



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2450/2023 / 9208
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-124/23-24 and 25.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	20.11.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/675/2022-23 dated 12.12.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Milanbhai Narsinhbhai Parmar, Sadashivnagar society, Nr. Shak Market, Ranip Road, Ahmedabad-382480.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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.

(ख) 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/जिनके बाहर किसी राष्ट्र या प्रदेश में निर्यातित 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.

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

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सवृत 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 पृष्ठीय 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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 M/s. Milanbhai Narsinhbhai Parmar, Sadashivnagar Society, Nr. Shak Market, Ranip Road, Ranip, Ahmedabad - 382480 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WTO7 / HG/675/2022-23 dated 12.12.2022 passed by The Assistant Commissioner, CST Division-VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AGAPP3467A. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 41,83,851/- during the FY 2015-16, which was reflected under the heads "Sales of services" (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of relevant documents for assessment for the above said period. However, the appellant had not responded to the letters/summons issued by the department.

2.1 Subsequently, the appellant was issued Show Cause Notice No. CGST/AR-V/DIV-VII/ABAD NORTH/TPD UR-15-16/115/2020-21 dated 27.09.2020 demanding Service Tax amounting to Rs. 6,06,658/- for the period FY 2015-16, 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 77(1), 77(2) and Section 78 of the Finance Act, 1994. However, the appellant had not responded to the department.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 6,06,658/- 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 from FY 2015-16. Further (i) Penalty of Rs. 6,06,658/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal along with an application for condonation of delay on the following grounds:



- The appellant is a proprietor and does not have a separate staff to look after legal matters. The Order-in-Original No: CST/WT07/HG/675/2022-23 dated 12.12.2022, was received on 03.01.2023 to them and as per the provisions contained in Section 35(1) of the Central Excise Act, 1944 read with Section 86 of the Finance Act, 1994, appeal against the order passed by any authority subordinate to Commissioner is required to be filed before the Commissioner (Appeals) within a period of Two months (as amended vide Finance Act 2012) from the date of receipt of the order by the aggrieved party.

The appellant being a trader was not well verse with the provisions of the Service Tax Department. As soon as the applicant understood that against the order, an appeal is required to be filed, he contacted the legal counsel and filed the present appeal on 06.03.2023 which was required to be filed on or before 03.03.2023. Therefore, there is a delay of 3 days in filing the appeal. The applicant has requested to consider the cause of delay.

The applicant rely on the judgement of the Honorable Supreme Court in the case of state of U.P. v/s Harish Chandra as reported in 1996 (85) ELT 209 (SC) held that "it is undoubtedly true that the applicant seeking for condonation of delay is duty bound to explain the reasons for the delay but as has been held by this court in several cases, the very manner in which the bureaucratic process moves, if the case deserves merit the court should consider the question of condonation from that perspective."

- The appellant is engaged in trading of unstitched dress material and not engaged in any service. During the Financial Year 2015-16, the value of Sale of unstitched dress material was Rs.41,83,851/- while filing the Income Tax return it was wrongly shown by the filer/tax consultant of the appellant as Sale of Services instead of Sale of Goods. The said Tax consultant admitted his mistake and filed affidavit in this regard also. A show cause notice was issued to the appellant demanding Service Tax of Rs.6,06,658/-.Further the same was confirmed vide The impugned Order for the demand of Service Tax of Rs.6,06,658/- along with interest as per section 75, penalty under section 77(1) for Rs. 10,000/-, penalty under section 77 (2) for Rs.5,000/- and Rs. 6,06,658/- under section 78 of the Finance Act, 1994.

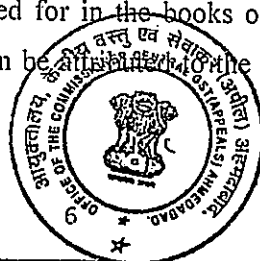
The appellant denies all the demand confirmed vide impugned OIO and submitted that they have not contravened any of the provisions of the Act.

- The appellant submitted that the Impugned OIO is passed without providing reasonable opportunity of hearing to the appellant. The adjudicating authority gave 3 opportunities of hearing within the period of 8 days vide single letter. The learned Adjudicating Authority passed ex-parte order which in Gross violation of natural justice. The appellant relied on the Jurisdictional High Court varying in the case of Regent whereas it has been held that *in a single letter giving 3 opportunities of hearing*



cannot be treated as valid opportunity of hearing. Reported as 2017 (6) G.S.T.L. 15 (Guj.) REGENT OVERSEAS PVT. LTD. Versus UNION OF INDIA - Service of notice by speed post - Proof of service - Section 37 of Central Excise Act, 1944 corresponding to Sections 93B & 94 of Finance Act, 1994 provides for notice by speed post with proof of delivery - No material by way of proof of delivery of notice to petitioners produced - Impugned ex parte is clearly in breach of principles of natural justice. [para 8]. Order - Ex parte order - Adjournments, three adjournments - Adjudicating authority given a choice of three dates of personal hearing in a single notice - Three adjournments/dates for hearing cannot be given by a single notice.

- The appellant is dealing in sale/purchase of unstitched dress material which is goods in nature and not the service. The tax Consultant of the appellant made mistake during filing of ITR for the FY-2015-16 wherein he shown "Sales of Service" in place of "Sales of unstitched dress material". Further the appellant furnished the copies of sample purchase and sales bills of unstitched dress material.
- The appellant states that The income earned during the F.Y. 2015-16 was from sale of unstitched dress material and the appellant has not suppressed the value from the Government with the intention to evade the Service Tax. Thus, the non- disclosure of value to the Service tax department, at the most be termed as 'omission' and not willful suppression, as alleged in the SCN.
- Further, the appellant submitted that the show cause notice is erroneous as it demands Service Tax by invoking extended period. The meaning of the word "suppression" was considered by the Hon'ble Supreme Court in the case of *Continental Foundation Jt. Venture Vs. CCE, Chandigarh*, reported in 2007 (216) ELT 177 (SC), and was held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty.
- The appellant submitted that in ITR for the F.Y.2015-16, they have shown the opening stock for Rs. 16,70,254/- as well as closing stock for Rs. 18,22,620/- along with purchase for Rs.35,48,370/- which also indicates that they are engaged in trading activity and not engaged in service. The appellant has not provided any service for F.Y.2015-16. They submitted that there was no mala-fide intention but due to Clerical mistake the issue has been raised. Therefore, the extended period has been invoked without any factual or legal base and shall be dropped.
- The appellant submitted that there is no element of fraud, willful misstatement or suppression of facts with intent to evade payment of service tax, as all the income received by them were accounted for in the books of accounts. . In absence of all above elements, no mens rea can be attributed to the appellant.. In absence of mens



rea penalty cannot be imposed. The appellant wishes to rely upon following decisions of various Courts:

(a) Hon'ble Supreme Court in case of M/s Pahwa Chemicals Private Ltd. vs. Commissioner - 2005 (189) E.L.T. 257 (S.C.) has held that mere failure to declare something does not amount to mis-declaration or willful suppression of facts and that for proving mis-declaration, and willful suppression of facts, some positive action on the part of the assessee is a must.

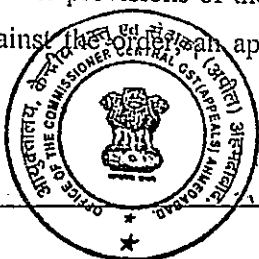
(b) As held by the Hon'ble Supreme Court in case of M/s Hindustan Steel Ltd. vs. State of Orissa - 1978 (2) E.L.T. J 159 (S.C.) penalty could not be imposed simply because there is default. For imposition of penalty presence of mens-rea is a must.

(c) Ms Padmini Products v. Collector of C. Ex., 1989 (043) ELT 0195 (S.C.) wherein the Apex Court held that suppression of facts is not failure to disclose the legal consequences of a certain provision.

- The appellant further submitted that Since the demand of tax under Section 73 of the Finance Act, 1994 itself is baseless and without merits therefore levy of interest and imposition of penalties. In the decision of Hon'ble Tribunal in *M/s DD Industries Ltd. V/s.CCE reported in 2002 (142) ELT 256 (Tri.)*, it was held that even if suppression is assumed, in the absence of an intent to evade payment of duty, a penalty cannot be imposed.
- The appellant submitted that as they were not required to take registration, no question arises to file returns and the penalty imposed under Section 77(1), Section 77(2) and 78 for Rs.10,000, Rs.5,000/- and Rs.6,06,658/-, respectively is not warranted. The appellant requested to be heard in person before the case is decided and prayed for Consideration of the above submissions and set aside the impugned order.

4. Personal hearing in the case was held on 06.10.2023. Shri Dhiraj Patel, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal. He requested to allow their appeal and set aside the impugned order.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 12.12.2022 and received by the appellant on 03.01.2023. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 06.03.2023, i.e. after a delay of 03 day from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that The appellant is a proprietor and does not have a separate staff to look after legal matters. He was not well verse with the provisions of the Service Tax Department. As soon as the applicant understood that against the order an appeal is required to be filed, he contacted the legal



counsel and filed the present appeal on 06.03.2023 which was required to be filed on or before 03.03.2023.

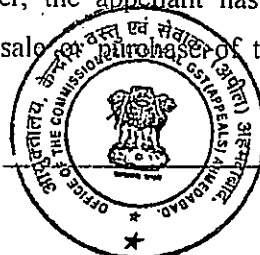
6. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 03 day and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing 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 2015-16.

8. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of 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. Merely because the appellant had reported receipts from "Sales of 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.

8.1 In the present case, I find that letter & summon 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. This, in my considered view, is not a valid ground for raising of demand of service tax.

9. It is observed that the main contentions of the appellant in the appeal memorandum is that they were engaged in the sale/purchase of unstitched dress material which is goods in nature and not the service and income received by them from such sale/purchase activity is a trading activity. For the confirmation of the same the appellant has submitted the copies of sample purchase and sales bills of unstitched dress material from/to its various clients/customers. In favour their submission, the appellant has also submitted the copies of ITR for F.Y.14-15 & 16-17 and 26AS from it appears that they are engaged in trading activity and not in the service providing. Being trader, the appellant has not taken service tax registration. The trading activity includes the sale/purchase of the goods in which the



ownership of the goods get change. Trading goods is the activity of buying, selling, or exchanging goods or services between people, firms, or countries. It can also mean the sale of goods by way of business to buyers, traders, or processors and the same is exempted from the service tax as per the Clause (e) of the Section 66D of Finance Act, 1994 specifies the Negative list of services i.e. the Services on which Service Tax is not applicable. Section 66D is been inserted in Finance Act, 1994 by Finance Act, 2012 and been notified to be effective from 1st July 2012 vide Notification No. 19/2012-ST dated 5 June 2012. Relevant portion of the above is re-produced as under:

66D. Negative list of services. - The negative list shall comprise of the following services, namely: -

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -

(b).....,

(c).....,

(d).....,

(e) trading of goods;

So once the activity falls within the meaning of any service provided in service tax negative list, the activity is out of service tax applicability. As they are engaged in sale/purchase i.e. trading activity, As per negative list [section 66D(e)] of Finance Act, 1994, service tax is not applicable. It is also observed that the adjudicating authority has passed the impugned order ex-parte.

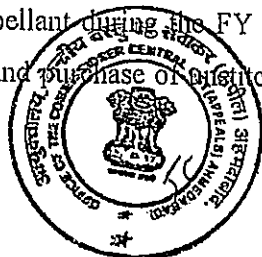
The total turnover for the FY 2015-16 is as under:

Sr. No.	Particulars	Amount (in Rs.)	Remarks
1	Sale of unstitched dress material wrongly shown as Sale of Services	41,83,851/-	Exempted as per negative list [section 66D(e)] of Finance Act, 1994

From the submission, it appears that The value is earned from Sale of unstitched dress material i.e. Rs.41,83,851/- during the subject period and while filing the Income Tax return it was wrongly shown by the filer/tax consultant of the appellant as Sale of Services instead of Sale of Goods. The said Tax consultant has admitted his mistake and filed affidavit in this regard also.

10. The appellant were not having any other income other than the discussed above. In support of the same they have submitted Income Tax Returns for the FY 2015-16; Form 26AS for FY 2015-16; Profit & Loss Account for the FY 2015-16; & copy of sample invoices issued by the appellant during the FY 2015-16.

11. On scrutiny of the documents viz. Profit & Loss Account for the FY 2015-16; invoices issued by the appellant during the FY 2015-16; I find that the appellant engaged in trading activity i.e. sale and purchase of unstitched dress material, Therefore, the activity carried out



by the appellant was exempted from service tax as per negative list [section 66D(e)] of Finance Act,1994 and the appellant not required to pay any service tax on the income of Rs. 41,83,851/- received by them during the FY 2015-16 from the sale of unstitched dress material.

12. In view of the above discussion, I am of the considered view that the activity carried out by the appellant not liable to pay Service Tax during the FY 2015-16. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

13. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of "sale of unstitched dress material" income received by the appellant during the FY 2015-16, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

J.C.J.
25.10.23

(जानचंद जैन)

आयुक्त (अपील्स)

Attested

M.K.

Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

Date :25.10.2023



By RPAD / SPEED POST

To,
M/s. Milanbhai Narsinhbhai Parmar,
Sadashivnagar Society, Nr. Shak Market,
Ranip Road, Ranip, Ahmedabad - 382480

Appellant

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Deputy Commissioner, CGST, Division V, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South

(for uploading the OIA)

- 5) Guard File
- 6) PA file

