

	::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in	

DIN20221164SX000000E68C

क	अपील / फाइल संख्या/ Appeal / File No. V2/42/BVR/2022	मूल आदेश सं / O.I.O. No. 337/SERVICE TAX/DEMAND/2021-22	दिनांक / Date 08-Mar-22
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अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-089-2022

आदेश का दिनांक /
Date of Order:
11.11.2022

जारी करने की तारीख /
Date of issue: 29.11.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा 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. Pradip Vallabhbhai Soliya, B-402, Shilpan Rigaliya, Near Satya Sai Hospital, Behind-Aatmiya College, Kalawad Road, Rajkot-360005

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 प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 मूल्यंकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद 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 ब्रताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ 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 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। स्वयंन 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 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 सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 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 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। स्वयंन 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty 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 प्रतियां 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 Service Tax Rules, 1994 and 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद 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, जहाँ 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 छूटी 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 संश्लेषण 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 साथ-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 O.I.O 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 सिद्धा पत्रा 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 numbers 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 टिकट 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 दर्जित 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. Pradip Vallabhbai Soliya, Rajkot (hereinafter referred to as "Appellant") has filed Appeal No. V2/42/BVR/2022 against Order-in-Original No. 337/SERVICE TAX/DEMAND/2021-22 dated 08.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department had provided details of various service tax assesses, wherein the Income Tax Return for the financial year 2014-15, 2015-16 & 2016-17 (Upto June-2017) and also details of Form 26AS (TDS) were provided which showed discrepancies in the discharge of Service Tax liability.

3. In order to verify whether the Appellant properly discharged the service tax liability during the Financial Year 2014-15, 2015-16 to 2017-18 (upto June 2017), a letter dated 15.07.2020 was issued to the Appellant to provide the information/documents. However, since, the Appellant did not submit the required details asked for by the jurisdictional Range Superintendent, the service tax liability was ascertained based on the figures mentioned in data/documents provided by the Income Tax Department.

4. The above investigation culminated into Show Cause Notice dated 10.09.2020 proposing to demand Service Tax of Rs. 1,10,390/- under Section 73(1) of the erstwhile Finance Act, 1994 (hereinafter referred to as 'the Act'), alongwith interest under Section 75 of the Act and to impose penalty under Section 77(1) (c), 77(2), 77 (1)(c) and Section 78 of the Act.

5. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,10,390/- 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), Section 77(2) and Section 77 (1)(c) of the Act and a penalty of Rs. 1,10,390/- was imposed under Section 78 of the Act with benefit of reduced penalty as per proviso to Section 78.

6. Being aggrieved, the Appellant has preferred the present appeal on 06.05.2022 on various grounds as stated below:

- (i) In view of the changed place of residence duly reflected by change in PAN address, they were unable to submit their defence submission and hence no adverse action could be taken against them for failure to furnish information and documents called for since the communication was not received by them. The impugned order does not provide cogent reasons for its findings and hence in



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light of principles of *audi alteram partem*, the order is liable to be set aside.

(ii) The department has wrongly invoked the extended period on the grounds of absence of service tax registration and non-filing of ST-3 returns. The department has not analysed these ground and mechanically construed the same as suppression of facts with intention to evade payment of service tax. They rely on the decision in the case of Pushpam Pharmaceutical Co. V. Commissioner of Central Excise, Bombay reported as 1995 (78) ELT 401 SC, Anand Nishikawa Co. Ltd. V. Commissioner of Central Excise, SOTC Travels Services Pvt. Ltd. Vs. Principal Commissioner of Central Excise reported as 2021 SCC Online CESTAT 2574, Uniworth Textile Ltd. Vs. Commissioner of Central Excise, Raipur - 2013 (288) ELT 161 SC, Bharat Hotels Ltd. Vs. Commissioner of Central Excise, Delhi, Delhi International Airport Ltd. Vs Commissioner of CGST Delhi - 2019 (24) GSTL 403 (Tri.-Del.).

(iii) That no malafides can be attributed to them on the absence of service tax registration since their brokerage income for the F.Y. 2014-15 as their income for previous financial year 2013-14 did not exceed Rs. 9 Lakh. Only registered persons are required to file ST-3 returns and they rely on CESTAT Kolkata in M/s. Suchak Marketing Pvt. Ltd. V. Commissioner of Service Tax, Kolkata - 2013 (6) TMI 641 relying Circular No. 97/8/2007-ST dated 23.08.2007 and Notification No. 33/2012-ST dated 20.06.2012, Continental Foundation Joint Venture Holding Vs Commissioner of Central Excise, Chandigarh - 2007 (10) SCC 337.

(iv) The department has mechanically determined the service tax based on income tax returns and they rely on Cosmic Dye Chemical Vs. Collector of Central Excise - 1994 (95) STC 604 SC, Commissioner of Service Tax, Ahmedabad Vs. Purani ADS Pvt. Ltd. - 2010 (19) STR 242 (Tri.-Ahmd.), Reliance Industries Ltd. Vs. Commissioner of Central Excise, Rajkot - 2008 (10) STR 243 (Tri.-Ahmd.), Synergy Audit Visual Workshop V. Commissioner of Service Tax, Bangalore - 2008 (14) STT (321). The impugned order is liable to be set aside.

(v) The adjudicating authority failed to carry out proper analysis of the documents received from the Income Tax Department and overlooked the basic fact that the brokerage income of the Appellant for the F.Y. 2014-15 is 8,93,119/- which is exempted under Notification No. 33/2012-ST dated 20.06.2012 since they had fulfilled all conditions of the said Notification. Therefore, they are not liable to pay any service tax for the F.Y. 2014-15 and hence the impugned order is liable to be set aside.

7. Personal hearing in the matter was held on 03.11.2022. CA Shri Bipin H. Parmar appeared for personal hearing and reiterated the submissions made in the appeal. He submitted that the appellant is involved in the sale/trading of

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iron & steel and also into brokerage service. The turnover under brokerage is below Rs. 10 lakhs and therefore, they are below the threshold limit. However, as due to change of address Show Cause Notice and personal hearing notices were not received by them the demand was confirmed vide impugned order on ex-parte basis. He has submitted a copy of audited balance sheet with the appeal. Therefore, he requested to set aside the impugned order and drop the proceedings against them.

8. I have carefully gone through the care records, Show Cause Notice, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not.

9. I find that the lower Adjudicating Authority in an ex-parte order found that in the ITR for the year 2014-15 of the Appellant, shared by the Income Tax Department, the Appellant had provided services of Rs. 8,93,119/- and Service Tax including cesses of Rs. 1,10,390/- was not paid by the Appellant. I find that the Appellant submitted the copy of Audit report for the year 2013-14 & 2014-15 wherein at Form No. 3CD, Part-B, column No. 10(a), nature of business has been mentioned as "Trading". The Appellant also submitted the copy of ITR-4 for the financial year 2014-15 (Assessment Year 2015-16) alongwith computation of total income, Trading Account, Profit & Loss Account & Balance Sheet. In trading account there is mention of sales & purchase and in the schedule forming part of profit & loss account, the figures of sale and purchase of iron and steel has also been mentioned. In schedule other income, there are three types of income Brokerage income, interest income and late payment interest income. I find that the trading activity and income from interest is out of purview of Service Tax.

10. I find that the term 'service' is defined under Section 65(44) of the Act as under:

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

(a) An activity which constitute merely-

(i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii)....

(iii)"

Under Section 66B of the Act, service tax shall be levied on the value of all services, other than those service specified in the negative list. Negative list denotes the list of services on which no service tax is payable under Section 66B of the Act. As per Section 66D (e), trading of goods is a service specified under the negative list which is as under:

SECTION 66D. Negative list of services. —



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The negative list shall comprise of the following services, namely :-

- (a)....
- (b)
- (c)
- (d)....
- (e) trading of goods;"

Accordingly, on the activity of trading of goods, no service tax is payable.

10.1 Section 66B provides that service tax is leviable on all 'services' other than the services specified under the negative list. Therefore, for being liable to service tax an activity needs to qualify as a service first. The term 'service' is defined under Section 65B (44) which specifically excludes an activity of mere transfer of title in goods by way of sale. Thus, the activity of trading which is merely buying and selling of the goods is not a service. Hence, the question of service tax levy on the same does not arise. Accordingly, even if trading activity is not specified under the negative list of services, it is not liable to service tax, as it is not a service. Further, negative list of services comprises services but an activity of trading of goods is not a service, therefore it cannot be specified under the negative list of services.

11. The income of brokerage for the year 2014-15 is 8,93,119/- whereas the brokerage income for the previous year 2013-14 was Rs. 8,25,757/- as per the audited report submitted by the Appellant. I find that the Adjudicating Authority confirmed the demand of Service Tax on brokerage income of Rs. 8,93,119/-. It is the contention of the Appellant that their income is exempted as per Notification No. 33/2012-Service Tax dated 20.06.2012. The same is as under for reference:

"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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i)or
- (ii)

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)....
- (vii)

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

3."



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The taxable value of the Appellant during the year 2013-14 was Rs. 8,25,757/- and taxable value for the year 2014-15 is Rs. 8,93,119/-. Therefore, in view of Notification No. 33/2012, the Appellant is not liable to Service Tax.

12. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

13. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested



Superintendent
Central GST (Appeals)
Rajkot

By R.P.A.D.


(शिव प्रताप सिंह)/(Shiv Pratap Singh),

आयुक्त (अपील)/Commissioner (Appeals)

To, M/s. Pradip Vallabhbai Soliya, B-402, "Shilpan Regaliya, Near: Satya Sai Hospital, B/H Atmiya College, Kalawad Road, Rajkot- 360 005	सेवा में, मे. प्रदीप वल्लभभाई सोलिया, b-402, शिल्पन रेगालिया, सत्य साई अस्पताल के पास, आत्मीय कॉलेज के पीछे, कालावड रोड, राजकोट- 360005.
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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/सयुक्त 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।



