



**आयुक्त ( अपील ) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065- टेलिफैक्स 07926305136



DIN: 20230864SW0000515236

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/8/2023-APPEAL/14622
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-64/2023-24  
दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 04.08.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/HG/412/2022 दिनांक: 28.09.2022 ,  
issued by Deputy Commissioner, CGST, Division-VII, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

The Assistant Commissioner, CGST, Division VII, Ahmedabad North  
4th Floor, Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-  
380052

2. Respondent

M/s. Mohan Ramkumar Singh, C/2, Sambhavnathji Society, Nr. Arjun Tower,  
CP Nagar, Ghatlodiya, Ahmedabad-380061

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

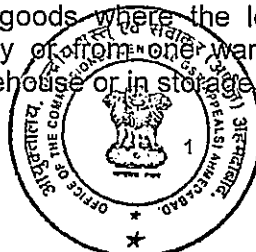
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो 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।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appel) 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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

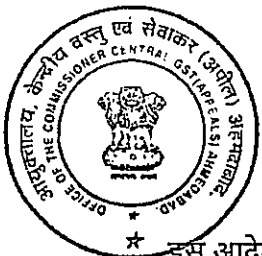
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER IN APPEAL**

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the appellant*') in pursuance of Review Order No.20/2022-23 dated 16.12.2022 issued under Section 84(1) of the Finance Act, 1994 by the Commissioner, Central GST, Ahmedabad North, against the Order-in-Original No. CGST/WT07/HG/412/2022 dated 28.09.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*') in the case of M/s. Mohan Ramkumar Singh, C/2, Samhavnathji Society, Near Arjun Tower, C.P. Nagar, Ghatlodiya, Ahmedabad-380061 (hereinafter referred to as '*the respondent*'), holding PAN No.BKEPS5279Q.

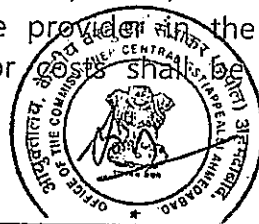
2. The facts of the case, in brief, are that the respondent is engaged in providing "Manpower Recruitment/Labour Supply Services" and are not registered with the department. Based on the income data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the respondent has not discharged the service tax liability on the income reflected under 'Sales/Gross Receipts' from services declared in ITR/Form 26AS. Letters were subsequently issued to the respondent to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts.

2.1 A Show Cause Notice (SCN) No. CGST/AR-III/Div-VII/A'bad-North/ TPD-UR/2015-16/39/2020-2021 dated 27.09.2020 was, therefore, issued to the respondent proposing recovery of service tax demand of Rs.2,68,939/- on the income received during the F.Y. 2015-16, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 77 and under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,68,939/- was dropped alongwith interest and penalties on the grounds that the respondent is not required to discharge any tax liability as the taxable income is within the threshold limit available under Notification No. 33/2012-ST dated 20.06.2012. The adjudicating authority has held that the respondent has provided Manpower Supply Service and the income received during F.Y. 2015-16 includes remuneration from Partnership firm and income on account of reimbursable expenses incurred as pure agent. He held that such reimbursable expenses incurred on account of pure agent are to be excluded in terms of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. After deducting partner's remuneration and reimbursable expenses, he arrived at a taxable value which he held was below the threshold limits.

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

- As per Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as

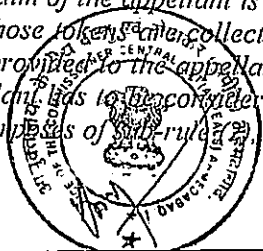


consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

Year	Gross Amount
2014-15.	13,79,025
2015-16	14,08,801
2016-17	11,50,000
2017-18 (upto June, 2017)	1,10,000

- In the work order given by the service receiver it is mentioned as, "Rate for drilling work at various locations in Gujarat including site expenses for total value of INR 2, 00, 000/- ( Two Lacs only )" i.e the work orders are given on lump sum basis. Therefore, the valuation should have been as per Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 read with Section 67 of the Finance Act, 1994.
- It also appears that conditions and explanation defining pure agent as per Rule 5 (2) of Service Tax ( Determination of Value) Rules, 2006 has not been satisfactorily discussed in the Order in Original. The work order was given by the service provider on lump sum basis and not in smaller bifurcation as per actual expenditure in case of pure agent agreements. There was no contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service. Adjudicating authority did not discuss contractual agreement with the recipient of service to act as his pure agent as per Sub-rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006 to incur expenditure or costs in the course of providing taxable service. No discussion that Service receiver was to authorize service provider to make payment on his behalf like snacks, dinner, lunch transportation etc has been undertaken. Adjudicating Authority has relied only on Explanation 1 under Sub-rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 without going into Explanation 2 and various illustrations given there under.
- The adjudicating authority has erred in allowing deduction from gross amount of services received as pure agent as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. The service receiver has given service contract on lump sum basis. The adjudicating authority had failed to examine the conditions of pure agent and excluded other expenses incurred and recovered. This has resulted in considering the benefit of Notification No.33/2012-ST dated 20.06.2012 as gross amount of services exceeded Rs.10 lakhs in 2014-15 with other charges. Reliance placed on decision passed in the case of P. Muneya-2016(41) STR 679 (Tri-Bang) wherein it was held that;

"Coming to the second issue as to whether the appellant can be considered a 'pure agent', the claim of the appellant is that the tokens are issued by the management to the employees and those tokens are collected by the appellant and food items are provided. The space is also provided to the appellant. This is the basis on which the learned counsel pleaded that appellant has to be considered as a pure agent. According to Explanation (1) to Rule 5 for the purposes of sub-rule (2), "Pure Agent" means a person who -



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

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

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

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

*The contract between the two parties does not provide that appellant will act as a pure agent. In fact, there is clear finding of the lower authorities that appellant received not only the wages but additional margin for the wages and further a lump sum amount for acting as a contractor have been made. In such circumstances, we cannot say that appellant has acted as a pure agent."*

- The amount received by respondent and representing, as reimbursable expenses was received towards provision of services and service tax was required to be paid as and when such amount was received by service provider. Thus, the adjudicating authority has erred in allowing deduction of such amount which has resulted in not recovering the short payment of service tax of Rs.3,93,276/- and interest thereon. Reliance is placed on decision passed in the case of CCE Vs Jubilant Enpro Pvt Ltd.- 2016 (41) STR 679 (Tri-Mumbai).
- Thus, the adjudicating authority has erred in dropping the demand, interest and penalty. It is prayed to set-aside the impugned order and pass an order confirming the service tax demand of Rs.3,93,276/- alongwith interest and penalty.

4. The respondent filed the cross-objection on 28.07.2023 contesting the above grounds of appeal, on the grounds detailed below:-

- They claim that the respondent is providing drilling consultancy services to various customers wherein they make payments to various agencies for labour and other charges on behalf of the customers. They get fees for the same and reimbursement of expenses on actual basis incurred for the said services.
- They placed reliance on decision passed in the case of Intercontinental Consultants & Technocrats Pvt. Ltd- (TS-72-SC-2018-ST) and M/s. Seher Vs Commissioner of S.Tax, Delhi- 2022 (6) TMI 614- CESTAT wherein it was held that the amount reimbursed by service recipient to service provider, for the payments made on behalf of service provider, would not be liable to service tax.
- After deducting the amount of reimbursement received from Partnership Firm and after excluding the amount received as pure agent for reimbursement the total income of the respondent shall be below the threshold limit of Rs.10 lacs and therefore no tax liability on the respondent.

5. Personal hearing in the matter was held on 21.07.2023. Shri Nirav Pankaj Shah, Advocate, appeared on behalf of the respondent and submitted that the appellant was providing drilling services to various Road contractors of which they received reimbursement of expenses for the labour supply and incidental expenses, in this



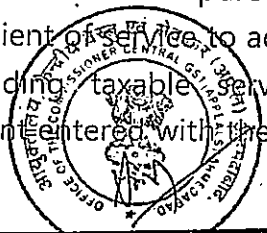
regards. These reimbursed expenses were incurred on behalf of the contractors, who are the service recipients, in capacity as their pure agent, which cannot be considered as taxable income of the respondent for service tax purpose. If reimbursement expenses received in the capacity of pure agent are deducted from the total receipts, the remaining income for rendering service becomes less than the threshold limit. Hence, the respondent is not liable for any service tax. The adjudicating authority has correctly appreciated the facts and has passed a legal and proper order. The department has reviewed it merely on the basis of assumptions. He requested to allow one week time for submission of written cross objection to the department appeal. He requested to reject the appeal filed by the department and to uphold the order of the lower authority.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, the submission made by the respondent in the cross-objection as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.3,93,276/- dropped alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2015-2016 to 2017-18 (upto June, 2017).

7. On examination of the SCN, it is observed that the total service tax liability of Rs. 2,68,939/- for the F.Y. 2015-16 was ascertained on the basis of income data shared by CBDT. The adjudicating authority observed that the respondents are providing "Manpower Supply Services". He held that the respondent has earned in the form of service income as well as reimbursement of site expenses i.e. food, shelter, transportation etc. In the Invoice No.06 dated 23.12.2015, issued by M/s. Mukesh A. Patel, the amount of labour service and reimbursement of expenses are separately mentioned. Similarly, the Work Order dated 15.10.2015, issued by M/s. Mukesh A. Patel, mentions that "*drilling work at various location in Gujarat including site expenses amounting to Rs.2,00,000/-*". Thus, he held that such reimbursable expenses shall not form part of taxable value as they are incurred on account of pure agent of the service recipient hence are excluded from the taxable value. He held that for the F.Y. 2015-16 out of the total income of Rs.18,54,750/- after deducting partner remuneration (non-taxable income of Rs.4,45,949/-) and receipt of Rs.5,51,151/- on account of pure agent, from the service receiver, the remaining income is Rs. 8,57,650/-, which is below the threshold limit provided under Notification No.33/2012-ST dated 20.06.2012. Similarly, he held that for the F.Y. 2016-17 & 2017-18 (upto June, 2017) also, considering the remuneration in the capacity of pure agent, the income for said period are below threshold limit. He, therefore, dropped the demand alongwith interest and penalties for the F.Y. 2015-16 to 2017-18 (upto June, 2017).

7.1 Revenue is in appeal on the grounds that as per the work orders lump-sum amount is given by the service provider and not in smaller bifurcation as per actual expenditure in case of pure agent agreements. There was no contractual agreement with the recipient of service to act as a pure agent to incur expenditure or costs in the course of providing taxable service. Adjudicating authority did not discuss contractual agreement entered with the recipient of service to act as a pure agent. No discussion is



there justifying that the appellant was authorized to make expenses on snacks, dinner, lunch, transportation etc on behalf of the service recipient. It is also contended that the adjudicating authority has relied on Explanation-1 under Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006.

7.2 I have gone through the documents submitted by the respondent. They claim that they are providing drilling services to various Road Contractors for which they are receiving reimbursement of expenses for the labour supply and incidental expenses. These reimbursement expenses are incurred on behalf of the contractors (service recipient) in capacity of pure agent. The respondent has submitted the reconciliation statement showing the list of service recipients, nature of service/goods rendered, amount paid on behalf of the service recipient for the F.Y. 2015-16 to 2017-18 (upto June, 2017).

7.3 On going through the sample invoices, I find that the respondent has raised debit notes to service recipient Shri. Mukesh A. Patel wherein they have charged Rs. 46,550/- as reimbursement of payment made on behalf of service recipient to Shri Pavan Kumar for "Assembly AW RD, Shefty Shoes Diesel & Misc Expenses". Respondent also submitted Invoices raised by Pavan Kumar wherein Shri Mukesh A. Patel was charged Rs.46,550/- for above goods. Respondent also raised debit note to Shri Mukesh A. Patel, charging reimbursement of Rs.49,005/- as payment made on behalf of service recipient to Nirman for "Shefty Shoes, Benetonite Powder and Tansportation and Misc Expenses." In support, the respondent also submitted Invoices raised by Nirman Singh wherein, Shri Mukesh A. Patel was charged Rs.65,320/- for the above goods. Sample invoices are reproduced below:-

**MOHANSINGH RAMKUMAR**  
 C-2, Vardhman Nagar, Nr. Arjun Tower, Ghatlodia, Ahmedabad, Gujarat-380061, Mob: +91 9874165707

**Debit Note**

To, Mukesh A Patel E 1 Durgah Complex, Nr. Arjun Tower, Ghatlodia, Ahmedabad 380061		Date:	07.05.2016		
PAN NO. ACNPP2481M		Debit Note No.:	DN008/15.16		
		Ref. No.:			
		PAN BXEP5272C			
Sr. No.	Description	Quantity	Unit	Rate	Amount
1	REIMBURSEMENT OF PAYMENT MADE ON YOUR BEHALF TO NIRMAN FOR SHEFTY SHOES, BENETONITE POWDER AND TRANSPORTATION AND MISC EXPE				49005.00
Total					49005.00
Grand Total					49005.00

In Words: Forty Nine Thousand Five Only





Nirman Singh  
Rajasthan

**INVOICE**

Invoice No. 11007  
Date 01/05/2023

To:  
Mukesh A. Patel  
Ahmedabad

Ship to:

Sr.no	Description	Rate	Amount
1	Pipe, Shefty Shoes, Diesel & Transportation And Misc Expe		65320/-
<b>Total</b>			<b>65320/-</b>

Amount in words:- Sixty Five Thousand Three Hundred Twenty only/-

Thanks & Regards

[Nirman]

**MOHANSINGH RAMKUMAR**

C-2, Vardhman Nagar, Nr. Arjun Tower, Ghantoliya, Ahmedabad, Gujarat-380061 Mob- 91 9829205707

**Debit Note**

To, Mukesh A Patel F 1 Darshan Complex, Nr. Arjun Tower, Ghantoliya, Ahmedabad - 380061		Date :-	17-07-2017		
PAN NO - ACNPP2481M		Debit Note No :-	D14007/16 17		
		Ref.No. :-			
		PAN-BKRP552790			
Sr. No.	Description	Quantity	Unit	Rate	Amount
3	REIMBURSEMENT OF PAYMENT MADE ON YOUR BEHALF TO PAVAN KUMAR FOR ASSEMBLY AWARD, SHEFTY SHOES, DIESEL AND MISC EXPE.				45550.00
<b>Total</b>					<b>45550.00</b>
In Words : Forty Five Thousand Five Hundred Fifty Only					<b>45550.00</b>

For, MOHANSINGH RAMKUMAR



# INVOICE

Invoice no	4
Date Of Issue	09/06/2016

Bill to: Mukesh A. Patel
Ahmedabad

From:
Pavan Kumar
Rajasthan

Description	cost	QTY	Amount
Assembly Aw Rd, Snelly Shoes, Diesel And Misc. Expe			46550/-
<b>Total</b>			<b>46550/-</b>

Amount in word:- Forty Six Thousand Five Hundred Fifty only/-

Thanking You,

(Pavan Kumar)

7.4 From the above, it is clear that respondent is engaging a third party for rendering certain services to the service recipient/clients. For which the respondent is raising debit note to service recipient for reimbursement of payment made to third party. The third party in turn raises invoice charging such expenses to the service recipient. Though, the payment is ultimately made by the respondent on behalf of the service recipient.

7.5 I find that that the provisions relating to determination of the value of taxable services contained in Service Tax (Determination of Value) Rules, 2006 are clear and unambiguous. Relevant text of Rule 5 of Service Tax (Determination of Value) Rules, 2006 is reproduced below:

**RULE 5. Inclusion in or exclusion from value of certain expenditure or costs. —**  
 (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

[Explanation.- For the removal of doubts, it is hereby clarified that for the [the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided].]

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

(i) the service provider acts as a pure agent of the recipient of service and he makes payment to third party for the goods or services procured.



- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

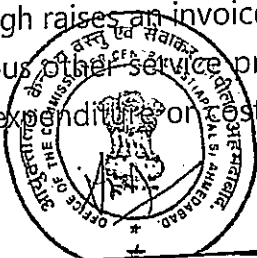
**Explanation 1.** - For the purposes of sub-rule (2), "pure agent" means a person who

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

**Explanation 2.** - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

As per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in the course of providing service, all such expenditure or costs shall be included in the value for the purpose of charging Service Tax on said service. However, Rule 5(2) *ibid*, *inter alia*, envisages that the expenditure or costs incurred by the service provider as a pure agent of recipient of service shall be excluded from the value of taxable service, if all the conditions mentioned therein are satisfied.

10. From the invoices, I find that the Respondent is incurring expenses on behalf of the service recipient to the third party. They claim they do not have any contract evidencing that they were permitted to make such expenses on behalf of the clients. However, they produced invoices to establish the fact that they on behalf of their clients are liable to make payment to the third party. Subsequently, they are charging their clients by raising debit notes. So the clients know that the goods / services for which payment was made by the respondent were provided by the third party. The third party though raises an invoice in the name of service recipient. Since the expenses incurred on various other service providers are ultimately reimbursed to the Respondent, I find that the expenditure on costs incurred by the Respondent on behalf of the service recipient.



in the course of providing service shall not be included in the value for the purpose of charging Service Tax on said service.

11. Thus, by not deducting the reimbursable expenses from the gross amount of services provided, I find that the taxable income of the respondent during the F.Y. 2015-16, 2016-17 & 2017-18 (upto June) was less than the threshold limit prescribed in Notification No.33/2012-ST dated 20.06.2012.

12. In view of the above discussion and findings, I find that the service tax demand pertaining to the F.Y. 2015-16, 2016-17 & 2017-18 (upto June) proposed by the appellant alongwith interest and penalties is legally not sustainable.

13. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed off in above terms.

*Shiv Prataap Singh*  
31.7.23  
(शिव प्रताप सिंह)  
आयुक्त (अपील्स)

Date:

Attested

*Rekha A. Nair*  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad



By RPAD/SPEED POST

To,  
The Assistant Commissioner,  
CGST, Division-VII, Ahmedabad North,  
Ahmedabad

Appellant

M/s. Mohan Ramkumar Singh,  
C/2, Samhavnathji Society,  
Near Arjun Tower, C.P. Nagar, Ghatlodiya,  
Ahmedabad-380061

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The deputy Commissioner, CGST, Division-VII, Ahmedabad North.
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
5. Guard File.

