicating Authority finds that the activity of the Appellant falls within the four corners of the Rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as 'the Rules'). On going through the case records and submissions made by the Appellant, I am in agreement of the views/findings recorded by the lower Adjudicating Authority



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and hold that the service provided by the Appellant is export of service satisfying the provisions of the Place of Provision of Services Rules, 2012 notified vide Notification No. 28/2012-Service Tax dated 20.06.2012.

7. I find that the lower Adjudicating Authority has placed reliance on the provisions of Rule 6A(2) of the Rules, 1994 read with Section 93A of the Act, which is re-produced below for reference:

6A. Export of services.-

(1)

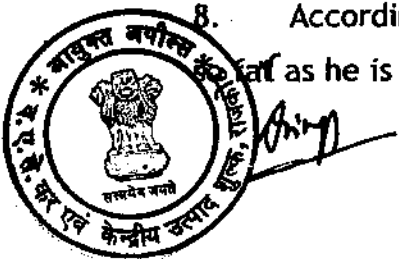
(2) *Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.*

On this, I find that the Rule 6A(2) of the Rules deals with the grant of rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to conditions and limitations as provided by the Notification. The rebate provisions under Section 93A of the Act which are as under:

"SECTION 93A. Power to grant rebate. – Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing or removal or export of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed or specified by notification in the Official Gazette."

The above provisions speak about grant of rebate of Service Tax paid on taxable services used as input services for providing any taxable services on export of services. This is a beneficial legislation based on the concept that taxes should not be exported. This is an additional benefit available to the exporter at his choice. The exporter cannot be forced to claim it or worse, forced to pay tax on a non taxable export service, that too, with heavy penalty. Here, in the case on hand the issue is levy of service tax on export services provided by the Appellant and not rebate of service tax incidence suffered by the exporter on input services used for providing export services. Therefore, on conjoint reading of Rule 6A *ibid* with Section 93A *ibid*, I am of considered view that there is no stipulation that a person engaged in export of service has to first pay the Service Tax on the exported output service and then claim it in the form of rebate of taxes paid on input services used, in the manner and time specified under the Notification No. 41/2012-Service Tax dated 29.06.2012. The findings recorded by the lower Adjudicating Authority are mis-conceived and not tenable after it is held by him that the activity is nothing but export of service.

8. Accordingly, I set aside the impugned order of the Adjudicating Authority as he is holding that the Appellant engaged in export of service has to first




pay the Service Tax on their exported services and then claim it in the form of rebate of taxes on input services used for providing export services. Since the service tax is not leviable on the activities carried out by the Appellant, the question of levy of interest and penalties as imposed vide the impugned order are not warranted at all.

9. अपीलकर्ता द्वारा दर्ज की गई अपील उपरोक्त तरीके से आंशिक रूप से स्वीकृत की जाती है।

9. The appeal filed by Appellant is partially allowed as above.

सत्यापित / Attested


Superintendent
Central GST (Appeals)
Rajkot


(शिव प्रताप सिंह)/(Shiv Pratap Singh),
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To, M/s. Theme Designer, Block No: 27, Maruti Park, Opp. Top 3 Cinema, Talaja Road, Bhavnagar- 364001	सेवा में, मे. थीम डीज़ाइनर, ब्लॉक संख्या २७, मारुति पार्क, टॉप-३ सिनेमा के सामने, तलाजा रोड, भावनगर - ३६४००१।
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प्रतिलिपि :-

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

