



सत्यमेव जयते

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- टैलेफैक्स 07926305136



DIN: 20230864SW0000444FE7

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1502 & 3824/2023-APPEAL / 11/2023
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-79 to 80/2023-24
दिनांक Date : 18-08-2023 जारी करने की तारीख Date of Issue 21.08.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/266/Sameer/AM/2022-23 दिनांक: 15.11.2022 & GST-06/D-VI/O&A/590/ Mohamedrafik/AM/2022-23 दिनांक: 17.02.2023 , issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Sameer & Company, 14, Amir Bunglow, Sunrise Park Society,
Juhapura Sarkhej Road, Ahmedabad - 380051.

2. Respondent

The Assistant Commissioner, CGST, Division-VI ,Ahmedabad North 7th
Floor, B.D. Patel House, Naranpura, Ahmedabad - 380014

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 :

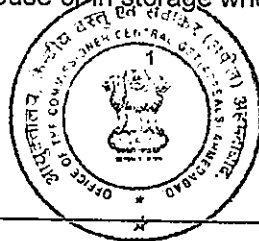
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल 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, 4th 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.

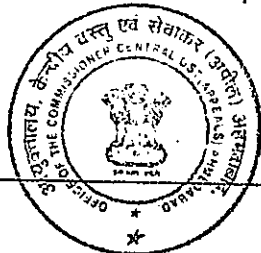
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned 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(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 अनुसूचि-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

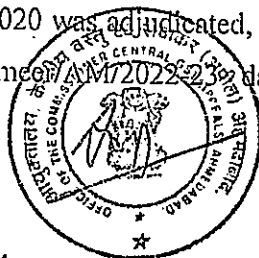
The present both the appeals have been filed by M/s. Sameer & Co., 14, Amir Bungalow, Sunrise Park Society, Juhapura Sarkhej Road, Ahmedabad – 380051 (hereinafter referred to as “the appellant”) against Orders-in-Original No. GST-06/D-VI/O&A/266/Sameer/AM/2022-23 dated 15.11.2022 and No. GST-06/D-VI/O&A/590/MOHAMEDRAFIK/AM/2022-23 dated 17.02.2023 (hereinafter referred to as “the impugned orders”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACRPC2792GST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 and FY 2016-17, it was noticed that there is difference of value of service amounting to Rs. 1,20,56,839/- for the FY 2014-15 and Rs. 1,60,20,635/- for the FY 2016-17, between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the relevant year. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST-06/04-310/O&A/SAMEER/2020-21 dated 24.09.2020 demanding Service Tax amounting to Rs. 38,79,933/- for the period FY 2014-15 & FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77 & Section 78 of the Finance Act, 1994.

2.2 An another Show Cause Notice No. CGST-06/04-1201/MOHMEDRAFIK/2021-22 dated 12.10.2021 was issued to the proprietor of the appellant in their personal name, i.e. Mohamedrafik Mohamednazir Chezara demanding Service Tax amounting to Rs. 24,03,095/- for the period FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77 & Section 78 of the Finance Act, 1994.

2.3 The Show Cause Notice dated 24.09.2020 was adjudicated, ex-parte, vide the Orders-in-Original No. GST-06/D-VI/O&A/266/Sameer/AM/2022-23 dated 15.11.2022 by the

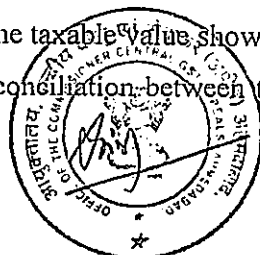


adjudicating authority wherein the demand of Service Tax amounting to Rs. 38,79,933/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2014-15 and FY 2016-17. Further, (i) Penalty of Rs. 38,79,933/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77 of the Finance Act, 1994.

2.4 The Show Cause Notice dated 12.10.2021 was also adjudicated, ex-parte, vide the Orders-in-Original No. GST-06/D-VI/O&A/590/MOHAMEDRAFIK/AM/2022-23 dated 17.02.2023 by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 24,03,095/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2016-17. Further, (i) Penalty of Rs. 24,03,095/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77 of the Finance Act, 1994.

3. Being aggrieved with the impugned orders passed by the adjudicating authority, the appellant have preferred the present appeals, inter alia, on the following grounds:

- The appellant, M/s. Sameer & Company, Proprietor Mohamedrafik Mohamednazir Chezara is engaged in providing services under the category of "Renting of Immovable Property Service"; "Restaurant Service", "Accommodation in hotels, inn, guest house, club, or camp site etc. Service"; and "Construction services other than residential complex including Commercial/Industrial buildings or civil structures and was holding service tax registration number ACRPC2792GST001. However, the appellant has not provided any services under Construction services during years under review.
- During the period specified in the impugned orders, the appellant has provided accommodation service at two non-star hotels named Hotel Orange Inn and Hotel Yellow Lime under same registration number specified as aforesaid. In addition to the above mentioned services, the appellant has provided restaurant services at Hotel Orange Inn during the period specified in the impugned orders.
- As per the impugned orders and SCNs the difference derived by the department between the income shown in ITR and the taxable value shown in STR are not correct. The appellant submitted the detailed reconciliation between the income shown in the



books of accounts v/s the income shown in ST-3 for FY 2014-15 & 2016-17 with the exemptions availed by them along with the appeal memorandum. Which is as under:

FY 2014-15

Particulars	Orange Inn	Yellow Lime	Sameer & Co	Total as per Books	As per ST-3	Difference
Food Sales	1793858	0	0	1793858	1793857	1
Room Rent						
Taxable	27500	0	0	27500	27500	0
Exempted	12412490	1415839	0	13828329	0	0
Rent - IMM	0	0	1665336	1665336	1642969	22367
Other receipt - Kasar, Vatav, etc.	12701	633	24366	37700	0	0
Total Receipts	14246549	1416472	1689702	17352723	3464326	22368

FY 2016-17

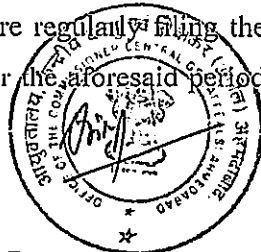
Particulars	Orange Inn	Yellow Lime	Sameer & Co	Total as per Books	As per ST-3	Difference
Food Sales	1839252	0	0	1839252	1863969	-24717
Room Rent						
Taxable	169526	0	0	169526	169524	2
Exempted	16602299	1282300	0	17884599	0	0
Rent - IMM	0	0	2247135	2247135	2247132	3
Other receipt - Kasar, Vatav, etc.	19178	0	43083	62261	0	0
Total Receipts	18630255	1282300	2290218	22202773	4280625	-24712

- Further the appellant is submitting that during the period FY 2014-15 & FY 2016-17, the appellant provided Accommodation Service at two of hotels viz. Hotel Orange Inn and Hotel Yellow Lime, both were non star hotels and declared tariff of both were below Rs. 1,000/-. Therefore, as per Sr. No. 18 of the Notification No. 25/2012-ST dated 20.06.2012, the Accommodation Service provided by them were exempted from service tax.
- In case of Restaurant services provided by them during period FY 2014-15 & FY 2016-17, they have paid all required duties. In case of Renting of



Immovable Property Service provided by them during period FY 2014-15 & FY 2016-17, they have paid all required duties on the same.

- The appellant have submitted the following documents along with appeal memorandum.
 - a) Copy of Tax Audit Report for FY 2014-15 & FY 2016-17
 - b) Copy of Income Tax Return for FY 2014-15 & FY 2016-17
 - c) Copy of Service Tax Return for FY 2014-15 & FY 2016-17
 - d) Copies of Form-II submitted to the District Revenue Authority for FY 2014-15 & FY 2016-17 as evidence showing rooms tariff
 - e) Copies of Invoices issued during the FY 2014-15 & FY 2016-17 by Hotel
- The appellant submitted that they have submitted the reply to show cause notice dated 24.09.2020 vide their letter dated 13.12.2021 to the adjudicating authority, however, they have not taken the same into consideration while issuing impugned order. They have submitted copy of their reply dated 13.12.2021 along with the appeal memorandum.
- The appellant submitted that they have submitted a letter dated 15.12.2022 with reference to the personal hearing letter dated 24.11.2022 and 06.12.2022 issued with regard to the show cause notice dated 12.10.2021, inter alia submitting that they have already received OIO No. GST-06/D-VI/O&A/Sameer/AM/2022-23 against the FY 2014-15 and FY 2016-17 and requesting the adjudicating authority to drop further proceeding. However, they have not taken the same into consideration while issuing impugned order. They have submitted copy of their letter dated 15.12.2022 along with the appeal memorandum.
- The appellant submitted that the order was issued on 25-03-2022 for the disputed period FY 2014-15 & FY 2016-17 and therefore, demand for the disputed period is barred by limitation and the extended period of limitation ought not to have been invoked. The larger period of limitation can be invoked only on those grounds which are specifically provided under the Statute viz. is suppression, omission or failure to disclose information with intent to evade the payment of service tax. If the department seeks to invoke the extended period of limitation on the ground other than those mentioned in the statute, then such invocation of extended period of limitation is barred in law.
- The appellant submitted that they were regularly filing the income tax returns, TDS was also deducted on their income for the aforesaid period, filing ST-3 regularly for



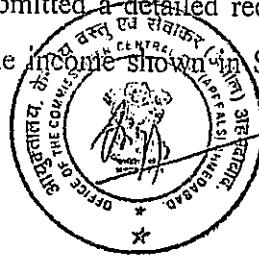
the period specified in impugned order and therefore by no stretch of imagination it can be said that the appellant had not declared their income to the government authorities.

- It is submitted that for imposing penalty, there should be an intention to evade payment of service tax on the part of the appellant supported by documentary evidence. The appellant submitted that for the reasons set out hereinabove the entire demand itself is not justifiable as on the total income shown in Form26AS / ITR, flat 15% tax has been calculated but the same is not proper. Hence, the imposition of total penalty cannot be sustained.
- On the basis of above grounds, the appellants requested that the impugned orders confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 31.07.2023. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He submitted that the demand has been issued for FY 2014-15 and FY 2016-17. The demand in respect of FY 2016-17 has been adjudicated twice. He submitted that the appellant is providing accomodation service in hotel where, the daily room tariff is less than Rs. 1000/-. Therefore, the service is exempted under the Mega Exemption Notification vide Sr. No. 18. He further, submitted that the show cause notice based, merely on the income tax data without any further investigation is not sustainable. He further, referred to the judgment in the case of Federation of Hotels and Restaurants Association of India by Delhi High Court. He requested to set aside the impugned orders.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15 and FY 2016-17.

6. It is observed that the main contention of the appellants is that they have paid applicable service tax on their income and submitted a detailed reconciliation between the income shown in the books of accounts v/s the income shown in ST-3 for FY 2014-15 &



2016-17 with the exemptions availed by them. It is also observed that the adjudicating authority has confirmed the demand of service tax vide impugned order passed ex-parte.

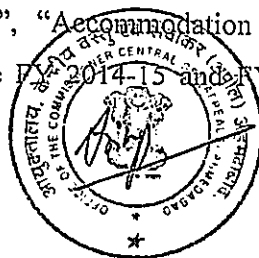
7. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 & FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

7.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax, specifically when the appellant is registered with the service tax department and filed their ST-3 Returns for the said period in time.

8. I find that the appellant, M/s. Sameer & Company, Proprietor Mohamedrafik Mohamednazir Chezara were engaged in providing services under the category of "Renting of Immovable Property Service"; "Restaurant Service", "Accommodation in hotels, inn, guest house, club, or camp site etc. Service"; during the FY 2014-15 and FY 2016-17 and was

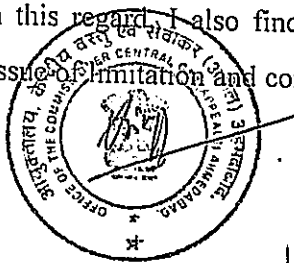


holding service tax registration number ACRPC2792GST001 and filed their ST-3 Returns for the relevant periods in time. On verification of the Tax Audit Report and Profit & Loss Account for FY 2014-15 & FY 2016-17, ST-3 Returns for the FY 2014-15 & FY 2016-17 filed by the appellant and detailed reconciliation submitted by the appellant showing the income shown in the books of accounts v/s the income shown in ST-3 for FY 2014-15 & 2016-17 with the exemptions availed by them, I find that the appellant paid the applicable Service Tax on the "Renting of Immovable Property Service" and "Restaurant Service", without claiming any exemption benefit. The appellant only claim exemption benefit on the services provided by them in the category of "Accommodation in hotels, inn, guest house, club, or camp site etc. Service". On verification of the copies of Form-II submitted to the District Revenue Authority for FY 2014-15 & FY 2016-17 by the appellant as evidence showing rooms tariff, I find that tariff of only 9 rooms out of 60 rooms is above Rs. 1,000/- per day. I also find that service provided by the appellant in their hotel, having declared tariff of a unit of accommodation below one thousand rupees per day is exempted under Sr. No. 18 of the Notification No. 25/2012-ST dated 20.06.2012. The relevant abstract of the same is as under:

"18. Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;"

8.1 On verification of the all the invoices submitted by the appellant, I find that the reconciliation carried out by the appellant is correct and they have also paid applicable service tax on "Accommodation in hotels, inn, guest house, club, or camp site etc. Service" provided by them.

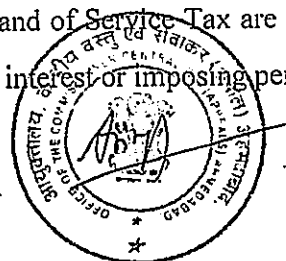
9. I also find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14th November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). Therefore, considering the date on which such return was filed i.e. 22.10.2014, I find that the demand for the period April, 2014 to September, 2014 is time barred as the notice was issued on 28.09.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant that, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.



10. With regard to the Show Cause Notice No. CGST-06/04-1201/MOHMEDRAFIK/2021-22 dated 12.10.2021, the contention of the appellant are that, they have submitted a letter dated 15.12.2022 to the adjudicating authority with reference to the personal hearing letter dated 24.11.2022 and 06.12.2022, inter alia, submitting that they have already received OIO No. GST-06/D-VI/O&A/266/Sameer/AM/2022-23 covering the period FY 2014-15 and FY 2016-17 and requesting the adjudicating authority to drop further proceeding. However, they have not taken the same into consideration while issuing Orders-in-Original No. GST-06/D-VI/O&A/590/MOHAMEDRAFIK/AM/2022-23 dated 17.02.2023 and passed the order ex-parte. In this regard, I find that the Order-in-Original No. GST-06/D-VI/O&A/266/Sameer/AM/2022-23 dated 15.11.2022 passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South is already covered the period FY 2016-17 for which the Orders-in-Original No. GST-06/D-VI/O&A/590/MOHAMEDRAFIK/AM/2022-23 dated 17.02.2023 was again issued by the adjudicating authority. I also find that the SCN No. CGST-06/04-310/O&A/SAMEER/2020-21 dated 24.09.2020 covering period from FY 2014-15 and FY 2016-17 issued to the appellant i.e. M/s. Sameer & Co., whereas on the same figures of the FY 2016-17, another SCN No. CGST-06/04-1201/MOHMEDRAFIK/2021-22 dated 12.10.2021 was issued to the proprietor of the appellant in their personal name, i.e. Mohamedrafik Mohamednazir Chezara. Thus, for the same PAN, two SCNs dated 24.09.2020 and 12.10.2021, issued by the department one for FY 2014-15 and FY 2016-17 and later for FY 2016-17. Thus, the second SCN dated 12.10.2021 and Orders-in-Original No. GST-06/D-VI/O&A/590/MOHAMEDRAFIK/AM/2022-23 dated 17.02.2023 non-est in law.

10.1 I find that even otherwise, when the Orders-in-Original No. GST-06/D-VI/O&A/266/Sameer/AM/2022-23 dated 15.11.2022 by the adjudicating authority was issued for the period FY 2014-15 and FY 2016-17, again for the FY 2016-17, the Orders-in-Original No. GST-06/D-VI/O&A/590/MOHAMEDRAFIK/AM/2022-23 dated 17.02.2023 issued by the adjudicating authority is not correct, proper and legal.

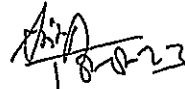
11. In view of above discussion, I hold that the impugned orders dated 15.11.2022 and 17.02.2023 passed by the adjudicating authority confirming demand of Service Tax of Rs. 38,79,933/- for the period FY 2014-15 and FY 2016-17 along with interest and penalties and confirming demand of Service Tax of Rs. 24,03,095/- along with interest and penalties for the period FY 2016-17, respectively, are not legal and proper and deserve to be set aside on various counts as enumerated above. Since the demand of Service Tax are not sustainable on merits, there does not arise any question of charging interest or imposing penalty in the case.



12. Accordingly, I set aside the impugned orders and allow the appeals filed by the appellant.


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

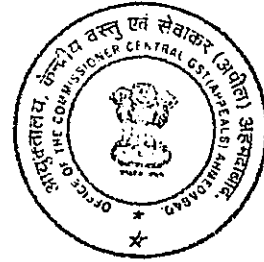
The appeals filed by the appellant stands disposed of in above terms.


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested

Date : 18.08.2023


(R. C. Mariyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Sameer & Co.,
Proprietor Mohamedrafik Mohamednazir Chezara
14, Amir Bunglow,
Sunrise Park Society,
Juhapura Sarkhej Road,
Ahmedabad – 380051

Appellant

The Assistant Commissioner,
CGST, Division-VI,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file

