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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/314/BVR/2017	मूल आदेश सं / O.I.O. No. BHV-EXCUS-000-JC-004- 2017-18	दिनांक / Date 21.04.2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

BHV-EXCUS-000-APP-160-2017-18

आदेश का दिनांक / Date of Order:	28.02.2018	जारी करने की तारीख / Date of issue:	12.03.2018
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Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s Shree Talala Taluka Sahakari Khand Udyog Mandali Limited, Sasan road, Talala Gir Junagadh-362150

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(ii) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- (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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार की पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरालेग के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section 35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

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

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीख अथवा संभावविधि पर या बाद में पारित किए गए हैं। /

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

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पंढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

ORDER-IN-APPEAL

M/s. Shree Talala Taluka Sahakari Khand Udyog Mandali Limited, Sasan Road, Talala Gir, Distt. Junagarh – 362150 (hereinafter referred to as "the appellant"), holding Central Excise Registration No.AAAAT2452LST001, are engaged in the manufacturing of Sugar. The appellant had filed the present appeal against OIO No BHV-EXCUS-000-JC-004-17-18 dated 21.04.2017 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts are that during the course of audit, it was observed that the appellant had shown transportation expenses in respect of purchase of sugarcane in their accounts, on which the appellant, being consignee who paid freight for such transportation, was liable to pay Service Tax under the taxable category of Goods Transport Agency ('GTA' in short) Service, under reverse charge mechanism.

3. Accordingly, a SCN dated 30.09.2014 was issued to the appellant proposing for demand of Service Tax of Rs.9,21,394/- under the provisions of Section 73 of Finance Act, 1994 along with interest as provided under Section 75 of Finance Act, 1994. Imposition of penalties had also been proposed under Section 77 & 78 of Finance Act, 1994 in the captioned SCN.

4. The demand, made in the aforesaid SCN, was confirmed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar vide OIO dated 30.09.2014. Being aggrieved, the appellant had preferred an appeal before Commissioner (Appeals), Rajkot who, vide order dated 18.05.2015, remanded the case back to the adjudicating authority on the ground that the adjudicating authority had not appreciated the documentary evidences produced by the appellant.

5. Accordingly, the captioned SCN was re-adjudicated by the adjudicating authority vide OIO No.BHV-EXCUS-000-JC-004-17-18 dated 21.04.2017 passed by the adjudicating authority by confirming the demand of Service Tax of Rs.9,21,394/- under Section 73(2) of Finance, 1994 along with interest thereon under Section 75 of Finance Act, 1994, and by imposing penalties upon the appellant under Section 77 & 78 of Finance Act, 1994.

6. The adjudicating authority, in the aforesaid OIO, has held that:-

- It is mandatory for a GTA to issue a consignment note in respect of taxable services, and the service recipient (i.e. the appellant) cannot avoid payment of Service Tax under reverse charge taking advantage of the failure of GTA to issue consignment note;
- An individual vehicle owner providing service of transportation of goods is also covered under GTA in as much as the definition of GTA starts from word 'any person', which means any legal person;
- The appellant has also maintained internal records which contain those details, required to be indicated in consignment note. It, thus, concluded that the consignment note was being prepared by the appellant on behalf of tractor owners;
- As regards the admissibility of benefit of Notification No.34/2004-ST dated 03.12.2004, as amended, the appellant had provided various handwritten Annexures to show that the gross amount charged for transportation of goods on consignment basis by various tractor owners are either below Rs.750/- or between Rs.750/- to 1500/- per consignment during 2009-10 as sample only, however the



appellant has shown their inability to provide such details for subsequent years under the pretext that their factory is closed/non-working since last three years and no staff is available to work out more details for the subsequent years;

- It is also not forthcoming from said annexure as to how tractors had been used for multiple consignments i.e to say for transportation of sugarcane for more than one consignee;
- The explanation to the said notification defines word "an individual consignment". Accordingly, for the purpose of claiming exemption in respect of consignment where gross amount charged is below Rs. 750/-. "an individual consignment" covers all the goods transported by a GTA in a goods carriage for a specific consignee. In the instant case, the appellant is the only consignee of the goods and receive the goods from various farmers (say consignor) through GTA, therefore, in order to get the exemption from payment of Service Tax, the gross amount charged by the GTA in respect of all consignments for the said consignee should not exceed Rs. 750/-.

7. Feeling aggrieved, the appellant has filed the present appeal on the following grounds:-

- Clause (p) of Section 66D (Negative List) specifies transportation of goods by road except when provided by GTA as a Non-taxable service;
- when a GTA fails to issue consignment note, it does not remain as GTA, as per provisions of Section 65(50b) & Section 65B of the Act, and Rule 4B of Service Tax Rules, 1994;
- Any person who is the owner of trucks or arranges the trucks by hiring them and provides transportation service, cannot be termed as GTA;
- Individual truck owners who does not issue consignment note and engaged in transportation of goods could not be said to be operating as GTA. In support, they rely upon the following judicial pronouncements:-
 - (i) CCE, Aurangabad Vs. Jaykumar Fulchand Ajmera, reported in 2017 (48) STR 52 (T.-Mum.);
 - (ii) Wave Industries P. Ltd. Vs. CCE, Noida, reported in 2017 (47) STR 105 (T.-All.);
 - (iii) Bhima Sahakari Sakhar Karkhana Ltd. Vs. CCE, Pune-II, reported in 2016 (41) STR 438 (T.Mum.);
 - (iv) Nandganj Sihori Sugar Co.Ltd. Vs. CCE, Lukhnow, reported in 2014 (34) STR 850 (T.Del);
 - (v) Bazpur Co-op. Sugar Factory Ltd. Vs. CCE, Meerut-II (T.-New Delhi).
- It is a fact that the gross amount charged by the GTA in respect of all the consignments from single consignor for the said consignee in a single trip should not exceed Rs. 750/-, but the gross amount charged for all the consignments of different consignors in that single trip should not exceed Rs.1500/-. The appellant has satisfied that condition;
- In view of the adverse circumstances of closure of the factory and non-availability of the staff, at that time, the appellant had requested the department to get their records verified to ascertain the details of the transportation of sugarcane by the tractor operators to establish the veracity of the claim of the appellant, but said request had never been considered by the department;
- In view of the above, the interest and penalty upon the appellant were also not imposable.



8. Personal hearing was also held on 23.02.2018, wherein Shri V.H. Hakani, Advocate appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum.

9. The appeals were filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Circular No. 208/6/2017 Service Tax dated 17.10.2017 and Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Department of Revenue, CBEC, Service Tax Wing.

10. I have carefully gone through the facts of case, the grounds mentioned in the appeal and the submissions made by the appellant. The question, to be decided in this appeal, is whether the appellant is liable to pay Service Tax under reverse charge on said transportation expenditure under the taxable category of GTA Service or otherwise.

11. I find that the appellant has taken a stand that the amounts were paid as inward freight to the individual tractors owners and not to Goods Transport Agency. It is seen from the records that this stand of the appellant is not disputed by the department in any way as also the stand that no consignment note is issued by tractors owners.

12. I find that an essential characteristic of provider of the service is the issuance of a consignment note, which is not present in this case. I also find from the OIO that the adjudicating authority held that the appellant had also maintained internal records which contained those details, required to be indicated in consignment note. It, thus, concluded that the consignment note was being prepared by the appellant on behalf of tractor owners. This argument of the adjudicating authority has also no force since internal records maintained by the appellant (and not by the individual tractors owners) can not be termed as consignment note.

13. In this regard, I agree to the submission made by the appellant that the issue is now squarely covered by the recent judgement of the Tribunal in the case of Nandganj Sihori Sugar Co. Ltd. (supra). We respectfully reproduce the relevant paragraph:-

"6. In terms of Section 65(105)(zzp), the taxable service means "any service provided to a customer, by a Goods Transport Agency, in relation to transport of goods by road in a goods carriage. "In terms of Section 65(50a) ibid 'Goods Carriage' has the meaning assigned to it in clause 14 of Section 2 of the Motor Vehicle Act, 1988. In terms of Section 65(50b), 'Goods Transport Agency' means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called. The Service Tax has been demanded from the Appellants as service recipient under Rule 2(i)(d)(v) of the Service Tax Act, 1994 read with Notification No. 35/2004-S.T., dated 3-12-2004, on the payments made by them to transporters against the fortnightly bills being presented by them. While admittedly no consignment notes or GRs have been issued by the transports, according to the Department the Transporter's bills are in the nature of the consignment notes. Under Rule 4B of the Service Tax Rules, 1994, "any Goods Transport Agency which provide service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer. In term of Explanation to Rule 4B, 'Consignment Note' means - a document issued by Goods Transport Agency against the receipt of goods for the purpose of its transport by road in a goods carriage, which is serially numbered and contains the name of consignor and consignee, registration number of the goods carriage in which goods are transported, details of goods transported, details of the place of origin and destination, person liable for paying Service Tax whether consignor, consignee or Goods Transport Agency. Thus mere transportation of the goods in a Motor Vehicle is not the service provided by a Goods Transport Agency. A Goods Transport Agency in terms of its definition under Section 65(50b) provides service in relation to transportation of goods under a consignment note which should

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have the particulars as prescribed in explanation to Rule 4B. In the present case admittedly no consignment notes have been issued. The fortnightly bills cannot be treated as consignment notes, as a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and merely a bill issued for transportation of goods cannot be treated as Consignment Note. The fact of non-issue of consignment to M/s. Nandganj is admitted in the show cause notice itself. In case of M/s. Bajpur though it is not mentioned in the show cause notice, this plea has been made by the Appellant and the same has not been refuted. The transportation of goods by individual truck owners without issue of consignment note, GR's & bills, etc. as prescribed in Rule 4B of the Service Tax Rules, would be simple transportation and not the service of Goods Transport Agency which involves not only undertaking the transportation of the goods handed over to it but also undertaking delivery of the goods to the consignee and also temporary storage of the goods till delivery. When the transporters did not issue consignment notes or GRs or Challans or any documents containing the particular as prescribed in Explanation to Rule 4B of the Service Tax Rules, 1994, the Transporters cannot be called "Goods Transport Agency" and, hence, in these cases, the service of transportation of sugarcane provided by the transporters would not be covered by Section 65(105)(zzp). In view of this we hold that there will be no Service Tax liability on the appellant sugarcane mills, as they have not received the service from a Goods Transport Agency. In view of this the impugned orders are not sustainable and the same are set aside. The appeals filed by M/s. Nandganj and M/s. Bajpur are allowed. As regards the Revenue's appeal, since it has been held that there is no Service Tax liability of the Appellants, there would be no merit in it and the same is dismissed."

14. I also find that there are few more judgments on this issue in favour of the appellant, as shown below:-

- (i) **CCE, Aurangabad Vs. Jaykumar Fulchand Ajmera, reported in 2017 (48) STR 52 (T.-Mum.)** – Individual truck owners not covered for taxability under impugned service – Section 65(105)(zzp) of Finance Act, 1994 – The issue is already settled in case of **Kanaka Durga Agro Oil Products Pvt. Ltd., reported in 2009 (15) STR 399 (T.Bang.)**;
- (ii) **Wave Industries P. Ltd. Vs. CCE, Noida, reported in 2017 (47) STR 105 (T.-All.)** – Transportation of sugarcane from 'cane collection centre to sugar factory – Appellant submitting no demand payable since transporters being individual truck owner not issued consignment notes;
- (iii) **Bhima Sahakari Sakhar Karkhana Ltd. Vs. CCE, Pune-II, reported in 2016 (41) STR 438 (T.Mum.)** – Demand – GTA Service- Recipient of service – Transportation of sugarcane from collection centre to sugar mill- Appellant paying inward freight charges to individual truck owners and not to any Goods Transport Agency – No consignment notes issued – Appellant not liable to pay service tax;
- (iv) **Nandganj Sihori Sugar Co.Ltd. Vs. CCE, Lukhnow, reported in 2014 (34) STR 850 (T.Del)** - Demand – GTA Service- Recipient of service – Transportation of sugarcane from collection centre to sugar mill without issuance of consignment notes, GR, bills etc. – Mere transportation of goods in motor vehicle not service provided by GTA – Fortnightly bills cannot be treated as consignment note – GTA Service involve not only transportation but also delivery of goods and temporary storage till delivery – Transporters not GTA and service not covered by Section 65(105)(zzp) of Act, 1994 – No service tax liability on sugar cane mills;
- (v) **Bazpur Co-op. Sugar Factory Ltd. Vs. CCE, Meerut-II (T.-New Delhi)** – There was clear intention of the government not to levy service tax on individual truck owners except in cases where the cargo for such trucks are booked by

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"Goods Transport Agency" which is in business of booking cargo and issuing the consignment note in the normal course of their business;

- (vi) **South Eastern Coal Fields Ltd. Vs. CCE, Raipur, as reported in 2014-TIOL-1554-CESTAT-Delhi- ST - GTA Services** - Appellant entered into agreement with 24 transporters for transportation of the mined coal to the railway siding - None of the 24 transporters however issued a consignment note by whatever name called, whether falling within ambit of the definition of consignment note in Rule 4(B) of the Service Tax Rules, 1994 or otherwise for rendition of the service of transportation of coal to the railway siding - issue no longer *res integra* - to fall within the ambit of the defined expression of Goods Transport Agency issuance of a consignment note is non-derogable ingredient - in view of the law declared and the factual matrix it cannot be said that Goods Transport Agency service was held to have been rendered - appellant is not liable to Service Tax;
- (vii) **Western Coal Fields Ltd. Vs. CCE, Nagpur - as reported in 2015-TIOL-1289-CESTAT-Mumbai- ST** - Appellants are engaged in extraction of coal - extracted coal is shifted from mines to warehouse and from warehouse to coal handling plant, railway siding etc. from where the coal is transported out - for transportation of coal to railway siding the appellant engages the services of various transporters and pays them amounts as per contract - Revenue allegation that appellant should pay ST under the category of Goods Transport Service for the period 01.01.2005 to 31.07.2007. Held: Issue is no longer *res integra* - truck authorisation slips were issued by appellant and not transporter - since admittedly no consignment notes were issued by the transporters the Goods Transport agency service cannot be held to have been rendered and that being the position appellant is not liable to tax - Orders set aside and appeal allowed.
- (viii) **Ultratech Cement Ltd. Vs. CCE, Kolhapur - reported in 2017-TIOL-4224-CESTAT-Mumbai - ST** - Service provider had not issued any consignment note and hence the appellant will not be covered under the scope of Goods transport Agency;
- (ix) **Kichha Sugar Co. Ltd. Vs. CCE, Meerut-I-as reported in 2017-TIOL-1731-CESTAT-Delhi- Service Tax - Demand of Service Tax on GTA Service** - the appellant had paid to various transporters/ truck owners and trolley owners for services rendered by them for transportation of sugarcane from various cane purchasing centers to its factory premises who did not issue any consignment note - the goods transport service availed by the appellant is not conforming to the definition of GTA service for the purpose of payment of service tax by the appellant under reverse charge mechanism - No merit in the impugned order;
- (x) **Saswad Mali Sugar Factory Ltd. Vs. CCE, Pune-III - as reported in 2016-TIOL-606-CESTAT-Mum- ST** - Whether the appellant is required to discharge the Service Tax liability on the inward freight paid by them to the lorry owners who transported the sugarcane from farmer to sugar factory under the category of "Goods Transport Agency" services or otherwise.

Held: It is noticed that undisputedly the appellant/assessee have paid the inward freight charges to individual truck owner, who transported sugarcane from farmer to their factory - It is also undisputed there was no consignment notes issued by the said truck owners - Tribunal has in the case of *Bhima SSK Ltd.* - 2015-TIOL-2134-CESTAT-MUM held that since the transporters did not issue consignment notes or GRs or Challans or any documents containing the particulars as prescribed in Explanation to Rule 4B of the ST, 1994, the Transporters cannot be called "Goods Transport Agency" and hence, in these cases, the service of transportation of sugarcane provided by the transporters would not be covered by Section 65(105)(zzp) - inasmuch as there will be no

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Service Tax liability on the appellant sugarcane mills, as they have not received the service from a Goods Transport Agency - following the same, demand set aside and appeal allowed - Revenue appeal is against dropping of penalty by Commissioner(A) but since demand itself has been set aside nothing survives - Assessee appeal allowed and Revenue appeal dismissed.

15. In view of the above judgments on the same issue, when said transportation expenses cannot be classified under the taxable category of GTA Service, I do not find any need to look into the matter of applicability of the condition of exemption Notification No. 34/2004-ST dated 03.12.2004.
16. Moreover, I also find that the Appellant is manufacturer of excisable goods and discharging excise duty in cash. If Service Tax is payable on GTA, the amount of such service tax is available as cenvat credit to the Appellant and the entire exercise is of revenue neutral.
17. In view of above, I set aside the impugned OIO and allow ~~the~~ the appeal.
18. The appeal filed by the appellant stand disposed of in above terms.



DR. BALBIR SINGH

ADDITIONAL DIRECTOR GENERAL (DGTS),

AZU, AHMEDABAD

28/02/18
Date 02.2018

F.No. V2/314/BVR/2017

BY RPAD.

To,

M/s. Shree Talala Taluka Sahakari Khand Udyog Mandali Limited,
Sasan Road, Talala Gir,
Distt. Junagarh, Gujarat - 362150

Copy to:

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Bhavnagar.
3. The Commissioner (Appeals), CGST, Rajkot.
4. The Jurisdictional Deputy / Assistant Commissioner, CGST & Central Excise, Bhavnagar Commissionerate;
5. The Additional / Joint Commissioner, Systems, CGST, Rajkot;
6. Guard File.