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

DIN:- 20240264SW0000252567

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4383/2023 / 2318
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-002-APP-229/23-24 and 14.02.2024
(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	19.02.2024
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/342/RAHUL/AM/2022-23 dated 28.11.2022 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Rahul Sehgal 1/41, Kalhar Bungalows Nr. Nandoli Village, Thaltej-Shilaj Road Shilaj, Ahmedabad - 380085

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 पूवोक्त 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 मे 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 मामलें में जो भारत के 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 डयूटी केडिट 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 दिनाँक 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 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 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 अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
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 2ndfloor, 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. Registar 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 ओदश 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 हैं।

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 Appellant 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 संषोधित 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 in 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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 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

M/s. Rahul Sehgal, 1/41, Kalhar Bunglows, Near Nandoli Village, Thaltej-Shilaj Road, Shilaj, Ahmedabad -380085 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.GST-06/D-VI/O&A/342/RAHUL/AM/2022-23 dated 28.11.2022 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. They declared Sales / Gross Receipts of Rs.33,32,620/- in their ITR, on which no service tax was paid. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs.4,64,965/- was, therefore quantified considering the income of Rs.33,32,620/- as taxable income.

Table-A

F.Y.	Sale of service as per ITR	Service tax rate	Service tax payable
2015-16	33,32,620/-	15%	4,64,965/-

2.1 A Show Cause Notice (SCN) No. GST-06/04-1020/O&A/RAHUL/2021-22 dated 24.3.2021 was issued to the appellant proposing recovery of service tax amount of Rs.4,64,965/-not paid on the value of income received during the F.Y. 2015-16, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Late fees under Section 70, imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994 was proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.4,64,965/-was confirmed alongwith interest. Late fees of Rs. 40,000/- under Section 70; Penalty of Rs. 2,000/- under Section 77 and Penalty of Rs.4,64,965/- was also imposed under Section 78.

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

- The appellant is engaged in providing consultancy servicesto Humane Society International (hereinafter referred to as "HSY"), a Washington, D.C. not-for-profit corporation with headquarters located at 2100 L Street, N.W., Washington, D.C. 20037 i.e. Outside India.

- The appellant exported services in relation to Indian operation of animal welfare programs and campaigns, non-profit management, fundraising, and disaster response of HSI. The contract between the appellant and HSI stipulates scope of services of the appellant. Relevant extract has been reproduced below:

- *Consultant will take the role of Asia Director and manage all Indian program staff;*
- *Consultant will carry out assessments of other organizations throughout India and Asia for consideration of partnership in the HSI Disaster Response team for Asia;*
- *Consultant will also lead in the development and implementation of CNVR initiatives throughout India and Asia, in conjunction with local governments, other NGOs and donors;*
- *Fundraising efforts on behalf of HSI Disaster Response and CNVR programs will be a responsibility of this role in India and Asia. In addition, upon invitation;*
- *Consultant will act as the HSI representative in presentations regarding the CNVR sterilization project to other interested organizations and local governments throughout the world;*
- *Consultant will assume the responsibility of staff recruitment for the India and Asia program work and work with the HSI Headquarters Office on administrative needs until appropriate personnel have been identified; and*
- *Consultant will be responsible for all requested reporting on program activity in India and Asia.*

➢ Since the appellant was engaged in providing only Export of services, they are not liable to take registration under Service Tax. The said income was duly disclosed by the appellant in Income Tax Return.

➢ HSI/India is a part of Humane Society International-one of the largest animalprotection organizations in the world. The appellant provided services to HSI forvarious assessments, promotion, representations to government, taking variousinitiatives for arranging sterilization of dogs project. Copy of Agreement betweenthe appellant and HSI, invoicesissued by appellant for the said services are also submitted.

➢ In the F.Y. 2015-16, professional fees income in this regard was accrued for Rs.32,68,807/-. The same income has been duly reported in Income-Tax return inForm ITR-4. Copy of ITR, Profit & Loss Account, Balance sheet and copy of Form 26AS has beenattached herewith for reference.

➢ So far as compliance in respect of Service Tax law is concerned, Appellant was notliable to take registration as the aggregate turnover of taxable service was notexceeded by Rs. 9 Lakhs. As far as export of service is concerned, place of supply of said service shall beoutside India. Hence, while calculating the registration requirement underService Tax law, turnover towards export of service shall be excluded whilecalculating Aggregate Taxable Turnover. And if we exclude the export turnover thenthe appellant is having turnover of Rs. 32,68,807/- the turnover shall be below thebask exemption limit of Rs. 10 Lacs and hence, appellant is not liable to obtainservice tax registration neither is he liable to pay any service tax on the same.

➢ Further, in order to qualify as an 'export of services' conditions specified u/r 6A ofService Tax Rules, 1994 should be fulfilled. The 'Place of Provision of Services Rules, 2012'in order to determine the taxing jurisdiction for a service. These rules are primarilymeant for persons who deal in cross border services. Here, appellant's transactionsare carried outside India and hence there is a need to refer to Place of ProvisionService Rules.Rule 3 of the Place of Provision of service Rules is the general rule determining theplace of provision of service. The general rule

will apply when none of the specificrules are applicable to determine the place of provision of service. Appellant hasprovided services to its clients located outside India by sending their employeesoutside India for performing such services. Hence, none of the specific rule of Placeof Provision of Service Rule will apply except the general rule. Rule 3 clarifies that the place of provision of services generally shall be thelocation of the service recipient. Hence, all the six conditions of the Export ofService rules are being fulfilled and hence appellant has exported services outsideIndia.

- In case of consultancy services provided bytaxpayer outside India. The same fact can be proved from the verification of serviceinvoices raised outside India and Foreign Inward Remittance Certificates (FIRC).Copies of service invoices raised on customers and copies of ForeignInward Remittance Certificate along with Appellant's EEFC BankStatement towards payment received from customers are submitted for reference. The bank FIRCs and EEFC statement has been received by appellantin foreign currency and so as to match the same foreign payments with recordedIndian currency in books of accounts. Invoice-wise reconciliation working has been submitted. The total value of taxable services of the Appellant exportturnover and in order to check liability to register under Service Tax regime we needto take upon base of domestic turnover only. Therefore, in case of the Appellant,while calculating the aggregate turnover taxable services for taking registration,export turnover shall not form part of calculation as the same service is exemptedfrom Tax leviable u/s 66B of the said Act.As aggregate turnover of taxable service as specified above doesn't exceed by Rs.9 Lakhs; no Service Tax registration is required to be taken by taxpayer. Accordingly,in F.Y. 2015-16, taxpayer has not taken Service Tax registration as he is not liablefor taking it.

- Based on comparison between Income Tax Returns filed in Form ITR-04 and ServiceTax Returns without understanding the nature of receipts of the Appellant, Service tax demand cannot be raised. Furtherthe demand of Service Tax is not supported with constructive evidence whichproves that there is actual evasion of any tax and suppression of income in returns.Plethora of judicial pronouncements have settled the law that no demand ofservice tax can be confirmed on the basis of amounts shown as receivables in theIncome Tax Returns. [In J.I Jesudasan vs. CCE 2015 (38) S.T.R 1099 (Tri.Chennai);Alpha Management Consultant P. Ltd vs. CST 2006 (6) STR 181 (Tri.Bang); Tempest Advertising (P) Ltd. v. CCE 2007 (5) STR 312 (Tri.-Bang.); Turret Industrial Securityvs. CCE 2008 (9) S.T.R. 564 (Tri- Kolkata).

- Extended Period of limitation cannot be invoked in the absence of fulfilment ofthe conditions under sub-section (1) to Section 73. The figures reflected in Income Tax Returns and Form 26AS are already availablewith the department at the time of filing during relevant year itself. Therefore, thesaid information has never been suppressed by the concerned taxpayer from thedepartment. Further, the appellant has also not indulged in anyfraud or collusion or willful misstatement as the given figures reported in ITR onthe basis of which SCN has been issued and the said information is available fordepartment's perusal right from the year in question.In F.Y 2015-16, Appellant has engaged in providingexport of services. It was exempt from service tax, so Appellant did not file the ST-3. Thus, there has been no suppression of fact to departmental officers. Reliance is placed on Saboo Coatings Ltd. v. Commr. of C. Ex.,Chandigarh [2014 (36) STR 447 (Tri. - Del.)] and Prolite Engineering Co. v. Unionof India [1995 (75) ELT 257 (Guj.)] wherein it has been held that non – disclosureof facts not required by law cannot be attributable to suppression.

- The present issue involvesinterpretation of complex legal provisions. Therefore, imposition of penalty is notwarranted in the present case. Reliance is placed on the following judgments : Ispat Industries Ltd. v. CCE 2006 (199) ELT 509 (Tri.-Mum)Secretary; Twon Hall Committee v. CCE 2007 {8} 5. T.R. 170 (Tri. - Bang.); CCE v. Sikar Ex-serviceman Welfare Coop. Society Ltd. 2006 (4) S.T.R. 213(Tri. - Del.).Hence, no penalty is imposable on the appellant and the impugned order is liableto be set aside on this ground.

- As Regards Interest u/s 75, it is settled principle of law that in cases where the original demand is notsustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of imposinginterest does not arise. Hence, the demand of interest by the impugned Order isliable to be dropped.

- Penalty u/s 77does not arisewhen no tax is payable. According under Section 80, no penalty under Section 76, 77 or 78 can be imposed ifthe appellant proves that there was a reasonable cause for default or failure underthese sections.

- Penalty under section 78 can be levied only if there is a fraud; collusion; willful misstatement;suppression of facts or contravention of any provisions with intend to evadepayment of service tax and it can be imposed by invoking larger period or extendedperiod for issue of show-cause notice. No penalty shall be imposable when the appellant proves that there was reasonable cause for said failure.

4. Personal hearing in the appeal matter was held on 12.01.2024. Ms. Forum Dhruv, Chartered Accountant appeared for personal hearing, on behalf of the appellant. She stated that the client provides consultancy for welfare of dogs for Humane Society International, an NGO situated at Washington, D.C. USA. The services fall under export of services. The payment is received in convertible currency and have submitted FIRC. Reiterating the written submissions, she requested to allow the appeal.

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 **Rs.4,64,965/-** 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 **F.Y 2015-16.**

5.1 I have gone through the Contract entered by the appellant with Humane Society International (HSI), located at Washington, D.C. It is a not-for-profit corporation with a mission to promote humane treatment of animals. As per the contract, the appellant has to perform the services on behalf of HSI, play a role of Asia Director and manage all Indian Program; the appellant shall carry out assessment of other organizations throughout India and Asia. This agreement was effective from January,2015 to December,2015; the HSI shall make payment of $ 4125 USD per month for the said services. In respect of the payment received, the appellant has submitted invoices issued by HSI for each month and the FIRC as well as Bank Statement as a proof of remittance received in foreign currency.

5.2 In the Profit & Loss Account the appellant has shown Rs.32,68,807/- as HSI Income and Rs.70,588/- as Other Income (totaling to Rs.33,39,395/-). The demand however has been raised on the income of Rs.33,32,620/- reflected in the ITR. The appellant claim that the difference of Rs.40,871/- (Rs.33,09,678/- minus Rs.32,68,807/-) is due to the foreign exchange difference.I do not agree with their above contention because the appellant themselves have shown Rs.32,68,807/- as the income from HSI in rupee terms after considering the exchange rate fluctuation.

5.3 Further, the appellant has claimed that as the income of Rs.32,68,807/- received is for the services rendered to the HSI which is located abroadhas to be treated as export on which there is no tax liability.In terms of Rule 3 of the POPS Rules,2012, the place of provision shall be the location of service recipient and as the recipient in the instant case is located outside India, the services tax liability does not arise.

5.4 Further, in terms of Section 66B, a service is taxable only when, it is"*provided (or agreed to be provided) in the taxable territory*". Thus, the taxability of a servicewill be determined based on the "place of its provision". The 'Place of Provision ofServices Rules (POPS), 2012' replaced the 'Export of Services, Rules, 2005' and 'Taxation ofServices (Provided from outside India and received in India) Rules, 2006. The POPS Rules, 2012 were introduced to examine the place of provision. In terms of Rule 3 of the POPS Rules, the place of provision of a service shall be the location of the recipient of service; provided that in case "of services other than online information and database access or retrieval services"(Inserted vide Notification 46/2012- Service Tax) where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service. So, aservice shall be treated as export of service if the supplier of service is located in India; the recipient of service is located outside India; the place of supply is outside India and the payment is received in foreign convertible currency.

5.5 In the instant case, the appellant has provided consultancy services to 'HSI' located outside India. The appellant has been carrying out the role of Asia Director and managed all India Programme staff, carried assessment of other organizations throughout India and Asia. All these activities were carried out by the appellant on behalf of HSI. Thus, the services were actually rendered to 'HSI' an organization having its location outside the taxable territory of India. Further, the remittance was received by the appellant in USD i.e. in convertible foreign exchange, which was paid by HSItowards the service received by them. In terms of Rule 3 of the POPS, 2012, the place of provision shall be the location of the recipient of service. In the instant case, the recipient is located outside India and therefore there shall be no tax liability on the appellant as there is no levy on export of services. I,therefore, find that the appellant is not required to discharge tax on the income of Rs.32,68,807/- earned from export of services as there is no levy on export of service.Thus, I set-aside the demand on the income of Rs.32,68,807/-.

5.6 On the remaining income of Rs.63,813/-, I find that the same is taxable as the appellant has not submitted any documentary evidences on the same. However, the appellant on such income has claimed SSI exemption. Notification No.33/2012-ST dated 20.06.2012, exempts the taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under

Section 66B of the said Finance Act. Further, this exemption shall apply where the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

5.7 In the P&L Account for the F.Y. 2014-15, the appellant has shown total income of Rs. 28,20,030/- out of which Rs.27,89,380/- was earned from rendering services to HSI and remaining income of Rs. 30,650/- was earned from other income. The income from HSI is non-taxable being exports, however, the income of Rs. 30,650/- was taxable. Asthe said income is below the threshold limit of Rs.10 lacs, the appellant shall be liable for SSI exemption in the subsequent year i.e. in F.Y. 2015-16. In the F.Y. 2015-16, the appellant has shown the Rs.32,68,807/- as income form HSI which is exports and Rs.63,813/- as income from other sources, which is taxable but as the taxable income is less than Rs.10 lakhs, the appellant shall not be liable to discharge any tax on such income. Thus, I find that there is no tax liability on the appellant for the F.Y. 2015-16.

6. I, therefore, find that the demand of Rs.4,64,965/- raised on the income of Rs.33,32,620/- is not legally sustainable. When the demand is not sustainable the question of recovering the interest and penalty also does not arise.

7. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of Rs.4,64,965/- alongwith interest and penalties.

8. अपीलकर्ता 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.

(ज्ञानचंद जैन)
आयुक्त (अपील्स)
Date: 14.02.2024

Attested

Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Rahul Sehgal, - **Appellant**
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Near Nandoli Village,
Thaltej-Shilaj Road, Shilaj,
Ahmedabad -380085

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

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Ahmedabad (Appeals) for uploading the OIA
4. Guard File.